

## Management of Conflict of Interest Policy

**NHS Walsall CCG Audit and Governance Committee approved this Policy on:**

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## CONTRIBUTION LIST

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Chief Officer
Chair and Governing Body members
Staff and Directors
Locality leads
LMC

### Version Control Summary

#### Significant or Substantive Changes from Previous Version

Version	Date	Comments
V 1	April 2012	Model constitution version
V 2	April 2014	Included NHS E guidance to CCGs and gifts and hospitality section and management of procurement conflicts of interest
v3	Jan 2015	reviewed in line with NHS England guidance for co-commissioning primary medical care services
v3.1	Aug 2015	Inclusion of federations on the declaration form for positions of authority
v3.2	Oct 2015	Review in readiness for full delegation of primary care commissioning. Include lay member as deputy chair where chair and vice chair have a conflict of interest which prevents them from carrying out the role. p44
v3.3	Sept 2016	Review in line with NHS E revised statutory guidance
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## 1. Introduction

In accordance with the Health and Social Care Act 2012, there is a legal requirement for Clinical Commissioning Groups (CCG) to manage the process of conflicts of interest, both actual and perceived.

It will not be possible to avoid conflicts of interest as they are inevitable in many aspect of public life. However by recognising where and how they arise and dealing with them appropriately, commissioners will be able to ensure proper governance, robust decision making and appropriate decisions about the use of public money.

Conflicts of interest can occur when an individual has a personal stake in a decision they are able to influence and are in a position to put the needs of their organisation second to their own benefit. Having a conflict of interest doesn't mean that the individual will not act appropriately, however the CCG has a responsibly to prevent the occurrence of conflicts of interest and to minimise their impact when they do occur.

## 2. Aims

This policy aims to set out how the CCG will manage the conflicts of interest whilst safeguarding clinical led commissioning and enabling objective investment decisions. It will in conjunction with NHS England guidance, set out the definition of conflicts, the process for identifying and recording conflicts, the management of conflicts and the consequences of breaching the policy. The policy demonstrates how the CCG will operate within the legal framework and its constitution and uphold trust and confidence with the public.

## 3. Legislative framework

Section 14O of the Health and Social Care Act 2012 sets out the minimum requirements for CCGs to manage conflicts of interest, which includes:

- Maintain appropriate registers of interests.
- Publish the registers of interest.
- Make arrangement requiring the prompt declaration of interests by the persons specified and ensure that these interests are entered into the relevant register.
- Have regard to National guidance.

Section 14O is supplemented by the procurement specific requirements set out in the NHS Procurement, Patient Choice and Competition (no 2) Regulations 2013. In particular regulation 6 requires the following:

- CCGs must not award a contract for the provision of NHS health care services where conflicts or potential conflicts, between the interests involved in commissioning such services and the interests involved in providing them affect, or appear to affect the integrity of the award of that contract.
- CCGs must keep a record of how it managed any such conflict in relation to NHS commissioning contracts it enters into.

This policy sets out the local policy and process for the compliance with the requirements to manage conflicts of interest. Where additional guidance or detail is required then reference to the NHS England Managing Conflicts of Interest: Revised statutory Guidance for CCGs must be referenced and the guidance from February 2017.

#### 4. Definition of an Interest

A conflict of interest occurs when an individual's ability to exercise judgement or act in a role is, could be or is seen to be impaired or otherwise influenced by their involvement in another role or relationship. It is where there is or could be a clash between the personal or private interests of an individual and the CCG, where this would affect that individual's performance of their CCG duties. The conflict of interest may be

1. actual where there is a material conflict between one or more interests or
2. potential where there is the possibility of a material conflict between one or more interests in the future.
3. perceived – where an observer could reasonable suspect there to be a conflict of interest regardless of whether there is one or not.

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

There are four different categories of conflicts:

1. **Financial interests** – this is where an individual may get direct financial benefits from the consequences of a commissioning decision they are involved in making.
2. **Non-financial professional interest** – 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.
3. **Non-financial personal interest** – 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 because of decision they are involved in making in their professional career.
4. **Indirect interests** – this is where an individual has a close association with another individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision who would stand to benefit from a decision they are involved in making. This would include a spouse or partner, close relative or friend or a business partner.

Examples of each are provided at section 6 page 7.

#### 5. Principles of Good Governance

Good governance is critical for CCGs to achieve success, therefore Walsall CCG will at all times observe the accepted principles of good governance in the way it conducts its business. Reference will be made to following the seven key principles of the NHS constitution, the good governance standard for public services, the Nolan principles and the Equality Act 2010.

#### 6. Declaring Conflicts of Interest

All persons referred to in section 7 page 8: Register of interest below must declare any interests.

Declarations of interest must be made:

- **On appointment** - applicants for any appointment to the CCG or Governing Body or any committees should be asked to make a declaration of interests and a formal declaration of interests to be made on and recorded on appointment. When the CCG makes a conditional appointment offer of Governing Body members or Senior members of staff, a declaration of interest must be completed by the applicant and the CCG will establish whether the declarations exclude individuals from being appointed.
- **Every 6 months** – a nil return should be recorded if there are no changes or declarations.
- **At meetings** – all attendees are required to declare their interests as a standing agenda item for every Governing Body, Governing Body committee meetings, sub-committee or working

groups before the item is discussed. The committee register of declarations will be shared as part of the committee papers. Even if an interest has been declared that is recorded on the register it should still be declared if it is relevant to the agenda item at the meeting. The minutes of the meeting will record any declarations of interest that are declared at the meeting.

- On **changing role or responsibility**- whenever an individual's role or responsibilities change in a way that affects the individuals interests they are required to update their declaration of interest form as soon as possible. It is the individuals responsibility to initiate this. This could be to either remove or add an interest.
- On any other **change of circumstance** as soon as the individual becomes aware and by law not later than 28 days after becoming aware of the conflict.

There is a requirement for individuals including GP members to declare all types of interest as defined earlier in the policy. The declaration of interest form is available from the intranet and should be returned to the Corporate Governance Officer in the Governance department. All declarations will be put on the register of interests which is available to the public on the CCG website.

The declaration of interest form is included at appendix 1.

There may be occasions when the conflict of interest is so profound that the CCG will want to consider whether practically such an interest is manageable at all. If it is not then the appropriate course of action may be to refuse to allow the circumstances which give rise to the conflict to occur. This may require an individual to step down from a position or for a position to not be offered to the individual at all.

### **Decision Making Individuals**

These are individuals who are in roles that require them to make decisions which influence the use of taxpayers money.

### **Types of Interest to be Declared**

Financial interests:

- Being a director, non-executive director or senior manager in a private or public limited company or other organisation which is doing or likely to do business with health or social care organisations.
- A shareholder or similar ownership interests, a partner or owner of a private or not-for-profit company, business, consultancy which is likely or seeking to do business with health or social care organisations.
- A management consultant for a provider.
- Any secondary employment.
- Being in receipt of any secondary income or grant from a provider.
- In receipt of any payments (honoraria, one-off payments, allowances, travel or subsidence) 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.
- Any patents or other intellectual property rights held (individually or by association with a commercial or other organisation), where items may be procured or used by the CCG.
- 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).

Non-financial professional interests:

- An advocate for a particular group of patients.
- A GP with special interests.
- A member of a particular specialist professional body.
- An advisor for CQC or NICE.
- A medical researcher.

- GPs and practice managers who are members of the governing body or its committees should declare details of their roles and responsibilities held within their GP practice.

Non-financial personal interests:

- A volunteer for a provider.
- A voluntary sector champion 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.
- In receipt of an IFR (this can be made confidentially with the conflict of interest guardian (COIG) to preserve the right to confidentiality).
- A member of a lobby or pressure group with an interest in health.

Indirect interests:

- Spouse or partner.
- Close relative or close friend.
- Business partner.

This list is not exhaustive. If individuals are unsure whether to declare an interest then guidance can be sought from the Conflict of Interest Guardian, the Clinical Chair or the Governance team.

## 7. Register of Declaration of Interests

The Chair will ensure that the CCG maintain registers of interest declared by:

- All members of the CCG i.e. each practice; GP partners or where the practice is a company, each director plus any individual directly involved with the business or decision-making of the CCG including involvement in a procurement process.
- All CCG employees.
- All members of the Governing Body.
- All members of committees and sub committees, including appointed deputies and member of committees from other organisations.
- All self-employed consultants or other individuals working for the CCG under a contract for services.
- Anybody who works with the CCG in an advisory role, anybody who works with the CCG in a decision making capacity and any individual providing support to the CCG.

The registers of interest are stored centrally in the governance department. They are routinely updated every 6 months and when there are any additional interests declared by individuals. The register will be made available to the public from the Walsall CCG website [www.walsallccg.nhs.uk](http://www.walsallccg.nhs.uk) and will be made available upon request at the CCG headquarters for individuals without internet access. All interests will remain on the public register for a minimum of 6 months after the interest has expired. The CCG will retain a record of the registers for a minimum of 6 years after the date on which it expired.

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. Such requests must be made in writing. 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 should retain a confidential un-redacted version of the register(s).

The register of interest template is included at Appendix 2.

## **8. Declaration of Gifts and Hospitality**

All individuals need to consider the risks associated with accepting offers of gifts, hospitality and entertainment when undertaking activities for or on behalf of the CCG or their practice. In particular, individuals must not accept gifts or hospitality or other benefits which might reasonably be seen to compromise their professional judgement or integrity. This is especially important during procurement exercises as the acceptance of gifts could give rise to real or perceived conflicts of interests or accusations of unfair influence, collusion or canvassing. Staff and individuals should also be mindful of the provisions of the Bribery Act 2010, which makes the offering, giving, seeking or receiving of any 'financial or other advantage' in return for the improper performance of any function of a public nature a criminal offence.

All staff and individuals listed in section 7 must comply with the gifts and hospitality declaration requirements including completing the gifts and hospitality form and returning it to the Corporate Governance Officer in the Governance department.

### Gifts

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. All cash or cash-equivalent gifts must be declined, regardless of their source. All other gifts, whatever their nature or value, must be declined and declared on the gifts and hospitality register if they

- are from suppliers or contractors linked currently or prospectively to the CCGs business.
- would give rise to perceptions of bias or favouritism.
- they are personal gifts made whilst you are working on behalf of the CCG.

Items that are acquired through (for example) events or conferences e.g. diaries, pens or calendars worth less than £6, or small tokens of appreciation from the public can be accepted. These items do not need to be declared on the register of gifts and hospitality.

### Hospitality

Hospitality covers any food, drink or hosting of an event which is funded by a third party. Modest hospitality which is 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 approximately to the value of £25. Hospitality of this nature only needs to be declared when it is offered by suppliers or contractors linked, currently or prospectively, to the CCG business, in which case all such offers whether accepted or not should be declared.

Hospitality which goes beyond this value should be refused and declared on the register. If there are limited and exceptional circumstances where accepting hospitality over the value of £25 may be contemplated then express prior approval should be sought from the Conflict of Interest Guardian. A clear reason should be recorded on the register as to why it was permissible to accept. Particular caution should be exercised where hospitality is offered by suppliers or contractor's current or potential, to the CCG business and consideration given to particular sensitivities for example if a contract re-tender is imminent.

### Commercial Sponsorship

The CCG 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 the member practices. All offers of commercial sponsorship whether accepted or declined must be declared on a register.

Acceptance of commercial sponsorship must not compromise commissioning decisions or be dependent on the purchase or supply of goods or services. Sponsors should not have influence over the content of an event, meeting, seminar, publication or training event. The CCG must not endorse individual companies or products and it should be made clear that any sponsorship does not mean endorsement. During dealings with sponsors there must be no breach in patient or individual confidentiality or data protection legislation. No information can 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 be supplied to companies. The commercial sponsorship policy.

## 9. Gifts and Hospitality Register

The Gifts and Hospitality register will be updated every six months and when there are any additional declarations made by individuals. This will be made available on the CCG website [www.walsallccg.nhs.uk](http://www.walsallccg.nhs.uk)

The Gifts and Hospitality template is included at appendix 3.

## 10. Accountability

The **Accountable Officer** is ultimately accountable for ensuring that all processes involved in managing conflicts of interest are maintained and followed where appropriate including the reporting of breaches, investigations and actions are appropriately undertaken. The **Audit and Governance Committee** on behalf of the Governing Body will oversee this policy and will ensure that the systems and processes in place to support compliance with the policy and national guidance is effective and ensure that corrective action will be initiated where there are failings. The Audit and Governance Committee will ensure that internal audit recommendations on the management of conflict of interests are appropriately responded to and implementation effective.

## 11. Roles and Responsibilities

When recruiting Governing Body members, committee and sub-committee members and individuals in decision making roles, the CCG will give consideration to any conflicts of interests declared to establish whether the conflict is material to their suitability for appointment to the role on a case by case basis.

The Conflict of Interest Guardian will advise the Chair of the CCG to assess the materiality of the interest and whether the individual or any person they have a close association with, may benefit from the appointment. If the area of interest is significant enough that the individual would be unable to sufficiently carry out their role, then the individual should not be appointed.

For committee or subcommittee membership if the individual has a material interest in an organisation which provides or is likely to provide substantial services to the CCG, consideration should be given to the inherent conflict of interest risk. They should not be a member of the Governing Body, committee or subcommittee if the nature and extent of their interest is such that it is likely to exclude them from the decision making part of the committee on a regular basis and significantly limit their ability to effectively perform the role. All members of the CCG and individuals working on behalf of the CCG will be expected to conduct themselves in line with the values of the NHS constitution, the Nolan principles and the Standards for members of NHS boards and CCG governing bodies.

The **Conflict of Interest Guardian** is responsible for strengthening the scrutiny and transparency of the CCGs decision making processes. They act as a conduit for GP practice staff, members of the public and healthcare professionals who have any concerns with regard to conflicts of interest. They are a safe point of contact for CCG employees or workers to raise any concerns in relation to this

policy. They support rigorous application of conflict of interest principles and policies. They provide independent advice and judgement where there is any doubt about how to apply conflicts of interest policies and principles in an individual situation. They provide advice on minimising the risks of conflicts of interest. In the unlikely event that the independence of the conflict of interest guardian is brought into question then independent expert advice will be secured.

The **Lay members** are responsible for providing scrutiny, challenge and an independent voice in support of robust and transparent decision making and management of conflicts of interest.

The **Chairs** of all meetings must ensure that any conflicts of interest arising from the agenda items are managed. They must ensure that any conflicts of interest are declared, managed and recorded at the start of each meeting.

The **Primary Care Commissioning Committee Chair** must ensure appropriate safeguards for the commissioning of primary care with oversight and assurance to and ensure that the audit chairs conflict of interest role is not compromised.

The **Governance lead** will manage the day to day management of conflicts of interest matters and queries and ensure appropriate administrative processes are in place. They will operationally manage the maintenance of the registers, support the conflict of interest guardian, and provide advice, support and guidance on how conflicts of interest should be managed.

The **Commissioning and Procurement Managers** are responsible for ensuring that the conflicts of interest are recorded and managed throughout all the stages of their work for each work stream.

The **CCG employees** must ensure that they complete the declaration of interest form as soon as it is requested and inform the Governance team of any change in professional or personal circumstances.

## **12. Governance arrangements and decision making**

### **Secondary Employment**

All employees committee members, contractors and others engaged under contract with them are required to inform the CCG if they are or wish to be employed or engaged in any employment or consultancy work in addition to their work with the CCG. The purpose of this is to enable the CCG to manage any potential conflict of interest. Examples of work which might conflict with the CCG include, but are not limited to, part time, fixed term, temporary or voluntary work such as

1. employment with another NHS organisation,
2. employment with an organisation which may supply goods or services to the CCG,
3. Directorship of a GP federation and or
4. self employment including private practice in a capacity which might conflict with the work of the CCG or may supply goods or services to the CCG.

The CCG will require all individuals to obtain prior permission to engage in secondary employment, and reserve the right to refuse permission where it believes a conflict will arise which cannot be effectively managed. In particular it is unacceptable for pharmacy advisers or other adviser's, employees or consultants to the CCG on matters of procurement, to themselves be in receipt of payments from the pharmaceutical or devices sector.

Secondary employment will be managed through the recruitment process for new employees and through the declaration of interest form for existing employees. Any declarations will be managed by the Conflict of Interest Guardian and Chair with consideration to the materiality and extent of any conflict and the suitability for appointment, acceptance of roles within the CCG and or continuation

of roles already undertaken for the CCG. The contract of employment includes a clause on outside employment and interests.

### **13. Managing Conflicts of Interest at Meetings**

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.

All members of the Governing Body, committees of the Governing Body and subcommittees will be required to complete a declaration of interest form every six months and take responsibility to inform the Corporate Governance Officer of any amendments as they arise. See appendix 1 for the declaration of interest form.

The agenda for each committee must include a complete register of declarations made by the committee members and members in attendance. This will be circulated in advance of the meeting along with the supporting committee papers.

The Governing Body, Committees of the Governing Body and subcommittees will use a standard agenda template which includes a standing agenda item at the beginning of the meeting for declarations of interest. The Chair of the committee must indicate any management of previously declared declarations for specific agenda items and ask if any member has additional declarations, especially on agenda items for that meeting.

It is the responsibility of each member to declare any interest that they may have. It may be appropriate for the committee member to declare that they have been lobbied for a specific agenda item; or in some cases it may be appropriate that committee members declare that they have not been lobbied. If the Chair or any member is aware of any facts or circumstances which may give rise to a conflict of interest which has not been declared then they should bring this to the attention of the chair for appropriate management.

The management of conflicts could include but are not limited to:

1. if the chair has a conflict, whether the vice chair or if they are conflicted another member chairs whole or part of the meeting.
2. the conflicted individual not attending part or the whole of the meeting.
3. the conflicted individual not receiving papers or minutes concerning the conflicted item.
4. the conflicted individual leaving the meeting when the discussion takes place and for any decision making in relation to the conflicted item.
5. the conflicted individual participating in the discussion but leaving the meeting for any decision making.
6. noting the interest and allowing the individual to remain and participate in the discussion and decision making. this is appropriate when the conflict is either immaterial or not relevant to the matter under discussion.

If a declaration is made, the detail of the declaration and its management must be recorded in the minutes and entered on the meeting declaration of interest management log. This must include who has the interest, the nature of the interest and type of conflict, the agenda item it relates to, the management of the conflict and evidence that this was managed as intended. The Corporate Governance Officer must be informed of all new declarations of interest raised during the meeting in order to update the register.

The meeting conflict log template is included as appendix 4.

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 to manage the conflict. If the Vice Chair is also conflicted then the remaining non conflicting members should agree between themselves how to manage the conflict. In making such a decision the Conflict of Interest Guardian may be consulted. It is good practice for the Chair with support from the Head of Corporate Governance to pro-actively consider, identify and manage conflicts of interest ahead of the meeting taking place. This should include consideration of whether supporting papers for items where members may be conflicted, being circulated to them.

#### **14. Primary Care Commissioning Committee**

The Primary Care Commissioning Committee should be held in public unless the CCG has concluded it is appropriate to exclude the public for items where it would be prejudicial to the public interest to hold that part of the meeting in public.

Examples of this may include but are not limited to:

1. information about individual patients or other individuals which includes sensitive personal data is to be discussed.
2. commercially confidential information is to be discussed, for example the detailed contents of a providers tender submission.
3. information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is to be discussed.
4. to allow the meeting to proceed without interruption and disruption.

The governance arrangements are detailed in the Primary Care Commissioning Committee terms of reference. In summary they require a lay and executive majority to be quorate if all GPs have to leave the meeting, a lay chair and vice chair, the GPs are not voting members, Local Authority representative from the Health and Wellbeing Board, a representative from Healthwatch and the LMC. The subgroups of the Primary Care Commissioning Committee will submit their committee minutes along with the management of any conflicts of interest to the Primary Care Commissioning Committee. The dates of the meetings and committee papers are available on the CCG website prior to the meeting.

#### **15. Managing Gifts & Hospitality and Commercial Sponsorship at Meetings**

The Governing Body, Committees of the Governing Body and subcommittees will use a standard agenda template which includes a standing agenda item at the beginning of the meeting for gifts and hospitality and commercial sponsorship. All offers of gifts and hospitality and commercial sponsorship that are declared at the meeting whether accepted or not must be recorded in the minutes and the corporate Governance Officer informed so that the gifts and hospitality register can be updated.

## **16. Managing conflicts of interest throughout the commissioning cycle**

Conflicts of interest must be managed 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.

## **17. Designing service requirements**

Public involvement supports transparent and credible commissioning decisions. It should happen at every stage of the commissioning cycle. The CCG has a legal duty to properly involve patients and the public in their respective commissioning processes and decisions.

It is good practice to engage with relevant providers in confirming that the design of service specifications will meet patient's needs. This is legal provided it is carried out with equal treatment, non-discrimination and transparently. This requires that the same information is given to all at the same time and procedures are transparent and implemented consistently and fairly. The Communications and Engagement Strategy details a patient and public engagement framework for commissioning decisions.

This model identifies patients and the public engagement in commissioning decisions.

1. Community engagement to identify needs and aspirations.
2. Public engagement to develop priorities and strategies and plans.
3. Patient and carer engagement to improve services.
4. Patient, carer and public engagement to procure services.
5. Patient and carer engagement to monitor services.

The planning stages

1. Engage communications in identifying health needs and aspirations.
2. Involve public in decisions about our priorities.
3. Gather information from service users and carers to inform planning.

Specifying outcomes

1. Involve patients in service redesign and feedback.
2. Embed an open and transparent process for service redesign and procurement.

## **18. Procurement**

The CCG will need 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. 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. A conflict of interest during a procurement exercise is defined 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'. The Procurement Policy should be read in conjunction with the conflict of interest policy for the management of procurement conflicts of interest.

The regulations put on a statutory footing many of the key requirements for commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behaviour that is against the interest of patients, and protect the right of patients to make choices about their healthcare. Good practice includes acting transparently, proportionately

and without discrimination and treating all providers and potential providers equally, in particular from not treating one provider more favourably than another on the basis of ownership.

There are two regimes of procurement law that the CCG must comply with when commissioning healthcare services:

- the NHS procurement regime - the NHS Procurement Patient Choice and Competition (no 2) Regulations 2013 (PPCCR) which states:

*CCGs must not award a contract for the provision of NHS healthcare 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 contract it has entered into.*

- and the European procurement regime - Public Contracts Regulations 2015 (PCR 2015) which 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.*

## **19. Management of the conflicts of interests during procurement**

An obvious area in which conflicts could arise is where a CCG commissions healthcare services, in which a member of the CCG has a financial or other interest, for example with regard to delegated primary medical care services where GPs are, or could be providers. A procurement checklist template at appendix 5 sets out factors which the CCG will address when drawing up plans to commission general practice services.

During the procurement, each individual involved in the process will be required to complete the declaration of interest form (at appendix 1) with specific relation to the procurement they are involved with. This will be recorded on the declaration of interest register. The COIG will support the process to manage the interests declared on the forms.

### **Declaration of interests for bidders and contractors**

The bidders and contractors will be asked to complete a bidders and contractors declaration of interest form ensure the commissioners are able to comply with the principles of equal treatment and transparency. When the CCG manages a conflict declared by a bidder it must ensure that the bidder is not treated differently to any other.

The declaration of interests by bidders and contractors will not be made publically available as this is deemed business sensitive information. The CCG will maintain a secure log of bidders and contractors declaration of interests and any management of conflicts along with any communications with economic operators and internal deliberations, including decisions made in relation to actual or perceived conflicts of interest declared by bidders. These records will be retained for a minimum of three years after the award of the contract.

The bidder and contractors declaration of interest form is included at appendix 6.

## **Register of procurement decisions and contracts awarded**

The CCG will maintain and make publically available via the website and at headquarters, a register of the procurements decisions and contracts awarded. This will include procurement of a new service or any extension or material variation of a current contract. This will include the details of the decision, the decision making, and a summary of the conflicts of interest and their management and the award decision taken. The register of procurement decisions and contracts awarded will provide transparency around:

1. Evidence that the CCG is seeking and encouraging scrutiny of its decision-making process.
2. A record of the public involvement throughout the commissioning of the service.
3. A record of how the proposed service meets local needs and priorities for partners.
4. Evidence to the Audit and Governance 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.

The Procurement decisions and contracts awarded register template is included in appendix 7 and will be updated whenever a procurement decision is taken. Where possible the register will include planned service developments and possible procurements.

The register is publicly available on the CCG website [www.walsallccg.nhs.uk](http://www.walsallccg.nhs.uk) A copy will also be available on request from the CCG headquarters.

## **20. Contract monitoring**

The management of conflicts of interest involves contract management. 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. The membership of Contract Review Meetings and Clinical Quality Review meetings which are the main vehicle to monitor the contracts, will all be required to complete a declaration of interest form and conflicts of interest will be considered and recorded at each meeting.

## **21. Raising Concerns and Breaches**

### **Process for reporting concerns and breaches**

There will be occasions when interests will not be identified, declared or managed appropriately and effectively. This may happen innocently, accidentally or because of the deliberate action of individuals or organisations. For the purposes of this policy this is known as a breach. A breach is a result of failure to comply with the conflict of interest policy or not declaring an interest that has or could be seen to influence involvement in another role or relationship. A concern is where someone raises an issue where there is genuine potential for a breach to have been made.

A concern or breach will be managed in line with the principles of the whistle blowing policy. It is the duty of every CCG employee, governing body member, committee or subcommittee member and GP practice member to speak up about genuine concerns or breaches in relation to the administration of this policy. If there is genuine doubt then this should be raised as an informal concern rather than wait for additional evidence or individuals attempt to investigate it themselves. Effective management of conflicts of interest requires an environment and culture where individuals feel supported and confident in declaring actual or suspected breaches of the policy. Individuals have a right to request anonymity which means that whilst their identity will be known by the person the concern was reported to, this will not be disclosed to a third party unless there is a requirement to disclose it under law.

## **Who should concerns and breaches be raised with?**

Individuals should raise the concern or breach either verbally or in writing with the COIG John Duder [john.duder@walsall.nhs.uk](mailto:john.duder@walsall.nhs.uk) If the conflict is concerning the COIG, then another lay member, the Chair or the Chief Officer should be approached. The person raising the concern or breach will receive acknowledgement within two working days from the COIG<sup>1</sup>.

Individuals who raise a concern or breach will be treated in line with the principles of the whistle blowing policy available on the CCG intranet which offers protection against detriment or dismissal. Individuals who are not employees of the CCG are able to raise concern or report suspected breaches in policy. They must ensure that they are compliant with their own organisations whistle blowing policy, which should provide protection against detriment or dismissal.

## **How will concerns and breaches be investigated**

Each concern or breach will be investigated and judged on its own merits. The first action will be for the COIG to speak to the involved individual/s to give them an opportunity to explain and clarify any relevant circumstances.

If the COIG determines that there is a case to answer they will lead the investigation. They will be supported by a team of individuals relevant to the case ie HR, the Fraud Officer or the Head of Corporate Governance to carry out an investigation proportionate to the concerns or breach raised. The COIG can source additional guidance, independent support or advice whenever they feel it necessary.

## **Who is responsible for making decision**

The CIOG supported by the investigating team will:

1. decide if there has been or there is a potential for an actual breach and its severity.
2. Assess whether further action is required in response- this is likely to involve any individual involved and their line manager or equivalent as a minimum.
3. Consider who else inside and outside the organisation should be made aware of the breach.
4. Take appropriate action such as clarifying existing policy, taking action against the individual responsible for the breach or escalating to external parties such as NHSE, police, auditors, NHS Protect or statutory health bodies or regulatory bodies.

When it is ascertained that a breach has occurred, the COIG along with support and advice from the Chair and or the Accountable Officer will determine the appropriate course of management. This may range from omission to minute the management of a declared conflict during a meeting to a deliberate avoidance to declare an interest for personal gain. The management of the breach will be proportionate to the consequences of the breach and the degree which the breach was deliberate, dishonest with the intension to make a gain or cause the loss to another. This may include implementation of the disciplinary policy and termination of employment in line with contractual arrangements.

The individual reporting the concern will be asked if they want to remain anonymous. This will be recorded on the database. The Caldicott principles will be adhered to throughout the process.

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<sup>1</sup> If the concern or breach is concerning the COIG the then Chair, CO or other lay member will take on the role of the COIG for the management of the concern or breach.

There may be occasions where it is necessary to consider the imposition of sanctions for breaches. Sanctions should not be considered until the circumstances surrounding breaches have been properly investigated. However, if such investigations establish wrong-doing or fault then the CCG can and will consider the range of possible sanctions that are available, in a manner which is proportionate to the breach. This includes:

- Employment law action against staff, office holders and all individuals that are covered by the CCG terms and conditions, which might include:
  - Informal action (such as reprimand, or signposting to training and/or guidance).
  - Formal disciplinary action (such as formal warning, the requirement for additional training, re-arrangement of duties, re-deployment, demotion, or dismissal).
- Reporting incidents to the external parties for them to consider what further investigations or sanctions might be.
- Contractual action, such as exercise of remedies or sanctions against the body or individual which caused the breach.
- Legal action, such as investigation and prosecution under fraud, bribery and corruption legislation.

## **Reporting requirements**

Upon receipt and throughout the process, the concern or breach will be logged onto a secure database by the Head of Corporate Governance. This will include the management of the concern or breach, any learning and examples of good practice to share. The number of concerns their management and the outcome of any investigation will be reported to the Audit and Governance committee. Details will be included in the Audit and Governance assurance report to the Governing Body. All conflict of interest reports will ensure that confidentiality is maintained. Where there is the potential for media interest this will be managed in line with the communications and engagement strategy.

All breaches will be reported. All reported breaches will be anonymised and reported on the CCG website and where appropriate detail learning and development taken by the CCG for example amendment to the policy or training materials.

NHS England will be notified of any breaches via email at [england.wm-localities@nhs.net](mailto:england.wm-localities@nhs.net) and in line with CCG Improvement & Assessment Framework requirements for reporting.

## **22. Potential impact of non-compliance**

The potential consequences for employed individuals who fail to make declarations or who make false declarations which are upheld may result in demotion or dismissal.

There are potential civil implications for the CCG if there is a legal challenge from providers during a procurement exercise this could lead to the decision being overturned with legal damages filed against the CCG.

Failure to manage conflicts of interest could lead to criminal proceedings including offences such as fraud, bribery and corruption.

Statutory regulated healthcare professionals who work for, or are engaged by the CCG are under professional duties imposed by their relevant regulator to act appropriately with regard to conflicts of interest. The CCG may decide to report a healthcare professional to their regulatory body if deemed necessary and appropriate.

# Declaration of Interests Form

**All members of NHS Walsall Clinical Commissioning Group are required to sign the declaration of interest form, including:**

- All members of the CCG i.e. each practice, GP partners, each director plus individuals directly involved with the business of the CCG
- All CCG employees
- Governing Body members
- Governing Body Committee members
- Consultants
- Anybody who works with the CCG in an advisory role
- Anybody who works with the CCG in a decision making

This form is required to be completed in accordance with the CCG’s Constitution and section 140 of *The National Health Service Act 2006, the NHS (Procurement, Patient Choice and Competition) regulations 2013 and the Substantive guidance on the Procurement, Patient Choice and Competition Regulations*

A conflict of interest occurs where an individual’s ability to exercise judgment or act in one role is or could be impaired or otherwise influenced by his or her involvement in another role or relationship. The individual does not need to exploit his or her position or obtain an actual benefit. Conflicts of loyalty may arise in respect of an organisation of which the individual is a member or has an affiliation. Conflicts can arise from personal or professional relationships with others e.g. where the role of a family member, friend or acquaintance may influence an individual’s judgment or actions or could be perceived to do so.

Declarations of Interest must be made on appointment, every six months, at meetings, on changing role or responsibility and on any other change of circumstance, by law not later than 28 days after becoming aware.

<b>Name:</b>					
<b>Position within, or relationship with, the CCG (or NHS England in the event of joint committees):</b>					
<b>Detail of interests held (complete all that are applicable):</b>					
Type of Interest* *See reverse of form for details	Description of Interest (including for indirect Interests, details of the relationship with the person who has the interest)	Date interest relates From & To		Is the interest direct or indirect?	
				Direct	Indirect

All CCG members and employees must ensure that, in the conduct of their respective roles and responsibilities in relation to Walsall CCG, they observe and follow the Nolan Principles.

The information submitted will be held by the CCG for personnel or other reasons specified on this form and to comply with the organisation's policies. This information may be held in both manual and electronic form in accordance with the Data Protection Act 1998. Information may be disclosed to third parties in accordance with the Freedom of Information Act 2000 and published in registers that the CCG holds. Any breach or concern should be raised with the conflict of interest guardian and will be managed through the breach process. More information can be found in the Managing of Conflict Interest 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 as 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.

**I do / do not [delete as applicable]** give my consent for this information to published on to the website and the registers that the CCG holds. If consent is NOT given please give reasons:

**Signed:**

**Date:**

**Signed:**

**Position:**

**Date:**

**(Line Manager or Senior CCG Manager)**

Please return to Serena Causer, Corporate Governance Officer:  
Email: [serena.causer@walsall.nhs.uk](mailto:serena.causer@walsall.nhs.uk) Telephone: 01922 618318

## Types of interest

Type of Interest	Description
<b>Financial Interests</b>	<p>This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could, for example, include being:</p> <ul style="list-style-type: none"> <li>• 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 i.e. Federation and GP Practice</li> <li>• Roles and Responsibilities held within member practices</li> <li>• Secondary employment</li> <li>• A shareholder (or similar owner interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations.</li> <li>• A management consultant for a provider;</li> <li>• In secondary employment (see paragraph 56 to 57);</li> <li>• In receipt of secondary income from a provider;</li> <li>• In receipt of a grant from a provider;</li> <li>• In receipt of any payments (for example honoraria, one off payments, day allowances or travel or subsistence) from a provider</li> <li>• 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; and</li> <li>• 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).</li> </ul>
<b>Non-Financial Professional Interests</b>	<p>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:</p> <ul style="list-style-type: none"> <li>• An advocate for a particular group of patients;</li> <li>• A GP with special interests e.g., in dermatology, acupuncture etc.</li> <li>• A member of a particular specialist professional body (although routine GP membership of the RCGP, BMA or a medical defence organisation would not usually by itself amount to an interest which needed to be declared);</li> <li>• An advisor for Care Quality Commission (CQC) or National Institute for Health and Care Excellence (NICE);</li> <li>• A medical researcher.</li> </ul>
<b>Non-Financial Personal Interests</b>	<p>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:</p> <ul style="list-style-type: none"> <li>• A voluntary sector champion for a provider;</li> <li>• A volunteer for a provider;</li> <li>• A member of a voluntary sector board or has any other position of authority in or connection with a voluntary sector organisation;</li> <li>• Suffering from a particular condition requiring individually funded treatment;</li> <li>• A member of a lobby or pressure groups with an interest in health.</li> </ul>

<b>Indirect Interests</b>	<p>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, this should include:</p> <ul style="list-style-type: none"><li>• Spouse / partner;</li><li>• Close relative e.g., parent, grandparent, child, grandchild or sibling;</li><li>• Close friend;</li><li>• Business partner.</li></ul>
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### Appendix 1 continued Template Declarations of gifts and hospitality

Recipient Name	Position	Date of Offer	Date of Receipt (if applicable)	Details of Gift / Hospitality	Estimated Value	Supplier / Offeror Name and Nature of Business	Details of Previous Offers or Acceptance by this Offeror/ Supplier	Details of the officer reviewing and approving the declaration made and date	Declined or Accepted?	Reason for Accepting or Declining	Other Comments

*The information submitted will be held by the CCG for personnel or other reasons specified on this form and to comply with the organisation's policies. This information may be held in both manual and electronic form in accordance with the Data Protection Act 1998. Information may be disclosed to third parties in accordance with the Freedom of Information Act 2000 and published in registers that the CCG holds.*

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, professional regulatory or internal disciplinary action may result.

**I do / do not (delete as applicable)** give my consent for this information to published on registers that the CCG holds. If consent is NOT given please give reasons:

**Signed:**

**Date:**

**Signed:**

**Position:**

**Date:**

**(Line Manager or a Senior CCG Manager)**

Please return to .....[insert name/contact details for team or individual in CCG nominated to provide advice, support, and guidance on how conflicts of interest should be managed, and administer associated administrative processes](#)

Please return to Serena Causer, Corporate Governance Officer:  
 Email: [serena.causer@walsall.nhs.uk](mailto:serena.causer@walsall.nhs.uk) Telephone: 01922 618318

## **Appendix 1 Policy for Commercial Sponsorship and Joint Working with Pharmaceutical Industry**

Please see the link below for access to the policy for Commercial Sponsorship and Joint Working with Pharmaceutical Industry:

<http://walsallccg.nhs.uk/medman/909-policy-for-commercial-sponsorship-and-joint-working-july-2014>

## Appendix 2 Template Register of interests

Name	Current position (s) held in the CCG i.e. Governing Body member; Committee member; Member practice; CCG employee or other	Declared Interest (Name of the organisation and nature of business)	Type of Interest			Is the interest direct or indirect?	Nature of Interest	Date of Interest		Action taken to mitigate risk
			Financial Interest	Non-Financial Professional Interest	Non-Financial Personal Interest			From	To	

### Appendix 3: Template Declarations of gifts and hospitality

Recipient Name	Position	Date of Offer	Date of Receipt (if applicable)	Details of Gift / Hospitality	Estimated Value	Supplier / Offeror Name and Nature of Business	Details of Previous Offers or Acceptance by this Offeror/ Supplier	Details of the officer reviewing and approving the declaration made and date	Declined or Accepted?	Reason for Accepting or Declining	Other Comments

*The information submitted will be held by the CCG for personnel or other reasons specified on this form and to comply with the organisation's policies. This information may be held in both manual and electronic form in accordance with the Data Protection Act 1998. Information may be disclosed to third parties in accordance with the Freedom of Information Act 2000 and published in registers that the CCG holds.*

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, professional regulatory or internal disciplinary action may result.

**I do / do not (delete as applicable)** give my consent for this information to published on registers that the CCG holds. If consent is NOT given please give reasons:

<b>Signed:</b>	<b>Position:</b>	<b>Date:</b>
<b>Signed:</b>	<b>Position:</b>	<b>Date:</b>

**(Line Manager or a Senior CCG Manager)**

Please return to .....**insert name/contact details for team or individual in CCG nominated to provide advice, support, and guidance on how conflicts of interest should be managed, and administer associated administrative processes**

Appendix 4 Template to record interests during the meeting.

Meeting	Date of Meeting	Chairperson (name)	Secretariat (name)	Name of person declaring	Agenda Item	Details of interest declared	Action taken

## Appendix 5 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? <sup>25</sup>	
11. What additional external involvement will there be in scrutinising the proposed decisions?	

<p><b>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?</b></p>	
<p>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)</p>	
<p><b>13. How have you determined a fair price for the service?</b></p>	
<p>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</p>	
<p><b>14. How will you ensure that patients are aware of the full range of qualified providers from whom they can choose?</b></p>	
<p>Additional questions for proposed direct awards to GP providers</p>	
<p><b>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?</b></p>	
<p><b>16. In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?</b></p>	
<p><b>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?</b></p>	

**Appendix 6: Template Declaration of conflict of interests for bidders/contractors**

<b>Name of Organisation:</b>	
Details of interests held:	
<b>Type of Interest</b>	<b>Details</b>
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	

## Appendix 7: Template 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 manger	Decision making process and name of decision making committee	Summary of conflicts of interest declared and how these were managed	Contract awarded (supplier name & registered address)	Contract value (£) (Total)	Contract value (£) to CCG