# Managing Conflicts of Interest – Revised 2016 Statutory NHS England Guidance for CCGs

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## Summary
The purpose of this paper is to update the Audit, Risk & Scrutiny Committee on the revised 2016 NHS England statutory guidance for CCGs in managing conflicts of interest.

## Recommendation
That the Audit, Risk & Scrutiny Committee:
- Notes the contents of the report;
- Endorses the actions proposed for the CCG to meet the requirements in the revised 2016 statutory guidance;

## Relevant standards/targets
- NHS England – Managing Conflicts of Interest: Revised Statutory Guidance for CCGs (June 2016)  
- The Health & Social Care Act (2012) (Sections 14O -14Z8)
MANAGING CONFLICTS OF INTEREST – REVISED 2016
STATUTORY NHS ENGLAND GUIDANCE FOR CCGS

1. PURPOSE

The purpose of this paper is to update the CCG’s Audit, Risk & Scrutiny committee on the revised 2016 NHS England statutory guidance for the management of conflicts of interest in CCGs and to propose a number of actions to be taken to ensure local compliance.

2. RECOMMENDATIONS

That the Audit, Risk & Scrutiny Committee:

- Notes the contents of the report, and;
- Assures itself that the proposed actions will meet the requirements in the revised statutory guidance;

3. BACKGROUND

Whilst conflicts of interest are inevitable given the increasing complexities in the commissioning of healthcare, the CCG has well-established governance arrangements to ensure that the integrity of our decision making processes (and membership) is not undermined by suggestions of undue influence, impropriety or bias.

The CCG’s Constitution (as amended 2015) summarises these arrangements and has been further galvanised by a ‘suite’ of policies and procedures which have been embedded in the organisation over the last 18 months. Liverpool CCG’s Conflicts of Interest Policy (2015), for example, provides the framework by which the organisation assures the transparency of decision making in its committee structures and how conflicts of interest will be declared, managed, recorded and publicised.

On 28th June 2016 NHS England published ‘Managing Conflicts of Interest: Revised Statutory Guidance for CCGs’ which supersedes the 2014 statutory guidance on which the CCG’s 2015 Conflicts of Interest Policy is based. CCGs must ‘have regard to’ this guidance, which essentially means that the CCG must comply unless it has sound reasons for not doing so (indeed, one of the ‘new’ requirements is for
CCGs to self-certify compliance on a quarterly and annual basis and explain the reasons for any ‘gaps’ or non-compliance).

This revised guidance presents a number of challenges for CCGs; the new requirements will not only have implications for the CCG in terms of self-assessment, but will also impact on the composition of the Governing Body membership and the annual audit cycle.

4. SUMMARY OF THE KEY CHANGES/NEW REQUIREMENTS IN THE 2016 GUIDANCE

In many respects the CCG has been consistently ‘ahead of the curve’ when it comes to managing conflicts of interest; working extensively with our internal audit colleagues (Mersey Internal Audit Agency) to continually improve current systems and processes whilst ensuring investment decisions are made objectively and promptly. Although areas of current good/best practice have always been assimilated into our local processes and governance arrangements, the 2016 NHS England statutory guidance represents a ‘game changer’ in the way CCGs are expected to manage conflicts of interest going forward. The following aims to provide a summary of the key new requirements and the proposed actions which will ultimately lead to a revised CCG Conflicts of Interest Policy being submitted to the October 2016 Governing Body for approval.

4.1 Adding a ‘Third’ Lay Member to the Governing Body

The 2016 NHS England guidance recommends that CCGs have a *minimum* of three lay members on the CCG Governing Body in light of their expanding role in primary care co-commissioning (by statute CCGs currently must have at least two lay members). Whilst not made explicit in the revised guidance, it is reasonable to assume that the third lay member would play a significant role as an ‘independent voice’ in support of robust management of conflicts of interest. Remuneration for any additional lay members would have to be found within existing budget(s).

4.2 Nominating a CCG ‘Conflicts of Interest Guardian’

This new role within CCGs is envisaged to be similar in responsibility to a ‘Caldicott Guardian’ with the aim of further strengthening the scrutiny and transparency of the CCG’s decision making and supporting
processes. This would seem, on paper to be quite a substantial role; providing advice on the minimising of risk, acting as a ‘safe point of contact’ for employees or workers of the CCG to raise any concerns and providing a main conduit for GPs and/or practice staff, healthcare professionals and members of the public who wish to raise any concerns in relation to conflicts of interest. The revised NHS England guidance suggests that this role could be taken by the chair of the Audit Committee although preliminary thoughts at this stage are this could also apply to a ‘lay member’ of the Audit Committee (with appropriate corporate support in place).

4.3 Robust arrangements for management of breaches

All CCGs will be required to set out a clear process for managing any breaches of their Conflicts of Interest policy. This requirement extends to describing the likely sanctions imposed/consequences of actual breaches and specifying the CCG’s external reporting arrangements with NHS England. There is also a new obligation for CCGs to publish details of breaches (and how they were managed) on the CCG website and the right of third parties to complain to NHS Improvement about commissioners’ conduct under Procurement Patient Choice and Competition Regulations.

4.4 Publication of Registers

Whilst the majority of CCGs routinely make public their Declarations of Interest and Gifts & Hospitality Registers, the revised guidance strengthens these provisions and introduces a new requirement to maintain and publish a ‘Register of Procurement Decisions’ (applied to both the procurement of ‘new’ services or where extensions/material variations to current contracts are proposed).

4.5 Mandatory Training

The 2016 guidance document makes it explicit that all CCGs must offer mandatory training to all employees, governing body members and members of CCG committees (and sub-committees) on the management of conflicts of interest. NHS England have committed to developing an online training package for completion on an annual basis with estimated roll out by the autumn of 2016. Interestingly, the guidance also identifies ‘practice staff involved in CCG business’ as requiring mandatory training in conflicts of interest.
4.6 Annual audit of conflicts of interest management

To provide further assurance on the degree of compliance with the statutory guidance, all CCGs will be expected to undertake an annual audit of conflicts of interest management as part of the annual internal audit cycle, the results of which should be reflected in the CCG's annual governance statement. Further guidance on the scope and remit of these audits is yet to be issued by NHS England.

5. NEXT STEPS

The current CCG Conflicts of Interest Policy (2015) will require significant revisions to meet the requirements of the new 2016 statutory guidance. It is therefore proposed that the revised Conflicts of Interest Policy be prepared for submission to the Audit, Risk & Scrutiny Committee meeting scheduled on 30th September 2016. Our final approach to implementation and addressing the various recommendations will be provided in the full paper scheduled for September 2016 (prior to submission to the Governing Body meeting in early October 2016).

6. STATUTORY REQUIREMENTS (only applicable to strategy & commissioning papers)

Compliance with NHS England 2016 statutory guidance "Managing Conflicts of Interest: Revised Statutory Guidance for CCGs" (which supersedes the 2014 NHS England guidance)

7. DESCRIBE HOW THIS PROMOTES FINANCIAL SUSTAINABILITY

Effective management of conflicts of interest acts as a safeguard for clinically led commissioning whilst ensuring objective investment decisions are made in an efficient and timely manner. By strengthening the provisions of existing policy, the revised NHS England guidance provides further mitigation against both the reputational and financial risks of legal challenge and judicial review.
8. CONCLUSION

The 2016 revised NHS England statutory guidance reinforces the CCG’s overall commitment to act fairly and transparently when making commissioning decisions for the population of Liverpool. The revised guidance presents a number of challenges for CCGs which will not only have implications in terms of conducting a thorough self-assessment and annual audit, but on the composition of the future Governing Body membership.

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Ends