

**Conflicts of interest for CCGs:
danger areas**

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Introduction



- Around 200 CCGs, responsible for approximately 2/3 of NHS budget
- Membership bodies, with local GP practices as the members;
- Led by an elected governing body made up of GPs, other clinicians including a nurse and a secondary care consultant, and lay members;
- Assess health needs of local population, decide on priorities and commission health services for their area;
- Increasingly fully delegated commissioning of primary care services on behalf of NHS England + emphasis on integrated/community care versus traditional model of receiving healthcare services in hospital setting;
- Crucially, public bodies spending tax-payers' money;
- All this combines to make real risk of conflicts of interest.

What are conflicts of interest?



Definition in the Conflicts of Interest Guidance:

“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”

Most likely conflict = financial stake in private companies.

BMJ study in 2015: 25% of 2476 clinical, lay and managerial members of CCG governing bodies had a financial stake in a for-profit company



Conflicts of interest: legal framework



- Section 140 of the NHS Act 2006:

(1) Each clinical commissioning group must maintain one or more registers of the interests of—

(a) the members of the group,

(b) the members of its governing body,

(c) the members of its committees or sub-committees or of committees or sub-committees of its governing body, and

(d) its employees.

(2) Each clinical commissioning group must publish the registers maintained under subsection (1) or make arrangements to ensure that members of the public have access to the registers on request.

“the local newspaper test”



Conflicts of interest: legal framework

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3) Each clinical commissioning group must make arrangements to ensure—
(a) that a person mentioned in subsection (1) declares any conflict or potential conflict of interest that the person has in relation to a decision to be made in the exercise of the commissioning functions of the group,
(b) that any such declaration is made as soon as practicable after the person becomes aware of the conflict or potential conflict and, in any event, within 28 days, and
(c) that any such declaration is included in the registers maintained under subsection (1).

(4) Each clinical commissioning group must make arrangements for managing conflicts and potential conflicts of interest in such a way as to ensure that they do not, and do not appear to, affect the integrity of the group's decision-making processes.



Conflicts of interest: legal framework

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- Paragraph 5 of Schedule 1A to the NHS Act provides:

“The constitution must specify the arrangements made by the clinical commissioning group for discharging its duties under section 14O(1) to (4)”



Conflicts of interest: legal framework



(5) The Board must publish guidance for clinical commissioning groups on the discharge of their functions under this section.

(6) Each clinical commissioning group must have regard to guidance published under subsection

(5).

...



Conflicts of interest: the statutory guidance for CCGS



- Important features of the guidance:
- Types of interest:
 - **Financial interests:** This is where an individual may get direct financial benefits from the consequences of a commissioning decision
 - **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
 - **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
 - **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



Conflicts of interest: the statutory guidance for CCGs



- “We expect all CCGs to fully implement this guidance”
- “The CCG should exercise discretion on a case by case basis, including in relation to new care model arrangements, having regard to the principles set out in the... guidance”
- Accountable officer should identify a team or individual with responsibility on day to day basis for conflicts of interest
- Conflicts of Interest Guardian – role to be undertaken by CCG audit chair. Provide independent advice + judgment on conflicts of interest issues, main contact for CCG members on potential conflicts.



Danger areas



Primary care commissioning

- ❖ Obvious area of risk given CCGs’ membership and makeup
- ❖ Increased commissioning of primary care services and community services where members of CCG might want to bid to provide services
- ❖ Make sure interests properly declared and recorded at all stages of the process
- ❖ Proper paper trail
- ❖ Robust/rational reasons for commissioning decisions – proper evidence base, properly taking into account annual commissioning plan, JSNA etc.
- ❖ Ultimately, arrangements will have to provide for the non-participation/non-voting of members, even if clinical input would be valuable, if interests too great
- ❖ Consider: co-opting members of neighbouring CCGs (any experience of this?)



Danger areas



Procurement exercises

- ❖ NB specific statutory provisions in relation to procurement: Reg 24 of Public Contracts Regs 2015 and Reg 6 of National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013.
- ❖ Risk a claim in damages/other remedies
- ❖ Case study: a London CCG who simply cancelled a procurement exercise because member's business, whose services been commissioned by CCG in past and contract expired, lost a tender exercise. Didn't like outcome so cancelled it and decided to reinstate. Very stark but happening!



Danger areas



Hidden areas of conflict: sponsorship for events in particular

- ❖ Challenge – to run events, treatment review projects etc, CCGs often require sponsorship
- ❖ Guidance has specific section on sponsorship
- ❖ BMJ investigation published this year:
- ❖ “GP commissioners in England are receiving tens of thousands of pounds from drug companies without declaring the funding in their public registers, an investigation by *The BMJ* has found.”
- ❖ Common theme.



Danger areas



General administrative weaknesses → run a tight ship on this

- ❖ Incomplete registers of interests
- ❖ Interests not re-declared at meetings
- ❖ Lack of coordination between registers
- ❖ No register for other GP members/staff who are not Board members – not limited to the Governing Board (NB s140)
- ❖ Not proper minute taking/variable level of detail in recording interests – be thorough

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Conflicts of interest for CCGs: pitfalls and how to avoid them

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