Greater Huddersfield
Clinical Commissioning Group

Conflicts of Interest Policy

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1. INTRODUCTION TO THE POLICY

1.1 Introduction

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.

NHS Greater Huddersfield Clinical Commissioning Group (the CCG), as a commissioner of healthcare, manages conflicts of interest as part of its day-to-day activities. Effective handling of conflicts of interest by the CCG is crucial to give confidence to patients, tax payers, healthcare providers and Parliament that CCG commissioning decisions are robust, fair and transparent and offer value for money. It is essential in order to protect healthcare professionals and maintain public trust in the NHS. Failure to manage conflicts of interest could lead to legal challenge and even criminal action in the event of fraud, bribery and corruption.

1.2 Aims and Objectives

Conflicts of interest are inevitable in commissioning – it is how the CCG manages them that matters.

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 the CCG will ensure that best practice is followed in managing potential conflicts of interest. The Policy further sets out the safeguards which are put in place by the 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 under delegated commissioning arrangements
- Conflicts of interest training

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

- Doing business appropriately – conflicts of interest become easier to identify, avoid and /or manage when the processes for needs assessments, consultation mechanisms, commissioning strategies and procurement procedures are right from the outset, because the rationale for all decision making will be clear and transparent and should withstand scrutiny.

- Being proactive not reactive – the CCG should seek to identify and minimise the risk of conflicts of interest at the earliest possible opportunity.
- Assuming that individuals will seek to act ethically and professionally, but may not always be sensitive to conflicts of interest
- Being balanced, sensible and proportionate – rules should be clear and robust but not overly prescriptive or restrictive. Decision-making should be transparent and fair whilst not being overly constraining, complex or cumbersome.
- Being transparent – clearly documenting the approach and decisions taken at every stage in the commissioning cycle so that a clear audit trail is evident.
- Creating an environment and culture where individuals feel supported and confident in declaring relevant information and raising any concerns.

The benefits of managing conflicts of interest are:

- Safeguarding clinically led commissioning, whilst ensuring objective investment decisions.
- Maintaining confidence and trust in the NHS.
- 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 and the local population before any personal financial interest.
- Ensuring that CCGs operate within the legal framework.

1.3 Constitutional and Statutory Requirements

Section 14O of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) ("the Act") sets out the minimum requirements of what the CCG must do in terms of managing conflicts of interest.

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

- Managing Conflicts of Interests: Revised Statutory Guidance for Clinical Commissioning Groups, 2017
- Code of Conduct: Managing Conflicts of Interest where GP Practices are Potential Providers of CCG Commissioned Services, April 2013

NHS England has previously 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. However, this has subsequently been superseded by the revised statutory guidance.

The CCG is also subject to procurement rules set out in the NHS (Procurement, Patient Choice and Competition) Regulations 2013 and the Public Contract Regulations 2015; as well as the Bribery Act 2010.

The CCG also adheres to relevant guidance issued by professional bodies on conflicts of interest, including the British Medical Association, the Royal College of General Practitioners and the General Medical Council.

The 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.

This Policy is not, nor does it purport to be, a full statement of the law.

1.4 Scope of the Policy

This Policy applies to all CCG 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.

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 the CCG or otherwise providing services or facilities to the CCG 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.

This Policy should be read in conjunction with the following CCG policies:

- NHS Greater Huddersfield CCG Constitution
- Anti-Fraud, Bribery and Corruption Policy
- Standards of Business Conduct Policy
- Procurement Policy

1.5 Accountability

It is the responsibility of everyone in the CCG to appropriately manage conflicts of interest. Everyone is responsible for familiarising themselves with this policy and to comply with the provisions of it.

Governing Body / Audit Committee

The CCG Governing Body, with support from the Audit Committee, 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 Register of Interests, which is published and made available to the public via the CCG 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.

Conflicts of Interest Guardian

The Chair of the CCG's Audit Committee will act as the Conflicts of Interest Guardian. The Guardian, in collaboration with the CCG's governance lead, will:

- Act as a conduit for GP practice staff, members of the public and healthcare professionals who have any concerns with regards to conflicts of interest;
- Be a safe point of contact for employees or workers of the CCG to raise any concerns in relation to this policy;
- Support the rigorous application of conflict of interest principles and policies;
- Provide independent advice and judgment where there is any doubt about how to apply conflicts of interest policies and principles in an individual situation;
- Provide advice on minimising the risks of conflicts of interest.

CCG Lay Members

Lay Members play a critical role in CCGs, providing scrutiny, challenge and an independent voice in support of robust and transparent decision-making and management of conflicts of interest. The Primary Care Commissioning Committee must have a lay chair and lay vice chair. To ensure the CCG audit chair's position as Conflicts of Interest Guardian is not compromised, the audit chair should not hold the position of chair of the Primary Care Commissioning Committee.

Accountable Officer

The CCG's Chief Officer, as Accountable Officer, has overall accountability for the CCG's management of conflicts of interest. The Accountable Officer has 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 Chair.

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 interest or potential conflicts of interest within a week of declaration. This will confirm the following:

- When an individual should withdraw from a specified activity, on a temporary or permanent basis.
- Monitoring of the specified activity undertaken by the individual, either by a line manager, colleague or other designated individual.

Where the Accountable Officer is conflicted or potentially conflicted, they will seek advice from the Conflicts of Interest Guardian.

Governance & Corporate Manager
The Governance & Corporate Manager has responsibility for:

- The day-to-day management of conflicts of interest matters and queries.
- Maintaining the CCG's Register of Interests and the other registers referred to in this Policy.
- Supporting the Conflicts of Interest Guardian to enable them to carry out the role effectively.
- Providing advice, support and guidance on how conflicts of interest should be managed.
- Ensuring that appropriate administrative processes are put in place.

Heads of Service
Heads of Service are responsible for ensuring that members of staff are aware of this policy and the 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 and the local population 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 benefits 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.
- Ensure that they declare all conflicts of interest and outside employment.

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, emails, 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.

2. DEFINITION OF AN INTEREST

2.1 Definition of an Interest

A conflict of interest is defined as 'a set of circumstances by which a reasonable person would consider that an individual's ability to apply judgement or act, in the context of delivering, commissioning, or assuring taxpayer funded health and care services is, or could be, impaired or influenced by another interest they hold'.

A conflict of interest may be 'actual' i.e. there is a material conflict between one or more interests or 'potential' i.e. there is the possibility of a material conflict between one or more interests in the future.

Individuals may hold interests for which they cannot see potential conflict. However, caution is always advisable because others may see it differently. It is important to exercise judgement and to declare such interests where there is otherwise a risk of imputation of improper conduct.

Conflicts of interest can arise in many situations, environments and forms of commissioning, with an increased risk in primary care commissioning, out-of hours commissioning and involvement with integrated care organisations and new care models[1], as clinical commissioners may here find themselves in a position of being at once commissioner and provider of services. Conflicts of interest can arise throughout the whole commissioning cycle from needs assessment, to procurement exercises, to contract monitoring.

It is important to remember 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.

2.2 Types of Interest

Interests can be captured in four different categories. A benefit may arise from the making of a gain or the avoidance of a loss:

1. **Financial Interests**
   This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could, for example, include being:
   - A director, including a non-executive director, or senior employee in a private company or public limited company or other organisation which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations. This includes involvement with a potential provider of a new care model.
   - A shareholder (or similar ownership interests), a partner or owner of a private or not-for-profit company, business, partnership of consultancy

[1] New care models refers to Multi-specialty Community Providers (MCP), Primary and Acute Care Systems (PACS) or other arrangements of a similar scale or scope.

which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations.
- A management consultant for a provider.
- A provider of clinical private practice.

This could also include an individual being:
- In employment outside of the CCG;
- In receipt of secondary income;
- In receipt of a grant from a provider;
- In receipt of any payments (for example honoraria, one-off payments, day allowances or travel or subsistence) from a provider;
- In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role;
- Having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider).

2. Non-Financial Professional Interests

This is where an individual may obtain a non-financial professional benefit from the consequences of a commissioning decision, such as increasing their professional reputation or status or promoting their professional career. This may, for example, include situations where the individual is:
- An advocate for a particular group of patients;
- A GP with special interests e.g. in dermatology, acupuncture etc;
- An active member of a particular specialist professional body (although routine GP membership of the RCGP, British Medical Association or a medical defence organisation would not usually by itself amount to an interest which needed to be declared);
- An advisor for the Care Quality Commission (CQC) or the National Institute for Health and Care Excellence (NICE);
- Engaged in a research role.
- The development holding of patents and other intellectual property rights which allow staff to protect something that they create, preventing unauthorised use of products or the copying of protected ideas;

GPs and practice managers, who are members of the Governing Body or committees of the CCG, should declare details of their roles and responsibilities held within their GP practices.

3. Non-Financial Personal Interests

This is where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include, for example, where the individual is:
- A voluntary sector champion for a provider;
- A volunteer for a provider;
- A member of a voluntary sector board or has any other position of authority in or connection with a voluntary sector organisation;
- Suffering from a particular condition requiring individually funded treatment;
- A member of a lobby or pressure group with an interest in health.

4. Indirect Interests

This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision (as those categories are described above) for example, a:

- Spouse / partner
- Close family member or relative e.g. parent, grandparent, child, grandchild or sibling
- Close friend or associate
- Business partner.

A declaration of interest for a 'business partner' in a GP partnership should include all relevant collective interest of the partnership, and all interests of their fellow GP partners (which could be done be cross referring to the separate declarations made by those GP partners, rather than by repeating the same information verbatim).

Whether an interest held by another person gives rise to a conflict of interests will depend upon the nature of the relationship between that person and the individual, and the role of the individual within the CCG.

Examples of case studies developed by NHS England can be found at: https://www.england.nhs.uk/publication/managing-conflicts-of-interest-ccg-case-studies/
The above categories and examples are not exhaustive, and 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 and the CCG will exercise discretion on a case by case basis, having regard to the principles set out within this Policy, in deciding whether any other role, relationship or interest which would impair or otherwise influence the individual's judgement or actions in their role within the CCG. If so, this should be declared and will be appropriately managed.

If any individual is unsure as to whether an interest should be declared then that individual should seek advice from the Governance & Corporate Manager, Accountable Officer, Conflicts of Interest Guardian, or from the Committee chair is appropriate.

The question of whether or not to declare an interest is an individual judgement.

3. PRINCIPLES OF GOOD GOVERNANCE

3.1 The Seven Principles of Public Life

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

- ***Selflessness*** – holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- ***Integrity*** – holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- ***Objectivity*** – in carrying out public business, including making appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- ***Accountability*** - holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- ***Openness*** - holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- ***Honesty*** - holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- ***Leadership*** - holders of public office should promote and support these principles by leadership and example.

3.2 The Seven Key Principles of the NHS Constitution[2]

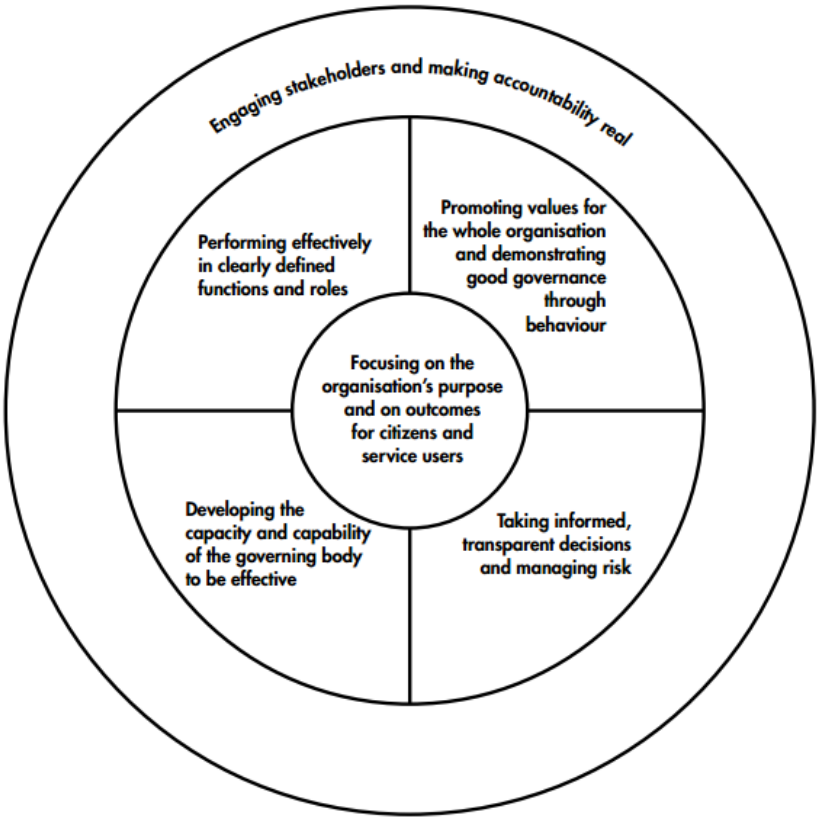
This Policy reflects the seven key guiding principles of the NHS Constitution, which are underpinned by core NHS values:

- The NHS provides a comprehensive service available to all.
- Access to NHS services is based on clinical need, not an individual's ability to pay.
- The NHS aspires to the highest standards of excellence and professionalism.
- The NHS aspires to put patients at the heart of everything it does.
- The NHS works across organisational boundaries and in partnership with other organisations in the interest of patients, local communities and the wider population.
- The NHS is committed to providing best value for taxpayers' money and the most effective, fair and sustainable use of finite resources.
- The NHS is accountable to the public, communities and patients that it serves.

3.3 The Good Governance Standards for Public Services[3]

This Policy reflects the six core principles of good governance:

[2] http://www.nhs.uk/NHSEngland/thenhs/about/Pages/nhscoreprinciples.aspx
[3] http://www.opm.co.uk/wp-content/uploads/2014/01/Good-Governance-Standard-for-Public-Services.pdf



3.4 **The Equality Act 2010**[4]

This Policy is written with regard to the Equality Act 2010.

3.5 **The UK Corporate Governance Code**[5]

The Code sets standards of good practice in relation to board leadership and effectiveness, remuneration, and accountability. This Policy reflects the Code.

3.6 **Standards for Members of NHS Boards and CCG Governing Bodies in England**[6]

This Policy is written with regard to the Standards.

4. DECLARING CONFLICTS OF INTEREST

4.1 Declarations of interest should be made as soon as reasonably practicable and by law within 28 days after the interest arises (this could include an interest an individual is pursuing). Further opportunities to make declarations include:

[4] http://www.legislation.gov.uk/ukpga/2010/15/contents
[5] https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate-Governance-Code.aspx
[6] http://www.professionalstandards.org.uk/docs/default-source/publications/standards/standards-for-members-of-nhs-boards-and-ccgs-2013.pdf?sfvrsn=2

On appointment
All applicants for any appointment to the CCG or its Governing Body or any committees will be asked to declare any relevant interests. When an appointment is made, a formal declaration of interests should be made using the CCG's Declaration of Interests Portal.

Annually
All interests must be declared at least annually. The Governance & Corporate Manager will coordinate the declaration process. This will be complemented by a quarterly check that the register of interests is accurate and up to date. Where there are no interests, a 'nil return' should be recorded.

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 form within this Policy (see Appendix B).

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 of the chair of the meeting, together with details of arrangements which have been confirmed for the management of the interest.

On changing role, responsibility or circumstances
Whenever an individual's role, responsibility or circumstances change in a way that affects the individual's interests (for example, where an individual takes on a new role outside the CCG, enters into a new business or relationship, starts a new project/piece of work or may be affected by a procurement decision e.g.if their role may transfer to a proposed new provider) a further declaration should be made. It is an individual's responsibility to make a further declaration as soon as possible, and in any event, within 28 days, rather than waiting to be asked.

4.2 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.

4.3 A Declaration of Interests Flowchart is attached at Appendix C to illustrate the above process.

5. REGISTER OF INTERESTS

5.1 The CCG must ensure that, when individuals declare interests, this includes all the interests of the relevant individuals within their organisation who have a

relationship with the CCG and who would potentially be in a position to benefit from the CCG's decisions.

5.2 The CCG will maintain a Register of Interests (see template at Appendix D) for:

- All CCG employees, including
  - All full and part time staff
  - Any staff on sessional or short term contracts
  - Any students and trainees (including apprentices)
  - Agency staff
  - Seconded staff
  - Any self-employed consultants or other individuals working for the CCG under a contract for services should make a declaration as if they were CCG employees
- All members of the CCG (i.e. each practice)
  - This includes each provider provider of primary medical services which is a member of the CCG under Section 14O(1) of the 2006 Act. Declarations should be made by:
    - GP partners (or where the practice is a company, each director)
    - Any individual directly involved with the business or decision-making of the CCG
- Members of the Governing Body and the CCG's Committees and Sub-Committees, including:
  - Co-opted members
  - Appointed deputies
  - Any member of committees/groups from other organisations
    (Where the CCG is participating in a joint committee alongside other CCGs, any interests which are declared by the committee members should be recorded on the register(s) of interest of each participating CCG.)

5.3 The Governance & Corporate Manager will ensure the transfer of all interests declared to the relevant register as soon as possible, and within 28 days.

5.4 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 and reported to the Audit Committee.

5.5 The CCG will publish the Register of Interests for 'decision-making staff' on the CCG's website. A copy will also be available at the CCG's headquarters.

5.6 The CCG defines 'decision-making staff' as:

- All governing body members;
- Members of advisory groups which contribute to direct or delegated decision making on the commissioning or provision of taxpayer funded services such as working groups involved in service redesign or stakeholder engagement that will affect future provision of services;
- Members of the Primary Care Commissioning Committee;
- Members of other committees of the CCG;

- Members of new care models joint provider / commissioner groups / committees;
- Senior Management Team;
- Management, administrative and clinical staff who have the power to enter into contracts on behalf of the CCG;
- Management, administrative and clinical staff involved in decision-making concerning the commissioning of services, purchasing of goods, medicines, medical devices or equipment, and formulary decisions.

5.7 All interests will remain on the public register for a minimum of six months after the interest has expired. The CCG will retain a private record of historic interests for a minimum of 6 years after the date on which it expired. The register of interests will state that historic interests are retained by the CCG, with advice to contact the Governance & Corporate Manager to submit a request for this information.

6. APPOINTMENTS

6.1 Appointing Governing Body / Committee Members / Senior Employees

6.1.1 On appointing Governing Body, committee or sub-committee members and senior staff, the CCG will consider whether conflicts of interest should exclude individuals from being appointed to the relevant role.

6.1.2 This will be considered on a case-by-case basis and will include an assessment of the materiality of the interest, in particular, whether the individual (or any person with whom they have a close association) could benefit (whether financially or otherwise) from any decision the CCG might make. The CCG will determine the extent of the interest and the nature of the appointee's proposed role within the CCG. If the interest is related to an area of business significant enough that the individual would be unable to operate effectively and make a full and proper contribution in the proposed role, then that individual should not be appointed to the role.

6.1.3 Any individual who has a material interest in an organisation which provides, or is likely to provide, substantial services to a CCG (whether as a provider of healthcare, including new care model providers, or healthcare commissioning support services, or otherwise) should recognise the inherent conflict of interest risk that may arise and should not be a member of the Governing Body or of a committee or sub-committee of the CCG, in particular if the nature and extent of their interest and the nature of their proposed role 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 perform that role.

6.2 Outside Employment

6.2.1 Outside employment means employment and other engagements, outside of formal employment arrangements.

6.2.2 Staff must inform and obtain prior permission from the CCG by notifying their line manager if they wish to engage in outside employment in addition to their work with the CCG. The purpose of this is to ensure that the CCG is aware of any potential conflict of interest with their CCG employment.

6.2.3 Staff should declare any outside employment using the form at Appendix E.

6.2.4 Examples of work which might conflict with the business of the CCG include:

- Employment with another NHS body;
- Employment with another organisation which might be in a position to supply goods/services to the CCG including paid advisory positions and paid honorariums which relate to bodies likely to do businesswith the CCG;

- Directorships e.g. of a GP federation or non-executive roles;
- Self-employment, including private practice, charitable trustee roles, political roles and consultancy work, in a capacity which might conflict with the work of the CCG or which might be in a position to supply goods/services to the CCG.

6.2.5 The CCG reserves the right to refuse permission where it believes a conflict will arise which cannot be effectively managed.

7. DECLARATION OF GIFTS AND HOSPITALITY

7.1 Gifts

7.1.1 A 'gift' is defined as any item of cash or goods, or any service, which is provided for personal benefit, free of charge or at less than its commercial value.

7.1.2 All gifts of any nature offered to CCG staff, governing body and committee members and individuals within GP member practices by suppliers or contractors linked (currently or prospectively) to the CCG's business should be declined, whatever their value. The person to whom the gifts were offered should also declare the offer to the Governance & Corporate Manager via the Declaration of Interest Portal , so the offer which has been declined can be recorded on the register.

7.1.3 Gifts offered from other sources should also be declined if accepting them might give rise to perceptions of bias or favouritism, and a common sense approach should be adopted as to whether or not this is the case. The only exceptions to the presumption to decline gifts relates to items of little financial value (i.e. less than £6) such as diaries, calendars, stationery and other gifts acquired from meetings, events or conferences, and items such as flowers and small tokens of appreciation from members of the public to staff for work well done. Gifts of this nature do not need to be declared to the team or individual who has designated responsibility for maintaining the register of gifts and hospitality, nor recorded on the register.

7.1.4 Any gift or cash or cash equivalents (e.g. vouchers, tokens, offers of remuneration to attend meetings whilst in a capacity working for or representing the CCG) must always be declined, whatever their value and whatever their source, and the offer which has been declined must be declared to the Governance & Corporate Manager via the Declaration of Interest Portal and recorded on the register.

7.2 Hospitality

7.2.1 A blanket ban on accepting or providing hospitality is neither practical nor desirable from a business point of view. However, individuals should be able to demonstrate that the acceptance or provision of hospitality would benefit the NHS or CCG.

7.2.2 Modest hospitality provided in normal and reasonable circumstances may be acceptable, although it should be on a similar scale to that which the CCG might offer in similar circumstances (e.g. tea, coffee, light refreshments at meetings). A common sense approach should be adopted as to whether hospitality offered is modest or not. Hospitality of this nature does not need to be declared to the Governance & Corporate Manager, nor recorded on the register, unless it is offered by suppliers or contractors linked (currently or prospectively) to the CCG's business; in which case all such offers (whether or not accepted) should be declared and recorded.

7.2.3 There is a presumption that offers of hospitality which go beyond modest or of a type that the CCG itself might offer, should be politely refused. A non-exhaustive list of examples includes:

- Hospitality of a value above £25; and
- In particular offers of foreign travel and accommodation.

7.2.4 There may be some limited and exceptional circumstances where accepting the types of hospitality referred to in the above paragraph may be contemplated. Express prior approval should be sought from the Governance & Corporate Manager (who will take further advice if required) before accepting such offers, and the reasons for acceptance should be recorded in the CCG's register of gifts and hospitality.

7.2.5 Hospitality of this nature should be subsequently declared to the Governance & Corporate Manager via the Declaration of Interest Portal and recorded on the register, whether accepted or not. In addition, particular caution should be exercised where hospitality is offered by suppliers or contractors linked (currently or prospectively) to the CCG's business. Advice should always be sought from the Governance & Corporate Manager (who will take further advice if required) as there may be particular sensitivities, for example, if a contract re-tender is imminent.

7.3 Commercial Sponsorship

7.3.1 CCG staff, governing body and committee members, and GP member practices may be offered commercial sponsorship for courses, conferences,

post/project funding, meetings and publications in connection with the activities which they carry out for or on behalf of the CCG or their GP practices. All such offers, whether accepted or declined, must be declared within two weeks of offer, so that they can be included on the CCG's register of interest, and the Governance & Corporate Manager should provide advice on whether or not it would be appropriate to accept any such offers. If such offers are reasonably justifiable and otherwise in accordance with this Policy, then they may be accepted, subject to approval by a Head of Service.

7.3.2 Collaborative partnerships with industry can have a number of benefits and a transparent approach across the CCG is essential. Clinical and professional decisions must always be in the best interests of patients and the service. Acceptance of commercial sponsorship should not in any way compromise commissioning decisions of the CCG or be dependent on the purchase or supply of goods or services.

7.3.3 Consideration should be given to the implications of any proposed sponsorship deal, its costs and benefits and an awareness of bias generated through sponsorship, where this might impinge on professional judgement and impartiality. High ethical standards must be adhered to at all times.

7.3.4 The CCG should not endorse individual companies or their products, and it should be made clear that any sponsorship does not mean that the CCG is endorsing a company's products or services.

7.3.5 During dealings with sponsors there must be no breach of patient or individual confidentiality or data protection legislation. No information should be supplied to a company for their commercial gain unless there is a clear benefit to the NHS. As a general rule, information which is not in the public domain should not normally be supplied.

7.3.6 All agreements with a commercial sponsor will be handled in an open and transparent manner and are open to scrutiny and be a matter of public record.

7.3.7 No agreements will be entered into with sponsors whose products or services are prejudicial to health or conflict with the principles and objectives of the NHS and the CCG. No agreements will be entered into with organisations whose business or function is ethically unacceptable to the CCG, its staff or the public.

7.3.8 In areas such as clinical trials, or commissioning, there must be sufficient distance between the commercial sponsor and the clinicians involved in the day to day operation of the clinical trial/commissioning decision, to ensure no undue influence is exerted to promote a particular company's product or service.

7.3.9 Commercial sponsorship for events including educational events, training, provision of speakers and open days, may be accepted provided that the following principles are strictly observed:

- the nature of the venues, meeting rooms and hospitality must be commensurate with that which would have been provided by the NHS directly had the event not been sponsored.
- permission to attend relevant conferences should be sought in advance of the event from the line manager who must be satisfied that acceptance will not compromise a purchasing decision in any way.

7.3.10 Sponsors should not have any influence over the content of an event, meeting, seminar, publication or training event.

7.3.11 These arrangements apply to all commercial sponsorship and not just pharmaceutical companies or other equipment/material suppliers. For clarification, these arrangements would apply to all external organisations offering sponsorship of a nature defined above where those organisations themselves are businesses directly engaged in profit making, whether within healthcare or not. As such, this includes private contractors and companies set up by private contractors (even though the companies themselves may technically be non-profit making).

7.3.12 Organisations directly within the NHS such as NHS Trusts, the Area Team, direct Government agencies and bodies, Foundation Trusts, and Local Authorities, would be excluded from having to comply with these arrangements, e.g. a Foundation Trust offering to host a conference at their expense to cover the costs of hospitality for a meeting, for example, would not have to be declared nor approved within this Policy.

7.3.13 Where a member of staff is invited to speak at a meeting organised by a pharmaceutical or other commercial company, the member of staff should discuss whether to accept this invitation with their line manager. If such an invite is accepted this should be declared using the appropriate form (see Appendix F). The company should have no influence on the content of any presentation made. It should be made clear that the member of staff's presence does not imply that NHS Greater Huddersfield CCG endorses any of the company's products or services. Any fee or gift received for such a presentation should be given to the CCG and entered in the hospitality register.

7.3.14 Attendance at externally organised events that are, or may be commercially sponsored, should be agreed through the appropriate line manager (e.g. attendance at an event organised by another NHS organisation, nurses attending talks within GP practices).

8. REGISTER OF GIFTS AND HOSPITALITY

8.1 The CCG will maintain a Register of Gifts and Hospitality (see template at Appendix G).

8.2 The Governance & Corporate Manager will ensure the transfer of all declarations to the register as soon as possible, and within 28 days.

8.3 The Register of Gifts and Hospitality 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 made publically available on the CCG's website.

9. GOVERNANCE ARRANGEMENTS AND DECISION-MAKING

9.1 Chairing arrangements and decision-making processes

9.1.1 The chair of a meeting has ultimate responsibility for deciding whether there is a conflict of interest and for taking the appropriate course of action in order to manage the conflict of interest.

9.1.2 In the event that the chair of a meeting has a conflict of interest, the vice chair is responsible for deciding the appropriate course of action in order to manage the conflict of interest. If the vice chair is also conflicted, then the remaining non-conflicted voting members of the meeting should agree between themselves how to manage the conflict.

9.1.3 In making such decisions, the chair may wish to consult with the Conflicts of Interest Guardian or another member of the Governing Body.

9.1.4 It is good practice for the chair, with support of the Governance & Corporate Manager and, if required, the Conflicts of Interest Guardian to proactively consider ahead of meetings what conflicts are likely to arise and how they should be managed, including taking steps to ensure that supporting papers for particular agenda items of private sessions/meetings are not sent to conflicted individuals in advance of the meeting.

9.1.5 NHS England have produced a template declaration of interest checklist with the intention of providing support in conflicts of interest management to the Chair prior to, during and following the meeting (see Appendix H).

9.1.6 The chair should ask at the beginning of each meeting if anyone has any conflicts of interest to declare in relation to the business to be transacted at the meeting. Each member of the group should declare any interests which are relevant to the business of the meeting whether or not those interests have previously been declared, and complete the appropriate form (see Appendix B). Interests declared at meetings are cross referenced with the register of interests to ensure that it is up-to-date.

9.1.7 It is the responsibility of each individual member of the meeting to declare any relevant interests. However, should the chair or any other member of the meeting be aware of facts or circumstances which may give rise to a conflict of interest but which have not been declared then they should bring this to the attention of the chair. The chair will decide whether there is a conflict of interest and the appropriate course of action to take in order to manage the conflict of interest.

9.1.8 When a member of the meeting (including the chair or vice chair) has a conflict of interest in relation to one or more items of business to be transacted at the meeting, the chair (or vice chair or remaining non-conflicted members where relevant as described above) must decide how to manage the conflict. The appropriate course of action will depend on the particular circumstances, but could include one or more of the following:

- Where the chair has a conflict of interest, deciding that the vice chair (or another non-conflicted member of the meeting if the vice chair is also conflicted) should chair all or part of the meeting;
- Requiring the individual who has a conflict of interest not to attend the meeting;
- Ensuring that the individual concerned does not receive the supporting papers or minutes of the meeting which relate to the matter(s) which give rise to the conflict;
- Requiring the individual to leave the discussion when the relevant matter(s) are being discussed and when any decisions are being taken in relation to those matter(s). In private meetings, this could include requiring the individual to leave the room and in public meetings to either leave the room or join the audience in the public gallery;
- Allowing the individual to participate in some or all of the discussion when the relevant matter(s) are being discussed but requiring them to leave the meeting when any decisions are being taken in relation to those matter(s). This may be appropriate where, for example, the conflicted individual has important relevant knowledge and experience of the matter(s) under discussion, which it would be of benefit for the meeting to hear, but this will depend on the nature and extent of the interest which has been declared.
- Noting the interest and ensuring that all attendees are aware of the nature and extent of the interest, but allowing the individual to remain and participate in both the discussion and in any decisions. This is only likely to be the appropriate course of action where it is decided that the interest which has been declared is either immaterial or not relevant to the matter(s) under discussion.

9.1.9 NHS England has produced a number of case studies including example of material and immaterial conflicts of interest. These can be viewed at:
https://www.england.nhs.uk/publication/managing-conflicts-of-interest-ccg-case-studies/

9.1.10 Where the conflict of interest relates to outside employment and an individual continues to participate in meetings pursuant to paragraph 9.1.8, he/she should ensure that the capacity in which they continue to participate in the discussions is made clear and correctly recorded in the meeting minutes. Where it is appropriate for them to participate in decisions they must only do so if they are acting in their CCG role.

9.1.11 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.

9.1.12 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 interests, the chair (or deputy) will determine whether or not the discussion can proceed.

9.1.13 In making the 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 Accountable Officer on the action to be taken. This may include:

- Requiring another of the CCG's committees or sub-committees, the Governing Body or the Governing Body's committees or sub-committees, which can be quorate, to progress the item of business.
- 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/committee/sub-committee in question) so that the group can progress the item of business:
    - A member of the CCG who is an individual;
    - An individual appointed by a member to act on its behalf in the dealings between it and the CCG;
    - A member of a relevant Health & Wellbeing Board;
    - A member of a Governing Body of another CCG.
- Where the item of business relates to a matter where all practice representatives on the Governing Body/Committee have to declare an interest, for that matter the practice representatives will be excluded from the arrangements on quoracy.

9.1.14 These arrangements must be recorded in the minutes.

9.2 Primary Care Commissioning

9.2.1 The CCG has delegated primary care commissioning responsibilities and has a Primary Care Commissioning Committee for discharging its primary medical services functions. The interests of all Committee members must be recorded on the CCG's register of interests.

9.2.2 The CCG can determine the full membership of the Committee, within the following parameters:

- A lay and executive majority, where lay refers to non-clinical. This ensures that the meeting will be quorate if all GPs had to withdraw from the decision-making process due to conflicts of interest.
- A lay chair and vice chair.
- GPs can, and should, be members to ensure sufficient clinical input, but must not be in the majority. Retired or out of area GPs can be appointed to ensure clinical input whilst minimising risk of conflicts of interest. Where the committee is commissioning a new care model, the

CCG should consider whether that committee has sufficient clinical expertise taking into account the range of services being commissioned, for example, having at least one clinician without an interest in a potential new care model provider e.g. a recently retired or out of area GP.

- Standing invitation to local Healthwatch representative and a local authority representative from the local Health & Well-Being Board to attend as non-voting attendees.
- Other individuals can be invited to attend on an ad hoc basis to provide expertise to support the decision-making process.

9.2.3 It is important that conflicts of interest are managed appropriately within any sub-committees or sub-groups established by the Committee. As a safeguard, minutes from any sub groups should be submitted to the Committee detailing any conflicts and how they have been managed.

9.3 Minute Taking

9.3.1 The CCG must ensure complete transparency in its decision-making processes through robust record-keeping. If any conflicts of interest are declared or otherwise arise in a meeting, the chair must ensure the following information is recorded in the minutes:

- Who has the interest;
- The nature of the interest and why it gives rise to a conflict, including the magnitude of any interest;
- The items on the agenda to which the interest relates;
- How the conflict was agreed to be managed;
- Evidence that the conflict was managed as intended (for example, recording the points during the meeting when particular individuals left or returned to the meeting).

9.3.2 The CCG has a template for recording minutes of meetings (see Appendix I).

10. MANAGING CONFLICTS OF INTEREST THROUGHOUT THE COMMISSIONING CYCLE

10.1 The CCG recognises the importance of 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. The CCG will commission and procure services in a manner which is open, transparent and non-discriminatory.

10.2 Conflicts of interest need to be managed appropriately throughout the whole commissioning cycle. At the outset of a commissioning process, the relevant interests of all individuals involved should be identified and clear arrangements put in place to manage any conflicts of interest. This includes consideration as to which stages of the process a conflicted individual should not participate in, and, in some circumstances, whether that individual should be involved in the process at all.

10.3 The CCG must identify as soon as possible where staff might transfer to a provider (or their role may materially change) following the award of a contract. This should be treated as a relevant interest, and the CCG will ensure it manages the potential conflict.

10.4 <u>Designing service requirements</u>

10.4.1 The way in which services are designed can either increase or decrease the extent of perceived or actual conflicts of interest. Particular attention should be given to public and patient involvement in service development.

10.4.2 Public involvement supports transparent and credible commissioning decisions. It should happen at every stage of the commissioning cycle from needs assessment, planning and prioritisation to service design, procurement and monitoring. The CCG has legal duties under the Act to properly involve patients and the public in their respective commissioning processes and decisions.

10.4.3 It is good practice to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient needs. This may include providers from the acute, primary, community, and mental health sectors, and may include NHS, third sector and private sector providers. Such engagement, done transparently and fairly, is entirely legal. However, conflicts of interest, as well as challenges to the fairness of the procurement process, can arise 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. The CCG must be particularly mindful of these issues when engaging with existing/potential providers in relation to the development of new care models.

10.4.4 Provider 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 at the same time and procedures are transparent. This mitigates the risk of potential legal challenge.

10.4.5 As the service design develops, it is good practice to engage with a range of providers on an on-going basis to seek comments on the proposed design e.g., via the commissioners website and/or via workshops with interested parties (ensuring a record is kept of all interaction). NHS Improvement has issued guidance on the use of provider boards in service design.

10.4.6 Engagement should help to shape the requirement to meet patient need, but it is important not to gear the requirement in favour of any particular provider(s). If appropriate, the advice of an independent clinical adviser on the design of the service should be secured.

10.4.7 The CCG should 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. However, they also need to ensure careful consideration is given to the appropriate degree of financial risk transfer in any new contractual model.

10.4.8 Specifications should be clear and transparent, reflecting the depth of engagement, and set out the basis on which any contract will be awarded.

10.5 Procurement and Awarding Grants

10.5.1 The CCG will need to be able to recognise and manage any conflicts or potential conflicts of interest that may arise in relation to the procurement of any services or the administration of grants.

10.5.2 "Procurement" relates to any purchase of goods, services or works and the term "procurement decision" should be understood in a wide sense to ensure transparency of decision making on spending public funds. The decision to use a single tender action, for instance, is a procurement decision and if it results in the CCG entering into a new contract, extending an existing contract, or materially altering the terms of an existing contract, then it is a decision that should be recorded.

10.5.3 NHS England and CCGs must comply with two different regimes of procurement law and regulation when commissioning healthcare services: the NHS procurement regime, and the European procurement regime:

- The NHS procurement regime – the NHS (Procurement, Patient Choice and Competition (No.2)) Regulations 2013: made under S75 of the 2012 Act; apply only to NHS England and CCGs; enforced by NHS Improvement;
- The European procurement regime – Public Contracts Regulations 2015 (PCR 2105): incorporate the European Public Contracts Directive into national law; apply to all public contracts over the threshold value (€750,000, currently £589,148); enforced through the Courts. The general principles arising under the Treaty on the Functioning of the European Union of equal treatment, transparency, mutual recognition, non-discrimination and proportionality may apply even to public contracts for two bodies, including Monitor's functions in relation to the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 (PPCCR) healthcare services falling below the threshold value if there is likely to be interest from providers in other member states.

Whilst the two regimes overlap in terms of some of their requirements, they are not the same – so compliance with one regime does not automatically mean compliance with the other.

10.5.4 The National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 201323 state: *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 has entered into.*

10.5.5 Paragraph 24 of PCR 2015 states: *"Contracting authorities shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators"*. Conflicts of interest are described as *"any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure"*.

10.5.6 The Procurement, Patient Choice and Competition Regulations 2013 (PPCCR) place requirements on commissioners to ensure that they adhere to good practice in relation to procurement, run a fair, transparent process that does not discriminate against any provider, 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. Furthermore the PPCCR places requirements on commissioners to secure high quality, efficient NHS healthcare services that meet the needs of the people who use those services. The PCR 2015 are focussed on ensuring a fair and open selection process for providers.

10.5.7 An 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 commissioning of primary care, particularly with regard to delegated commissioning, where GPs are current or possible providers or in relation to the commissioning of new care models.

10.5.8 A procurement template (see Appendix J) sets out factors that the CCG should address when drawing up their plans to commission general practice services.

10.5.9 CCGs are required to make the evidence of their management of conflicts publicly available, and the relevant information from the procurement template will be used to complete the register of procurement decisions (see Appendix K).

10.5.10 Complete transparency around procurement will provide:

- Evidence that the CCG is seeking and encouraging scrutiny of its decision-making process;
- A record of the public involvement throughout the commissioning of the service;
- A record of how the proposed service meets local needs and priorities for partners such as the Health and Wellbeing Boards, local Healthwatch and local communities;
- Evidence to the Audit Committee and internal and 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.

10.6 Register of Procurement Decisions

10.6.1 The CCG maintains a register of procurement decisions taken, either for the procurement of a new service or any extension or material variation of a current contract (see template at Appendix K).

10.6.2 The register is updated whenever a procurement decision is taken and is publicly available on the CCG's website and upon request at the CCG's headquarters.

10.7 Declarations of Interests for Bidders/Contractors

10.7.1 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 – the form is attached at Appendix L.

10.7.2 It will not usually be appropriate to declare such a conflict on the register of procurement decisions, as it may compromise the anonymity of bidders during the procurement process.

10.7.3 However, the CCG will retain an internal audit trail of how the conflict or perceived conflict was dealt with to allow them to provide information at a later date if required. These records must be retained for a period of at least three years from the date of award of the contract.

10.8 Contract Monitoring

10.8.1 The management of conflicts of interest applies to all aspects of the commissioning cycle, including contract management.

10.8.2 Any contract monitoring meeting needs to consider conflicts of interest as part of the process i.e., the chair of a contract management meeting should invite declarations of interests; record any declared interests in the minutes of the meeting; and manage any conflicts appropriately and in line with this guidance. This equally applies where a contract is held jointly with another organisation such as the Local Authority or with other CCGs under lead commissioner arrangements.

10.8.3 The individuals involved in the monitoring of a contract should not have any direct or indirect financial, professional or personal interest in the incumbent provider or in any other provider that could prevent them, or be perceived to prevent them, from carrying out their role in an impartial, fair and transparent manner.

10.8.4 The CCG should be mindful of any potential conflicts of interest when they disseminate any contract or performance information/reports on providers, and manage the risks appropriately.

11. PUBLICATION OF REGISTERS

11.1 The CCG will publish the registers of interest, the register of gifts and hospitality, and the register of procurement decisions, on the CCG's website.

11.2 In exceptional circumstances, where the public disclosure of information could give rise to a real risk of harm or is prohibited by law, an individual's name and/or other information may be redacted from the publicly available register(s). Where an individual believes that substantial damage or distress may be caused, to him/herself or somebody else by the publication of information about them, they are entitled to request that the information is not published. This can be done via the Declaration of Interest Portal, and will be reviewed by the Governance & Corporate Manager, who will inform the Conflicts of Interest Guardian. Decisions not to publish information must be made by the Conflicts of Interest Guardian for the CCG, who should seek appropriate legal advice where required, and the CCG will retain a confidential un-redacted version of the register(s).

11.3 All persons who are required to make a declaration of interest or a declaration of gifts or hospitality will be made aware that the registers will be published in advance of publication. The CCG's fair processing notice will detail this requirement.

11.4 The register of interests (including the register of gifts and hospitality) will be published as part of the CCG's Annual Report and Annual Governance Statement.

12. RAISING CONCERNS AND BREACHES

12.1 Raising Concerns

12.1.1 It is the duty of every CCG employee, governing body member, committee or sub-committee member and GP practice member to speak up about genuine concerns in relation to the administration of the CCG's policy on conflicts of interest management, and to report these concerns.

12.1.2 These individuals should not ignore their suspicions or investigate themselves, but rather speak to the Governance & Corporate Manager, Accountable Officer or Conflicts of Interest Guardian to raise their concerns. Concerns can also be raised in writing. The CCG welcomes the raising of concerns and is committed to dealing with them responsibly and professionally. If anyone raises a concern, the matter will always be given serious consideration.

12.1.3 The CCG will treat all disclosures in a confidential and sensitive manner in line with the CCG's policies and applicable laws. The identity of the individual

raising the concern may be kept confidential so long as it does not hinder or frustrate any investigation.

12.2 Managing Breaches

12.2.1 All concerns received will be documented by the Governance & Corporate Manager and fully investigated to determine if a breach of the Conflict of Interest Policy has occurred. In most instances, the Conflicts of Interest Guardian will investigate the concern, with support from the Governance & Corporate Manager.

12.2.2 The Governance & Corporate Manager will arrange for the notification to NHS England.

12.2.3 The individual making a disclosure will receive an appropriate explanation of any decisions taken as a result of any investigation.

12.2.4 Any non-compliance with the CCG's Conflicts of Interest Policy (where the breach is being reported by an employee or worker of the CCG) will be handled in line with that policy and the CCG's Whistleblowing Policy. Anyone who wishes to report a suspected or known breach of the policy, who is not an employee or worker of the CCG, should also ensure that they comply with their own organisation's whistleblowing policy, since most such policies provide protection against detriment or dismissal.

12.2.5 The Governance & Corporate Manager will arrange for anonymised details of breaches to be published on the CCG's website for the purpose of learning and development. The Head of Communications will be advised.

12.3 Fraud and Bribery

12.3.1 Suspected fraud, bribery and corruption can be reported:

- To the CCG's Local Counter Fraud Specialist – Liz O'Reilly – who can be contacted by telephoning 01924 816098 or e-mailing liz.oreilly@nhs.net.
- Using the NHS Fraud, Bribery and Corruption Reporting Line on 0800 028 40 60 or by filling in an online form at www.reportnhsfraud.nhs.uk as an alternative to internal reporting procedures and if staff wish to remain anonymous. All reports of fraud, bribery and corruption will be taken seriously and thoroughly investigated by professionally trained staff.

13. IMPACT OF NON-COMPLIANCE

13.1 Failure to comply with the CCG's policies on conflicts of interest management can have serious implications for the CCG and any individuals concerned.

13.2 Civil Implications

13.2.1 If conflicts of interest are not effectively managed, the CCG could face civil challenges to the decisions it makes. For instance, if breaches occur during a

service re-design or procurement exercise, the CCG risks a legal challenge from providers that could potentially overturn the award of a contract, lead to damages claims against the CCG, and necessitate a repeat of the procurement process. This could delay the development of better services and care for patients, waste public money and damage the CCG's reputation.

13.2.2 In extreme cases, staff and other individuals could face personal civil liability, for example a claim for misfeasance in public office.

13.3 Criminal Implications

13.3.1 Failure to manage conflicts of interest could lead to criminal proceedings including for offences such as fraud, bribery and corruption. This could have implications for the CCG and linked organisations, and the individuals who are engaged by them.

13.3.2 The Fraud Act 2006 created a criminal offence of fraud and defines three ways of committing it:

- Fraud by false representation;
- Fraud by failing to disclose information; and,
- Fraud by abuse of position.

13.3.3 An essential ingredient of the offences is that, the offender's conduct must be dishonest and their intention must be to make a gain, or cause a loss (or the risk of a loss) to another. Fraud carries a maximum sentence of 10 years imprisonment and /or a fine if convicted in the Crown Court or 6 months imprisonment and/or a fine in the Magistrates' Court. The offences can be committed by a body corporate.

13.3.4 Bribery is generally defined as giving or offering someone a financial or other advantage to encourage that person to perform their functions or activities. The Bribery Act 2010 reformed the criminal law of bribery, making it easier to tackle this offence proactively in both the public and private sectors. It introduced a corporate offence which means that commercial organisations, including NHS bodies, will be exposed to criminal liability, punishable by an unlimited fine, for failing to prevent bribery. The offences of bribing another person, being bribed and bribery of foreign public officials can also be committed by a body corporate. The Act repealed the UK's previous anti-corruption legislation (the 47 Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Acts of 1906 and 1916 and the common law offence of bribery) and provides an updated and extended framework of offences to cover bribery both in the UK and abroad. The offences of bribing another person, being bribed or bribery of foreign public officials in relation to an individual carries a maximum sentence of 10 years imprisonment and/or a fine if convicted in the Crown Court and 6 months imprisonment and/or a fine in the Magistrates' Court. In relation to a body corporate the penalty for these offences is a fine.

13.4 Disciplinary Implications

13.4.1 Individuals who fail to disclose any relevant interests or who otherwise breach the CCG's rules and policies relating to the management of conflicts of interest are subject to investigation and, where appropriate, to disciplinary action.

13.4.2 CCG staff, Governing Body and committee members in particular should be aware that the outcomes of such action may, if appropriate, result in the termination of their employment or position with the CCG.

13.5 Professional Regulatory Implications

13.5.1 Statutorily regulated healthcare professionals who work for, or are engaged by, CCGs are under professional duties imposed by their relevant regulator to act appropriately with regard to conflicts of interest.

13.5.2 The CCG will report statutorily regulated healthcare professionals to their regulator if they believe that they have acted improperly, so that these concerns can be investigated. The consequences for inappropriate action could include fitness to practise proceedings being brought against individuals, and they could, if appropriate, be struck off by their professional regulator as a result.

14. TRAINING

14.1 In line with the statutory guidance, annual training is offered via an NHS England online training package to all employees, Governing Body members, members of CCG committees and sub-committees and practice staff with involvement in CCG business on the management of conflicts of interest. This is to ensure staff and others within the CCG understand what conflicts are and how to manage them effectively. Completion rates are recorded as part of the annual conflicts of interest audit.

14.2 Face to face training is also provided by NHS England to key individuals within CCGs.

15. PUBLIC SECTOR EQUALITY DUTY

An Equality Impact Assessment has been carried out for this Policy (see Appendix M) – no impact was identified.

16. IMPLEMENTATION AND DISSEMINATION

16.1 The Policy will be disseminated to all employees, Governing Body and Committee members and member practices, via the CCG intranet and CCG newsletters.

17. MONITORING COMPLIANCE

17.1 The CCG's Audit Committee will monitor compliance with the Policy.

17.2 Internal Audit

17.2.1 The CCG is required to undertake an audit of conflicts of interest management as part of its internal audit on an annual basis.

17.2.2 The results of the audit are required to be reflected in the CCG's annual governance statement and will be discussed in the end of year governance meeting with NHS regional teams.

17.3 CCG Improvement and Assessment Framework

17.3.1 The management of conflicts of interest is a key indicator of the Improvement and Assessment Framework for CCGs.

17.3.2 As part of the new framework, CCGs will be required on an annual basis to confirm via self-certification:

- That the CCG has a clear policy for the management of conflicts of interest in line with the statutory guidance and a robust process for the management of breaches;
- That the CCG has a minimum of three lay members;
- That the CCG audit chair has taken on the role of the Conflicts of Interest Guardian;
- The level of compliance with the mandated conflicts of interest on-line training, as of 31 January annually.

17.3.3 In addition, CCGs will be required to report on a quarterly basis via self-certification whether the CCG:

- Has processes in place to ensure individuals declare any interests which may give rise to a conflict or potential conflict as soon as they become aware of it, and in any event within 28 days, ensuring accurate up to date registers are complete for: conflicts of interest; procurement decisions; and gifts and hospitality;
- Has made these registers available on its website and, upon request, at the CCG's HQ;
- Is aware of any breaches of its policies and procedures in relation to the management of conflicts of interest and how many:
    - To include details of how they were managed;
    - Confirmation that anonymised details of the breach have been
    - published on the CCG website;
    - Confirmation that they been communicated to NHS England.

17.3.4 Where a CCG has decided not to comply with one or more of the requirements whether in relation to any of the matters referred to in paragraphs 123 and 124 above or otherwise it is expected to be discussed in advance with NHS England.

17.3.5 CCGs must also include within their self-certification statements the reasons for deciding not to do so, on a "comply or explain" basis.

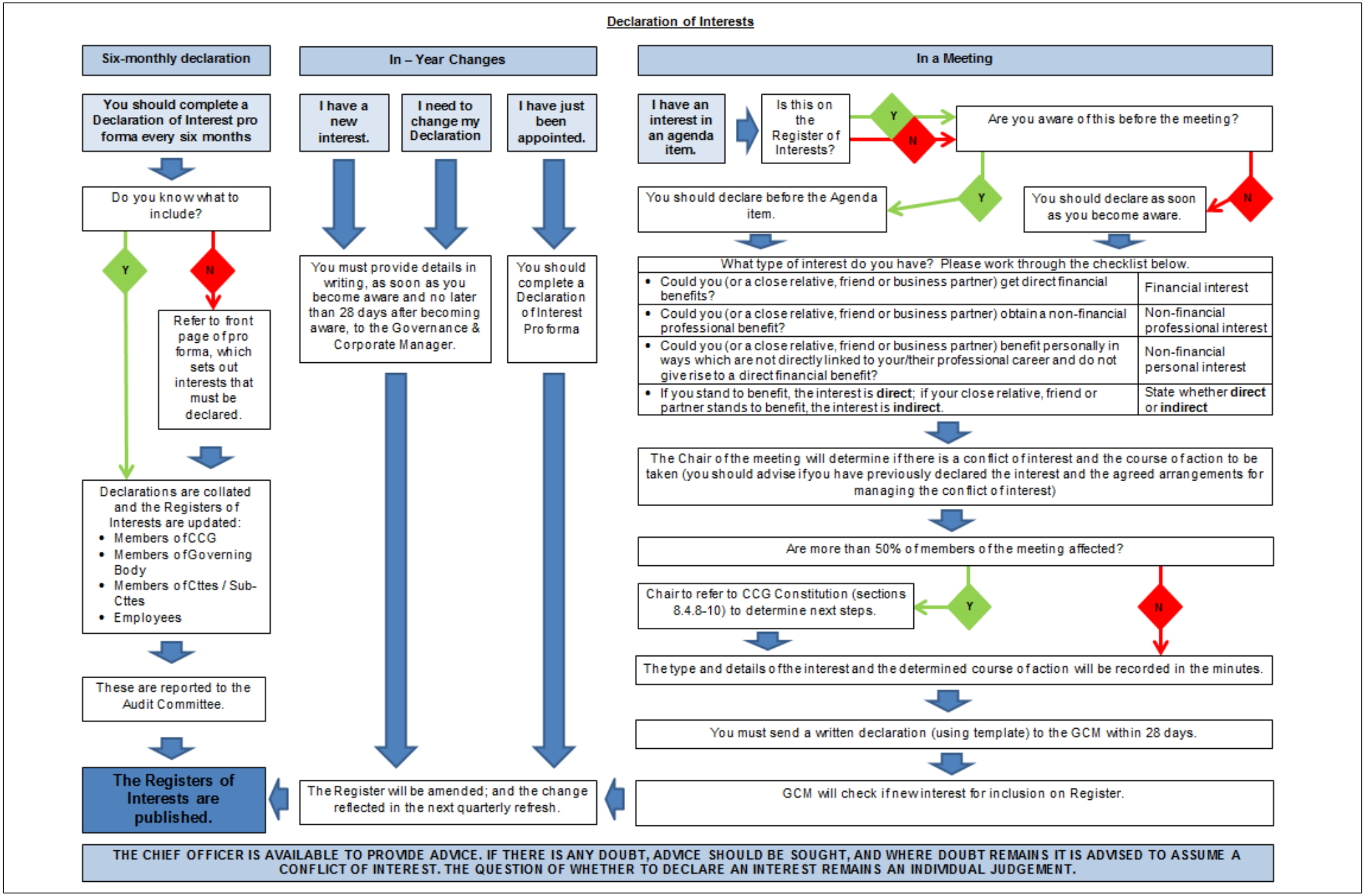
In-meeting declaration of interests form

Name:					
Meeting:			Date:		
Agenda item in which you have an interest	**Type of interest**		**Direct or indirect?**	**Brief description of your interest**	**Agreed arrangements for managing conflict of interest**
	Financial				
	Non-financial professional				
	Non-financial personal				
	Financial				
	Non-financial professional				
	Non-financial personal				
	Financial				
	Non-financial professional				
	Non-financial personal				
	Financial				
	Non-financial professional				
	Non-financial personal				
	Financial				
	Non-financial professional				
	Non-financial personal				

I confirm that the information provided above is complete and correct. I am aware that if I do not make full, accurate and timely declarations then civil, criminal, or internal disciplinary action may result.

Signed: **Date Signed:**

APPENDIX B


Declaration of Interests
Six-monthly declaration
You should complete a Declaration of Interest pro forma every six months
Do you know what to include?
Y
N
Refer to front page of pro forma, which sets out interests that must be declared.
Declarations are collated and the Registers of Interests are updated:
• Members of CCG
• Members of Governing Body
• Members of Cttes / Sub-Cttes
• Employees
These are reported to the Audit Committee.
The Registers of Interests are published.
In – Year Changes
I have a new interest.
I need to change my Declaration
I have just been appointed.
You must provide details in writing, as soon as you become aware and no later than 28 days after becoming aware, to the Governance & Corporate Manager.
You should complete a Declaration of Interest Pro forma
The Register will be amended; and the change reflected in the next quarterly refresh.
In a Meeting
I have an interest in an agenda item.
Is this on the Register of Interests?
Y
N
Are you aware of this before the meeting?
Y
You should declare before the Agenda item.
N
You should declare as soon as you become aware.
What type of interest do you have? Please work through the checklist below.
• Could you (or a close relative, friend or business partner) get direct financial benefits? — Financial interest
• Could you (or a close relative, friend or business partner) obtain a non-financial professional benefit? — Non-financial professional interest
• Could you (or a close relative, friend or business partner) benefit personally in ways which are not directly linked to your/their professional career and do not give rise to a direct financial benefit? — Non-financial personal interest
• If you stand to benefit, the interest is direct; if your close relative, friend or partner stands to benefit, the interest is indirect. — State whether direct or indirect
The Chair of the meeting will determine if there is a conflict of interest and the course of action to be taken (you should advise if you have previously declared the interest and the agreed arrangements for managing the conflict of interest)
Are more than 50% of members of the meeting affected?
Chair to refer to CCG Constitution (sections 8.4.8-10) to determine next steps.
Y
N
The type and details of the interest and the determined course of action will be recorded in the minutes.
You must send a written declaration (using template) to the GCM within 28 days.
GCM will check if new interest for inclusion on Register.
THE CHIEF OFFICER IS AVAILABLE TO PROVIDE ADVICE. IF THERE IS ANY DOUBT, ADVICE SHOULD BE SOUGHT, AND WHERE DOUBT REMAINS IT IS ADVISED TO ASSUME A CONFLICT OF INTEREST. THE QUESTION OF WHETHER TO DECLARE AN INTEREST REMAINS AN INDIVIDUAL JUDGEMENT.

APPENDIX C

NHS
Greater Huddersfield
Clinical Commissioning Group

Register of interests

Name	Current position (s) held- i.e. Governing Body, Member practice, Employee or other	Name and business of the organisation in which the interest is held	Type of Interest			Is the interest direct or indirect?	Nature of Interest	Any action taken, where appropriate, to mitigate risk
			Financial Interests	Non-Financial Professional Interests	Non-Financial Personal Interests			

DECLARATION OF OUTSIDE EMPLOYMENT / PRIVATE PRACTICE

Guidance Notes: This form is to notify NHS Greater Huddersfield if you are engaged in, or wish to engage in outside employment in addition to your work with the CCG. Please return to Governance and Corporate Manager.

Details of Outside Employment/outside practice:

Employer .....

Nature / Type of Business .....

Other Relevant Information

.....

.....

.....

.....

.....

.....

.....

Do you envisage a conflict of interests between this employment/outside practice and your CCG employment? YES / NO

If such work would mean that your working hours may exceed 48 hours per week, you should discuss this with your line manager.

I confirm that I have read the GHCCG's Standards of Business Conduct Policy, and have complied with the requirements. I confirm that this does not breach the policy.

I confirm that the information provided above is complete and correct. I acknowledge that any changes in these declarations must be notified to the CCG as soon as practicable and no later than 28 days after the interest arises. I am aware that if I do not make full, accurate and timely declarations then civil, criminal, or internal disciplinary action may result.

Signature: ..... Date: .....

Print Name: ..... Contact No.....

Job Title: .....

Department: .....

Manager's Signature: ..... Date: .....

Print Name: ..... Contact No.....

Job Title: .....

Department: .....

NHS
Greater Huddersfield
Clinical Commissioning Group

Register of gifts and hospitality

Name	Position	Date of offer	Declined or Accepted?	Date of Receipt (if applicable)	Details of Gift /Hospitality	Estimated Value	Supplier / Offeror Name and Nature of business	Reason for Accepting or Declining

Annex E: Template declarations of interest checklist

Under the Health and Social Care Act 2012, there is a legal obligation to manage conflicts of interest appropriately. It is essential that declarations of interest and actions arising from the declarations are recorded formally and consistently across all CCG governing body, committee and sub-committee meetings. This checklist has been developed with the intention of providing support in conflicts of interest management to the Chair of the meeting- prior to, during and following the meeting. It does not cover the requirements for declaring interests outside of the committee process.

Timing	Checklist for Chairs	Responsibility
In advance of the meeting	1. **The agenda** to include a standing item on declaration of interests to enable individuals to raise any issues and/or make a declaration at the meeting.	Meeting Chair and secretariat
	2. A **definition of conflicts of interest** should also be accompanied with each agenda to provide clarity for all recipients.	Meeting Chair and secretariat
	3. **Agenda** to be circulated to enable attendees (including visitors) to identify any interests relating specifically to the agenda items being considered.	Meeting Chair and secretariat
	4. **Members should contact the Chair** as soon as an actual or potential conflict is identified.	Meeting members
	5. Chair to review a **summary report from preceding meetings** i.e., sub-committee, working group, etc., detailing any conflicts of interest declared and how this was managed. **A template for a summary report** to present discussions at preceding meetings is detailed below.	Meeting Chair
	6. A **copy of the members' declared interests** is checked to establish any actual or potential conflicts of interest that may occur during the meeting.	Meeting Chair

During the meeting	**7. Check and declare the meeting is quorate** and ensure that this is noted in the minutes of the meeting.	Meeting Chair
	8. Chair requests **members to declare any interests in agenda items-** which have not already been declared, including the nature of the conflict.	Meeting Chair
	9. Chair makes a decision as to how to manage each interest which has been declared, including whether / to what extent the individual member should continue to participate in the meeting, on a case by case basis, and this decision is recorded.	Meeting Chair and secretariat
	10. As minimum requirement, the following should be **recorded in the minutes of the meeting**: • Individual declaring the interest; • At what point the interest was declared; • The nature of the interest; • The Chair's decision and resulting action taken; • The point during the meeting at which any individuals retired from and returned to the meeting - even if an interest has not been declared; • **Visitors in attendance** who participate in the meeting must also follow the meeting protocol and declare any interests in a timely manner. **A template for recording any interests during meetings** is detailed below.	Secretariat
Following the meeting	**11.** All **new interests declared** at the meeting should be promptly updated onto the declaration of interest form;	Individual(s) declaring interest(s)
	12. All new completed declarations of interest should be **transferred onto the register of interests.**	Designated person responsible for registers of interest

Minutes of the NHS Greater Huddersfield CCG *Meeting Title*
held on *Day Date Year, xx pm/am – xx pm/am*
Venue/Location.

Remove borders from the name boxes

Governing Body Members/ XX Committee Members Present *(delete as applicable)*

Member Name	(Initial)	Job Title/Position

**Use table to keep information clear (lines are to be removed from presented version)*

Members Apologies:

Name	(Initial)	Job Title/Position

**Use table to keep information clear (lines are to be removed from presented version)*

In Attendance

Name	(Initial)	Job Title/Position

**Use table to keep information clear (lines are to be removed from presented version)*

Other Apologies:

Name	(Initial)	Job Title/Position

**Use table to keep information clear (lines are to be removed from presented version)*

Minutes:

Named Administrator	(Initial)	Job Title

Minute Ref **Welcome and Introductions** *(Title as it appears on agenda)*
(See guidance)

XX opened the meeting ……

Minute Ref **Apologies and Declarations of Interest** *(Title as it appears on agenda)*

Apologies were received from ……

Declarations of interest:
Committee members were reminded of their obligation to declare any interest they may have on issues arising at committee meetings which might conflict with the business of the CCG.

Declarations declared are listed in the CCG's register of interests, which is available at [insert hyperlink].

The following Declarations of interest were made in respect of this meeting:-

[Include name of person declaring interest, type of interest and whether direct or indirect, description of interest, and agreed arrangements for managing conflict.]

The interests were **NOTED** and action taken as appropriate.

Minute Ref **Title as it appears on agenda**

Minutes
The Minutes of meeting(s) held on DD-MMM-YYYY were reviewed for accuracy.

Matters Arising
XXXX

Action Log *(EXAMPLEs)*
GB/14/255 Performance Report - Clarity to be sought from Calderdale and Huddersfield NHS Foundation Trust (CHFT) against six week diagnostic Target. **– Action to Remain Open**

MP provided an update against action GB/14/255 Performance Report in relation to MRI Breaches. Work is being undertaken regarding capacity, there has been a small reduction however further work is required in this area **– Action to be Closed**

Action(s) *(Where a new action arises use this format at the end of the item section)*

- **PW to gain assurance from YAS regarding the process for identifying any impact on patient care resulting from poor performance within delivery of the NHS 111 service.**

Minute Ref **Title as it appears on agenda**

XXXXXXXXXXXXXX

Action(s)

- **XXXXXXXXXX**

The *Governing Body/Committee* **RECEIVED** and **NOTED** the report and actions being taken.

OR

The *Governing Body/Committee* unanimously **AGREED** and **APPROVED** the contract award as recommended: ***Bidder one*** *for a period of* ***three years.***

Movements during the meeting should be noted as followed and include a time if possible e.g.

(IC and DA left the meeting at 16:49)

(VS handed the meeting back to SO as Chair)

(Conflicted members left the room at 12:16)
(Conflicted members returned to the room at 12:30)

Minute Ref	**Title as it appears on agenda**
	XXXXXXXXXX

Minute Ref	**Date and Time of Next Meeting**
	It was confirmed that the next meeting would be held on DAY, DATE YYYY, 00:00 – 00:00hrs.

This concluded the Governing Body Meeting held in Public at approximately 00:00hrs.

(For Governing Body only)
Chair's Signature: ..... Date: .....

Vice Chair's Signature: ..... Date: .....
(Where Vice Chair has presided over the/a section of the meeting)

APPENDIX H

Procurement Checklist

Service:	
Question	**Comment/ Evidence**
1. 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?	
2. How have you involved the public in the decision to commission this service?	
3. What range of health professionals have been involved in designing the proposed service?	
4. What range of potential providers have been involved in considering the proposals?	
5. 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)?	
6. What are the proposals for monitoring the quality of the service?	
7. What systems will there be to monitor and publish data on referral patterns?	
8. Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers?	
9. In respect of every conflict or potential conflict, you must record how you have managed that conflict or potential conflict. Has the management of all conflicts been recorded with a brief explanation of how they have been managed?	
10. Why have you chosen this procurement route e.g., single action tender?[7]	

[7]Taking into account all relevant regulations (e.g. the NHS (Procurement, patient choice and competition) (No 2) Regulations 2013 and guidance (e.g. that of Monitor).

11. What additional external involvement will there be in scrutinising the proposed decisions?	
12. 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)	
13. 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	
14. 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	
15. What steps have been taken to demonstrate that the services to which the contract relates are capable of being provided by only one provider?	
16. In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?	
17. What assurances will there be that a GP practice is providing high-quality services under the GP contract before it has the opportunity to provide any new services?	

APPENDIX H

Template: Procurement decisions and contracts awarded

Ref No	Contract/ Service title	Procurement description	Existing contract or new procurement (if existing include details)	Procurement type – CCG procurement, collaborative procurement with partners	CCG clinical lead (Name)	CCG contract manger (Name)	Decision making process and name of decision making committee	Summary of conflicts of interest noted	Actions to mitigate conflicts of interest	Justification for actions to mitigate conflicts of interest	Contract awarded (supplier name & registered address)	Contract value (£) (Total) and value to CCG	Comments to note

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:

Please return to **Head of Contracting & Procurement**

NHS
Greater Huddersfield
Clinical Commissioning Group

Register of procurement decisions and contracts awarded

Ref No	Contract/ Service title	Procurement description	Existing contract or new procurement (if existing include details)	Procurement type – CCG procurement, collaborative procurement with partners	CCG clinical lead	CCG contract manager	Decision making process and name of decision making committee	Summary of conflicts of interest declared and how these were managed	Contract Award (supplier name & registered address)	Contract value (£) (Total)	Contract value to CCG

APPENDIX J

Template Declaration of conflict of interests for bidders/contractors

Name of Organisation:	
Details of interests held:	
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	[*complete for all Relevant Persons*]	
Details of interests held:		
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:

Equality Impact Assessment Tool

	Conflicts of Interest Policy		
		Yes/No	**Comments**
1.	**Does the policy/guidance affect one group less or more favourably than another on the basis of:**		
	Race	No	
	Ethnic origins (including gypsies and travellers)	No	
	Nationality	No	
	Gender	No	
	Culture	No	
	Religion or belief	No	
	Sexual orientation including lesbian, gay and bisexual people	No	
	Age	No	
	Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
2.	**Is there any evidence that some groups are affected differently?**	No	
3.	**If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?**	-	
4.	**Is the impact of the policy/guidance likely to be negative?**	No	
5.	**If so can the impact be avoided?**	-	
6.	**What alternatives are there to achieving the policy/guidance without the impact?**	-	
7.	**Can we reduce the impact by taking different action?**	-	

If you have identified a potential discriminatory impact of this procedural document, please refer it to, together with any suggestions as to the action required to avoid/reduce this impact.

Summary of key aspects of the guidance on managing conflicts of interest relating to commissioning of new care models

Introduction

1. Conflicts of interest can arise throughout the whole commissioning cycle from needs assessment, to procurement exercises, to contract monitoring. They arise in many situations, environments and forms of commissioning.

2. Where CCGs are commissioning new care models [28], particularly those that include primary medical services, it is likely that there will be some individuals with roles in the CCG (whether clinical or non-clinical), that also have roles within a potential provider, or may be affected by decisions relating to new care models. Any conflicts of interest must be identified and appropriately managed, in accordance with this statutory guidance.

3. This annex is intended to provide further advice and support to help CCGs to manage conflicts of interest in the commissioning of new care models. It summarises key aspects of the statutory guidance which are of particular relevance to commissioning new care models rather than setting out new requirements. Whilst this annex highlights some of the key aspects of the statutory guidance, CCGs should always refer to, and comply with, the full statutory guidance.

Identifying and managing conflicts of interest

4. The statutory guidance for CCGs is clear that any individual who has a material interest in an organisation which provides, or is likely to provide, substantial services to a CCG (whether as a provider of healthcare or provider of commissioning support services, or otherwise) should recognise the inherent conflict of interest risk that may arise and should not be a member of the governing body or of a committee or sub-committee of the CCG.

5. In the case of new care models, it is perhaps likely that there will be individuals with roles in both the CCG and new care model provider/potential provider. These conflicts of interest should be identified as soon as possible, and appropriately managed locally. The position should also be reviewed whenever an individual's role, responsibility or circumstances change in a way that affects the individual's interests. For example where an individual takes on a new role outside the CCG, or enters into a new business or relationship, these new interests should be promptly declared and appropriately managed in accordance with the statutory guidance.

6. There will be occasions where the conflict of interest is profound and acute. In such scenarios (such as where an individual has a direct financial interest which gives rise to a conflict, e.g., secondary employment or involvement with an organisation which benefits financially from contracts for the supply of goods and services to a CCG or aspires to be a new care model provider), it is likely that CCGs will want to consider whether, practically, such an interest is manageable

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[28] Where we refer to 'new care models' in this note, we are referring to any Multi-speciality Community Provider (MCP), Primary and Acute Care Systems (PACS) or other arrangements of a similar scale or scope that (directly or indirectly) includes primary medical services.

at all. CCGs should note that this can arise in relation to both clinical and non- clinical members/roles. If an interest is not manageable, the appropriate course of action may be to refuse to allow the circumstances which gave rise to the conflict to persist. This may require an individual to step down from a particular role and/or move to another role within the CCG and may require the CCG to take action to terminate an appointment if the individual refuses to step down. CCGs should ensure that their contracts of employment and letters of appointment, HR policies, governing body and committee terms of reference and standing orders are reviewed to ensure that they enable the CCG to take appropriate action to manage conflicts of interest robustly and effectively in such circumstances.

7. Where a member of CCG staff participating in a meeting has dual roles, for example a role with the CCG and a role with a new care model provider organisation, but it is not considered necessary to exclude them from the whole or any part of a CCG meeting, he or she should ensure that the capacity in which they continue to participate in the discussions is made clear and correctly recorded in the meeting minutes, but where it is appropriate for them to participate in decisions they must only do so if they are acting in their CCG role.

8. CCGs should take all reasonable steps to ensure that employees, committee members, contractors and others engaged under contract with them are aware of the requirement to inform the CCG if they are employed or engaged in, or wish to be employed or engaged in, any employment or consultancy work in addition to their work with the CCG (for example, in relation to new care model arrangements).

9. CCGs should identify as soon as possible where staff might be affected by the outcome of a procurement exercise, e.g., they may transfer to a provider (or their role may materially change) following the award of a contract. This should be treated as a relevant interest, and CCGs should ensure they manage the potential conflict. This conflict of interest arises as soon as individuals are able to identify that their role may be personally affected.

10. Similarly, CCGs should identify and manage potential conflicts of interest where staff are involved in both the contract management of existing contracts, and involved in procurement of related new contracts.

Governance arrangements

11. Appropriate governance arrangements must be put in place that ensure that conflicts of interest are identified and managed appropriately, in accordance with this statutory guidance, without compromising the CCG's ability to make robust commissioning decisions.

12. We know that some CCGs are adapting existing governance arrangements and others developing new ones to manage the risks that can arise when commissioning new care models. We are therefore, not recommending a "one size fits" all governance approach, but have included some examples of governance models which CCGs may want to consider.

13. The principles set out in the general statutory guidance on managing conflicts of interest (paragraph 19-23), including the Nolan Principles and the Good

Governance Standards for Public Services (2004), should underpin all governance arrangements.

14. CCGs should consider whether it is appropriate for the Governing Body to take decisions on new care models or (if there are too many conflicted members to make this possible) whether it would be appropriate to refer decisions to a CCG committee.

Primary Care Commissioning Committee

15. Where a CCG has full delegation for primary medical services, CCGs could consider delegating the commissioning and contract management of the entire new care model to its Primary Care Commissioning Committee. This Committee is constituted with a lay and executive majority, and includes a requirement to invite a Local Authority and Healthwatch representative to attend (see paragraph 97 onwards of the CCG guidance).

16. Should this approach be adopted, the CCG may also want to increase the representation of other relevant clinicians on the Primary Care Commissioning Committee when new care models are being considered, as mentioned in Paragraph 98 of this guidance. The use of the Primary Care Commissioning Committee may assist with the management of conflicts/quorum issues at governing body level without the creation of a new forum/committee within the CCG.

17. If the CCG does not have a Primary Care Commissioning Committee, the CCG might want to consider whether it would be appropriate/advantageous to establish either:

a) A **new care model commissioning committee** (with membership including relevant non-conflicted clinicians, and formal decision making powers similar to a Primary Care Commissioning Committee ("NCM Commissioning Committee"); or

b) A separate **clinical advisory committee**, to act as an advisory body to provide clinical input to the Governing Body in connection with a new care model project, with representation from all providers involved or potentially involved in the new care model but with formal decision making powers remaining reserved to the governing body ("NCM Clinical Advisory Committee").

NCM Commissioning Committee

18. The establishment of a NCM Commissioning Committee could help to provide an alternative forum for decisions where it is not possible/appropriate for decisions to be made by the Governing Body due to the existence of multiple conflicts of interest amongst members of the Governing Body. The NCM Commissioning Committee should be established as a sub-committee of the Governing Body.

19. The CCG could make the NCM Commissioning Committee responsible for oversight of the procurement process and provide assurance that appropriate governance is in place, managing conflicts of interest and making decisions in relation to new care models on behalf of the CCG. CCGs may need to amend

their constitution if it does not currently contain a power to set up such a committee either with formal delegated decision making powers or containing the proposed categories of individuals (see below).

20. The NCM Commissioning Committee should be chaired by a lay member and include non-conflicted GPs and CCG members, and relevant non-conflicted secondary care clinicians.

NCM Clinical Advisory Committee

21. This advisory committee would need to include appropriate clinical representation from all potential providers, but have no decision making powers. With conflicts of interest declared and managed appropriately, the NCM Clinical Advisory Committee could formally advise the CCG Governing Body on clinical matters relating to the new care model, in accordance with a scope and remit specified by the Governing Body.

22. This would provide assurance that there is appropriate clinical input into Governing Body decisions, whilst creating a clear distinction between the clinical/provider side input and the commissioner decision-making powers (retained by the Governing Body, with any conflicts on the Governing Body managed in accordance with this statutory guidance and constitution of the CCG).

23. From a procurement perspective the Public Contracts Regulations 2015 encourage early market engagement and input into procurement processes. However, this must be managed very carefully and done in an open, transparent and fair way. Advice should therefore be taken as to how best to constitute the NCM Clinical Advisory Committee to ensure all potential participants have the same opportunity. Furthermore it would also be important to ensure that the advice provided to the CCG by this committee is considered proportionately alongside all other relevant information. Ultimately it will be the responsibility of the CCG to run an award process in accordance with the relevant procurement rules and this should be a process which does not unfairly favour any one particular provider or group of providers.

24. When considering what approach to adopt (whether adopting an NCM Commissioning Committee, NCM Clinical Advisory committee or otherwise) each CCG will need to consider the best approach for their particular circumstances whilst ensuring robust governance arrangements are put in place. Depending on the circumstances, either of the approaches in paragraph 17 above may help to give the CCG assurance that there was appropriate clinical input into decisions, whilst supporting the management of conflicts. When considering its options the CCG will, in particular, need to bear in mind any joint / delegated commissioning arrangements that it already has in place either with NHS England, other CCGs or local authorities and how those arrangements impact on its options.

Provider engagement

25. It is good practice to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient needs. This may include providers from the acute, primary, community, and mental health sectors, and may include NHS, third sector and private sector providers. Such

engagement, done transparently and fairly, is entirely legal. However, conflicts of interest, as well as challenges to the fairness of the procurement process, can arise 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. CCGs should be particularly mindful of these issues when engaging with existing / potential providers in relation to the development of new care models and CCGs must ensure they comply with their statutory obligations including, but not limited to, their obligations under the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 and the Public Contracts Regulations 2015.

Further support

26. If you have any queries about this advice, please contact: england.co-commissioning@nhs.net.