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<b>Lead director/officer:</b>	Chief of Staff		

## Conflict of Interest Policy

**Understanding, and compliance with, this policy is a contractual obligation of all employees of the NHS NW London. Failure to do so may lead to disciplinary action up to and including dismissal.**

Version Control Record

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<b>Responsible Directors:</b>	Stephen Bloomer, Chief Finance Officer	<b>Author:</b>	Simon Carney, Head of NW London Governance
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<b>0.1 – 06 July 2017, Simon Carney</b>	Consideration by the CWHHE Audit Committees: explicit section on procurement to be added, increase the emphasis on the importance of considering candidates' potential Col's at recruitment / appointment stage, clearer distinction between the requirements of the formal Register of Interests and the broader considerations for decision-makers day-to-day, remove requirement at para 16 for CCGs to be assured explicitly on Practices' registers.		
<b>0.2, 12 July 2017, Simon Carney</b>	Revised as above and circulated in correspondence for CWHHE Audit Committees' approval.		
<b>0.2 20 July 2017</b>	Additional paragraphs on BHH approach to managing Col in decision making (Procurement and Col panels, addition of Annex H in that regard. Circulation to BHH Audit Committees for approval consideration of the policy [Approved by all eight CCGs' Audit Committees and published as v1.0]		
<b>1.1 March 2019</b>	Amended to include the remaining elements of the Standards of Business Conduct Policy and take on suggestions from LCFS review.		
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<b>1.1.1 05 September 2019</b>	Minor typographical etc changes arising from Committees' review. Approved.
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<b>1.3 June 2022</b>	Conversion of NW LONDON CCG terminology and branding via NHS England's establishment of the Integrated Care Board (ICB)

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## Scope

Within the ICB we use the skills of many different people, all of whom are vital to our work. This includes people on differing employment terms, who for the purposes of this policy we refer to as ‘staff’, ‘employees’ and / or ‘officers’ and are listed below:

- All salaried employees, full or part time including students and trainees
- All prospective employees – who are part-way through recruitment
- Contractors, sub-contractors and self-employed consultants
- Agency and seconded staff
- Members of the GB, appointed deputies or co-opted members
- Committee, sub-committee and advisory group members (who may not be directly employed or engaged by the organisation).

## Review

This policy will be reviewed each year unless an earlier review is required due to any serious concerns arise that are not addressed by the current policy or on the receipt of new national guidance. This review will be led by the NW London Company Secretary.

In addition, an annual review of the ICB’s policy and compliance by internal audit will be carried out in the fourth quarter of each year and the outcome will be considered by the ICB’s Audit Committee.

## Summary

1. Dealing properly with conflicts of interest is vital to securing public confidence in clinically led commissioning. The consequences of failing to do so could have significant implications for the ICB, both legal and reputational.
2. The key stages of managing conflicts are:
  - identifying what constitutes an interest
  - recognising when such an interest may represent a conflicts;
  - declaring conflicts when they arise; and
  - acting appropriately in response to conflicts.
3. It is vital that any conflicts are identified as early as possible and time is taken to consider how they should be resolved.
4. This policy draws from the following guidance, and the principles contained therein:
  - [NHS England 'Managing Conflicts of Interest: Statutory Guidance for ICBs' \(June 2017\);](#)

- [NHS England Managing conflicts of interest in the NHS: Guidance for staff and organisations](#) (February 2017)
- the Institute of Chartered Secretaries and Administrators (2012), which itself draws on guidance issued by the General Medical Council (2011);
- Royal College of General Practitioners/NHS Confederation 'Managing Conflicts of Interest in Integrated Care Boards' (2011);
- The Good Governance Standards of Public Services;
- NHS Protect 'Bribery Act 2010 Guidance Refresher' (2015); and
- The Equality Act 2010.

### **Legal and broader policy context**

5. This policy has been revised to comply with NHS England's statutory guidance (see first bullet point at 4. above) which is issued to ICBs under 140 and 14Z8 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012). It has been developed as part of a suite of governance policies whose cumulative aim is the promotion and protection of the highest standards of probity and accountability. Therefore, this policy should not be considered in isolation of interrelated and cross-referenced documents and policies, including:

- the ICB's Constitutions;
- Prime Financial Policies;
- Schemes of Reservation and Delegation;
- Procurement Policy;
- Whistleblowing policy;
- Counter Fraud and Corruption policies;
- NHS (Procurement, Patient Choice and Competition) (No2) Regulations 2013 (PPCCR 2013); and
- Public Contracts Regulations 2015 (PCR 2015).

### **Reasons for having a policy**

6. The Governing Body has ultimate responsibility for all actions carried out by staff and committees throughout the ICB. This responsibility includes the stewardship of significant public resources and the commissioning of healthcare for the community. The Governing Body is, therefore, determined to ensure the organisation inspires confidence and trust amongst its public, patients, staff, partners, funders and suppliers by demonstrating integrity and avoiding any potential or real situations of bias or undue influence.
7. This conflict of interest policy reflects the seven principles of public life promulgated by the Nolan Committee. These are:
- selflessness;
  - integrity;
  - objectivity;
  - accountability;
  - openness;
  - honesty; and
  - leadership.

Further, it follows naturally from The Code of Conduct and Code of Accountability in the NHS (second revision July 2004), which sets out the following three public service values which are central to the work of ICBs:

- **Accountability** - everything done by those who work in the NHS must be able to stand the test of parliamentary scrutiny, public judgements on propriety and professional codes of conduct;
  - **Probity** - there should be an absolute standard of honesty in dealing with the assets of the NHS; integrity should be the hallmark of all personal conduct in decisions affecting patients, officers and members and suppliers, and in the use of information acquired in the course of NHS duties; and
  - **Openness** - there should be sufficient transparency about NHS activities to promote confidence between each ICB and its staff, patients and the public.
8. Failure to deal appropriately with conflicts of interest can have serious consequences:
- **legal** – a decision that is deemed to have been taken improperly can be challenged in court and, potentially, reversed. In some circumstances members of the ICB's Governing Body could be judged to be personally liable for resulting costs and any 'ill-gotten gains';
  - **reputational** – it is important that ICBs are seen to be doing things properly and transparently. They are likely to be under intense public scrutiny and ensuring that decisions are made properly and transparently will be crucial to public confidence in the system.
  - **for Staff** – by exposing people to the potential of unnecessary reputational damage; and
  - **for Patients** – if conflicts lead to inappropriate care being commissioned or undermine confidence that decisions were taken in patients' best interests, based on objective evidence.
9. Treating something as a conflict and following the principles set out in this policy may cause some inconvenience but such is a saving in the long-run; failure to recognise where a conflict exists can have major implications for both the individual and organisation concerned. It is sensible to work on the basis that potential issues are conflicts and, by identifying them and taking mitigating action, greater harm may be avoided.

### What is a conflict of interest?

10. NHS England uses the following useful explanation:  
*'A conflict of interest can occur when there is the possibility that a person's judgement regarding their primary duty to NHS patients may be influenced by a secondary interest they hold.'*
11. Such a conflict may be:
- **Potential** – i.e. there is the possibility of a conflict between the two interests in the future;
  - **Actual** - i.e. there is a relevant and material conflict between the two interests now; and
  - **Perceived** – i.e. an observer could reasonably suspect there to be a conflict of interest regardless of whether there is one or not.
12. Conflicts can occur with interests held by the individual or their close family members<sup>1</sup>,

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<sup>1</sup> Family member' refers to a spouse, civil partner, or partner living in the same residence as the individual, as well as siblings, grandparents, children and adults (who may or may not be living in the same residence) for

close friends and associates, and business partners (dependent on the circumstances and the nature of such relationships).

13. Interests can then breakdown into sub-categories:

- **financial interests** - where there is, or appears to be, opportunity for an individual to benefit from the consequences of a commissioning decision;
- **Non-financial professional interests** - where a benefit to an individual’s professional reputation, status or career prospects may benefit from a commissioning decision;
- **non-financial personal interests** – where an individual might benefit from a commissioning decision in ways not linked to their career (eg status / reputation etc with a voluntary sector body or linked cause, from treatment for a particular medical condition from which they suffer and so on); and
- **indirect interests** – where an individual with a close association with the decision-maker stands to benefit (in any way above) from a commissioning decision.

### Recognising conflicts

14. It is not possible to define all instances in which an interest may be a real or perceived conflict (although some examples are given in Annex A). **It is for each individual to exercise their judgement in deciding whether to declare any interests that may be construed as a conflict.** Individuals can seek guidance from the NHS NW London ICB’s Governance team about when to do so, but it is always best to declare an interest if in doubt.

### The declaration of interests

15. Each ICB is required to ensure that conflicts of interest or potential conflicts of interest are declared and mitigated and a key component of this is the requirement for, each ICB to maintain an up-to-date Conflicts of Interest Register. ICBs need to ensure, therefore, that all conflicts of interest or potential conflicts of interest are systematically declared and registered, irrespective of what position the staff member holds, paying particular and more regular attention to those staff with decision-making roles / authority (eg contract managers, those involved in the various stages of procurement (from identification of need through to letting of contracts etc)..

16. To be effective, this process must start at recruitment with each candidate declaring any interests they have (using the form at Annex B) as part of the application process. These declarations must be considered and agreed by the recruiter to not conflict materially with the role being applied for. Records of these considerations should be kept and each successful candidate’s declaration of interest entered on to the appropriate Register(s) of Interest.

*Table 1: ICB conflict of interest declaration requirements*

Definition	Requirement	Min. Frequency	Treatment
Governing Body and Governing Body Committee members (including Senior Managers, co-opted members, appointed deputies and members from other organisations)	Mandatory completion of Conflicts of Interest Form upon appointment and when any new	6 monthly or within 28 days of a change of circumstances <sup>i</sup>	This section of the Conflicts of Interest Register is published on the ICB website

<sup>i</sup>whom the individual is legally responsible, (for example, an adult whose full power of attorney is held by the individual)



	outside employment arises (even if this is a Nil return)		
All other staff/individuals working within the organisation, i.e.: <ul style="list-style-type: none"> <li>• ICB employees (whether their remit is clinical or corporate);</li> <li>• committee members;</li> <li>• third parties acting on behalf of the ICB under a contract;</li> <li>• students and trainees (including apprentices);</li> <li>• agency staff engaged by the ICB; and</li> <li>• secondees.</li> </ul>	Mandatory completion of Conflicts of Interest Form (even if this is a Nil return)	At job application stage and (if successful) thereafter annually / within 28 days of a change of circumstances	Interests not routinely published

17. In addition, the statutory guidance requires each Member of the ICB (ie Practices) to make declarations at least annually (or as circumstances change). As Members of the ICB have delegated all functional decision-making to the Governing Body, this requirement does not apply **provided** the ICB ensures that its Registers of Interest capture **all** individuals directly involved in the decision-making of the ICB. This requirement is regardless of the individual's formal status with the ICB; if they are part of the ICB's decision making process, their interests need to be declared and captured on the relevant Register.
18. Employees of NHS NW London ICB are required to inform the ICB if they are engaged in or wish to engage in outside employment in addition to their work with the ICB (using the form in Annex B). The purpose of this is to ensure that the ICB is aware of any potential conflict of interest with the employment. Permission to engage in outside employment will be required and the ICB reserves the right to refuse permission where it believes a conflict will arise.
19. Interests that must be declared on the Register must, as minimum, include all those relating to the business of the ICB, in particular:
  - any directorships of companies or material involvement with any entity, formally constituted or not, likely to be engaged with the business of the ICB, for example, where GP Governing Body members are directors of an incorporated company which is contracted to provide primary care or community based services to the ICB;
  - previous (at least the last three years') and / or current employment, consultancy or advisory positions;

- voluntary or remunerated positions, such as trusteeship, local authority positions, other public positions;
  - active membership of professional bodies or mutual support organisations;
  - investments in unlisted companies, partnerships and other forms of business, major shareholdings and beneficial interests, for example, where a GP Governing Body member is a shareholder in a company or enterprise, such as a primary care federation, and which is contracted to provide services to the ICB;
  - material investments / grants / sponsorships received – a GB member’s practice receiving resilience funding from a ICB, material (or regular) subsidising by a pharmaceutical company of training costs etc;
  - gifts or hospitality offered by external bodies and whether this was declined or accepted in the last twelve months; and
  - any other conflicts that are not covered by the above.
20. A declaration of interests form is provided for this purpose, listing the types of interest that should be declared (see Annex B). The declaration of interests form must be completed in line with the requirements set out in Table 1, above. If an individual is not sure what to declare, or whether/when a declaration needs to be updated, **they should err on the side of caution** and declare anyway. The NHS NW London Governance Teams can be contacted for confidential guidance, if needed.
21. It is imperative that all staff complete at least Module 1 of the mandatory Conflicts of Interest training on ESR each year – compliance with this requirement is both monitored by SMT and audited. **Non-compliance is potentially a disciplinary offence.**

### Register of Interests

22. Interests will be recorded on the ICB’s Register of Interests, which will also contain all information on accepted Hospitality, Sponsorships, and Travel and Accommodation packages which are declared by members of staff, and will be maintained by the ICB’s Governance Lead on behalf of the Accountable Officer. The ICB’s Governance Lead will also be responsible for making the register available for inspection whenever it is appropriate to do so, ensure the register’s confidentiality is maintained and kept up-to-date in line with this policy..
23. The element of the conflicts of interest register that pertains to Governing Body members (including senior managers who are Governing Body members) will be accessible by the public and published on the ICB’s website.
24. The information provided will be processed in accordance with data protection principles as set out in the Data Protection Act 2018. Data will be processed only to ensure that Governing Body members and other staff act in the best interests of the ICB and the public the Group was established to serve. The information provided will not be used for any other purpose. Signing the declaration form will also signify consent to Governing Body members’ data being processed for the purposes set out in this policy.
25. In addition, individuals should not use confidential information acquired in the pursuit of their ICB role to benefit themselves or others.

### Taking Action

26. In addition to the specific requirements of the Register and the form, the requirement remains for all who act in an formal capacity for the ICB to be aware of how their lives outside of the ICB may be seen to have an influence on the decisions and actions they take on behalf of the ICB. Individuals should note that the legal and policy requirement

upon them is that they must declare any other interest that they have in relation to a decision to be made in the exercise of the functions of the ICB **as soon as they are aware** of it and in any event **no later than twenty eight (28) days after becoming aware**. This protects both the ICB from successful legal challenge and the individual from misinformed / misconceived allegations of impropriety / abuse of office. As above, if in doubt, talk to your Governing Body Chair and Governance Lead at the earliest opportunity and, if agreed necessary, formally include the interest on the register of interests.

27. Visibility of interests is vital. Once an interest is out in the open, others can give a perspective as to the significance of the issue. Declaration, by itself, shows good faith and, therefore, serves to protect the person declaring it. However, declaring an interest, either by entering it on the register or announcing it in a meeting, will often not be sufficient. There remains an on-going responsibility for any decision-maker to consider issues as they come up and to decide, in conjunction with their governance colleagues and meeting chair, whether these issues present them with a conflict or potential conflict of interest.
28. All decision-makers are required to declare their interests in relation to any items on the agenda at the start of each meeting. Where the conflict is material to the discussion, the individual shall withdraw from discussions pertaining to that agenda item, the conflict and the action will be recorded in the minutes of the meeting and the register of interests updated as necessary. It is the responsibility of the meeting Secretary to monitor quorum and advise the chair accordingly to ensure it is maintained throughout the discussion and decision of the agenda item. There may be circumstances where an individual's medical condition is a declarable interest – eg when the item / service being discussed could benefit or disbenefit that individual's treatment options – but this would only be where the subject under discussion presents a significant and direct conflict for the individual. If this situation arises, the issue should be discussed confidentially with the Chair of the meeting and its Secretary in advance of a meeting so that a decision can be taken on how to proceed.
29. The Secretary will attempt to identify issues where there is a potential or actual conflict of interest **before** they arise in a meeting, in order to find an alternative way of dealing with them as this is much easier to do when there is time for consideration outside of a meeting. However, if an issue arises in a meeting, it will fall to the non-conflicted Chair (see below) to decide, along with other non-conflicted members in the meeting, what the next steps ought to be, up to and including stopping discussion and refer the issue to the relevant Governance Lead and NHS NW London Company Secretary to advise on an appropriate course of action to deal with it.
30. If the meeting Chair or a member has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of interest, that person shall no longer count towards the quorum. If a quorum is then not available – and the relevant Standing Orders / terms of reference do not offer a legitimate solution (eg suspension of the quorum provisions), that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting or communicated to members at a later date. The meeting must then proceed to the next item of business. See para 35 on the use of such waivers.
31. Where the Chair is conflicted, the (non-conflicted) Deputy Chair shall take the Chair's role for discussions and decisions.

32. There are a number of options for dealing with a conflict. The main options are:
- deciding that the interest is not material so that no action need be taken;
  - asking the individual not to participate in the discussion or vote on the issue;
  - asking the individual to leave the room for the duration of the discussion;
  - allowing lay members to take the decision; and
  - deferring the decision to an independent body, such as the Investment Committee / Procurement Panel, to decide.
33. Whichever course taken must, of course, be in line with this policy and proportionate to the matter and interest in hand. All decisions relating to the management of conflicts of interest in formal decision making meetings must be recorded clearly and candidly in the relevant meeting's minutes.

### **North West London ICB's Finance Committee**

34. The Finance Committee has been established by the Governing Body with the ability to take decisions where a significant conflict arises at the ICB Governing Body. The Committee is chaired by a lay member and is able to form a quoracy that includes only non-conflicted members. Independent (non-conflicted) clinical advice may be sought by the Committee, as necessary. Where the decision lies outside of the Finance Committee's delegate authority, the Governing Body or may delegate specific authority to it to make recommendations or final decisions on its behalf.
35. The Finance Committee should have sight of the procurement process followed when making investment decisions and, specifically, if any conflicts were identified during the process and how they were managed. Decision making could be compromised if members who are conflicted are involved in the procurement process which arrived at making a decision on a particular provider. Conflicts of interest should be identified from the start of the procurement process i.e. at the stage of setting out the specification for the work required.

### **Waiver of restrictions on participation in discussions**

36. Where permitted under the ICB constitution, or the conditions of its establishment, the Governing Body has the power to waive restrictions on any clinical professional Governing Body member participating in Governing Body business, where to authorise such a conflict would be in the interests of patients served by the ICB. The application of a waiver can, therefore, be used following prior discussion and approval by the ICB Chair, governance lay member, Accountable Officer and NW London Company Secretary, where it is deemed that, on balance, it is in the interests of patients of the ICB to waive restrictions on the clinical professional Governing Body member participating in the particular business matter (but do note the caveat in para 37).
37. In such circumstances where the waiver has been approved, the Governing Body member:
- must disclose his/her interest as soon as practicable at the start of the meeting;
  - may participate in the discussion of the matter under consideration; but
  - must not vote on the subject under discussion.
38. The minutes of the meeting will formally record that the waiver has been used, and that this policy and the governing document provisions have been observed in managing that authorised conflict. Where a member has withdrawn from the meeting for a particular item, the Secretary will ensure that the minutes for that member do not contain such information that may compound the potential conflict, but do not unnecessarily

disadvantage the member in their performance of their functions and legal responsibilities.

39. An individual who has a conflict of interest must not be involved in procuring, tendering, managing or monitoring a contract in which they have an interest. Monitoring arrangements for such contracts will include provisions for an independent challenge of bills and invoices, and termination of the contract if the relationship is unsatisfactory.

### **Decisions taken where a Governing Body member has an interest**

40. Interests should be identified and declared as early as possible and ideally in advance of the circulation of decision-related papers. Wherever practicable, the approach to be taken on how any conflicts will be handled should be decided before the meeting convenes, and preferably at the outset of the development of any proposal. That approach should then be reported at the meeting itself by the (non-conflicted) Chair. In cases where the Chair attracts a material conflict, a non-conflicted deputy must be appointed to chair discussions of that issue, as per 28. above.
41. In the event of the Governing Body having to decide upon a question in which a Governing Body member has an interest, all decisions will be made by vote, with a simple majority required. A quorum must be present for the discussion and decision as defined by the Terms of Reference of the meeting. Interested Governing Body members must not vote on matters affecting their own interests, even where the use of the waiver has been approved by the chair and used.
42. Where a quorum is not possible due to the number of conflicts arising, the decision should be formally delegated to the Finance Committee (para 34). Again, the requirement for such a delegation should be identified in advance of the meeting and reported at it.
43. All decisions under a conflict of interest will be recorded by the Secretary and reported in the minutes of the meeting. The report will record:
  - the nature and extent of the conflict;
  - an outline of the discussion;
  - the actions taken to manage the conflict; and, if applicable,
  - the use of the waiver and reasons for its implementation.

### **Managing Conflicts of Interest in relation to Primary Care Commissioning**

44. Primary Care Commissioning is an area that attracts significant potential for conflicts of interests for Governing Body and Committee members. This potential is inherent in the structure of ICBs themselves – decision makers include GPs whose Practices are potentially the recipients / beneficiaries of the decisions of the ICBs. These connections create immediate financial (pecuniary) interests. Essentially, and if not managed correctly, decision-makers risk allocating public funds to their own employers / businesses and are thus seen to benefit personally from such decisions. This is a breach of several fundamental points of law.
45. Great care, therefore, must be taken to avoid such conflicts – the consequences corporately and for the individual are potentially very significant (see “Breaches” – para 81 onwards). The ICB has in place clear structures in place for ensuring robust, clinically-led decision-making is possible without breaking the law.



46. The ICB considers the role of clinical director of Primary Care Network as being incompatible with ICB decision-making roles due to the difficulty managing the interest in the eyes of an objective third party observer.

### **Delegated (Primary Care) Commissioning**

47. For decisions that involving primary care that are delegated to the ICB from NHS England (or taken jointly with NHS England), a non-conflicted Committee will have been established to take decisions on behalf of the GB. All decisions that are covered by the delegation from NHS England must be taken here.

### **Decisions relating to Primary Care that impact the ICB's core baseline**

48. Where the ICB wishes to invest monies from elsewhere in its baseline into Primary Care, the Primary Care Committees **cannot** take a final decision on behalf of Governing Bodies as its authority extends no further than delegated monies from NHS England.
49. Instead, it can review the proposals (as it would any other) and make its recommendations to the NW London Finance Committee.

### **Procurement and the Commissioning Cycle**

50. Given the fundamental role of ICBs is deciding on how to spend public funds to meet the needs of patients, the requirement is that decision-makers' interests are identified and managed transparently throughout the entire process.
51. For the purposes of this policy, the term 'procurement' relates to any purchase of goods, services or works and 'procurement decisions' should be taken in its broadest sense to, effectively, cover any decision to spend (or, in the case of grants, award) ICB funds. To be clear, the decision to use a single tender waiver (ie to not undertake a formal procurement) is a procurement decision in the eyes of this policy.
52. The ICB's procurement policy establishes the detail of how one must undertake procurements and the relevant requirements of procurement law and regulation in play and a procurement checklist – that goes beyond just the conflict of interest requirements – is at Annex F. However, it is worth noting the following statutory requirements in particular:
- ICBs **must not** award a contract... where conflicts, or potential conflicts...affect, or appear to affect, the integrity of the award of that contract – perception of a conflict of interest in any part of the procurement process can lead to, in the eyes of the law, distortion of fair and open competition / equality of opportunity between potential bidders. It can also, in some circumstances, lead to action under the Bribery Act 2010 (see 54. below); and
  - ICBs **must** keep a record of how it manages any conflicts in the procurement process and publish a register of procurement decision, which includes details of conflicts of interest identified and how they were managed (a template for such a register is at Annex G);
53. In line with the rest of the policy, the rule for those involved in a procurement / procurement decision remains 'if in doubt, declare the interest', taking advice from the procurement adviser / governance lead as necessary. If the interest is considered to be a material and / or a financial conflict, then the usual approach will be to end that individual's involvement in the process. Particular care should be taken by individuals involved in the early stages of specification writing, engagement and

consultation – if a commissioner is involved in the procurement process as a provider or beneficiary of the service, it is likely to create a perception of a conflict of interest. These should either be avoided or managed carefully and transparently and advice must be sought from the Governance Lead.

### **Gifts, Hospitality and the Bribery Act**

54. Gifts and Hospitality are related to conflicts of interest (the receipt of a significant gift or amount of hospitality from a relevant party could create a conflict of interest, for example). The profile of this area was raised significantly by the passage of the Bribery Act 2010. Under the Act it is an offence for employees to:
- pay bribes: to offer or give a financial or other advantage with the intention of inducing that person to perform a relevant function or activity improperly or to reward that person for doing so;
  - receive bribes: to receive a financial or other advantage intending that a “relevant function” or activity should be performed improperly as a result; and / or
  - fail to prevent bribery: an organisation is guilty of an offence if an associated person, i.e. someone who performs services on behalf of the organisation, bribes another person intending to obtain or return business or a business advantage.
55. “Relevant function or activity” includes any function of a public nature and any activity connected with a business. The person performing the activity is required to perform it in good faith, impartially or be in a position of trust. Conviction under the Act is punishable by imprisonment for a maximum of 10 years.
56. Hospitality is unlikely to breach the Act if it is:
- reasonable and proportionate;
  - has a bona fide business purpose; and
  - is not intended to influence.
57. Unduly lavish hospitality could imply impropriety. Timing may also be an issue e.g. if a recipient is handling or involved in a pending decision affecting the organisation.
58. The ICB’s policy on **gifts** is:
1. **gifts from suppliers or contractors (including those who could reasonably be viewed as likely potential suppliers or contractors), must be declined and entered onto the Gifts and Hospitality Register.** Where the offer is clearly part of a marketing campaign, promotional and / or less than £6 in value need not be declared;
  2. **gifts from other sources** (eg patients, families, service users) – must never be sought by ICB staff. Modest gifts and below £50 in value can be accepted and there is no requirement to declare them. However, it is recommended that you do if the value is above £10, if only to prevent any misunderstanding or misperception regarding the acceptance of such an item and its source. Gifts in this category and over £50 should only be accepted on behalf of an organisation and not in a personal capacity; and **Multiple gifts’ values from the same source are cumulative under this policy and must be treated the same as single gifts, when the £50 threshold is reached; thus** ensuring that there is an appropriate mechanism in place, to verify staff conformity to the policy.

59. The ICBs' policy on **hospitality** is that ICB staff must not seek hospitality or accept any that may affect, or been seen to affect, their professional judgment. It can only be accepted where there is a legitimate and robust business reason to do so and the hospitality is proportionate. As a rule of thumb, no hospitality should be accepted that the ICB would not be willing to reciprocate.
60. Specific policies in relation to **meals and refreshments** are that those:
- under £25 may be accepted and need not be declared;
  - above this but below £75 may be accepted and must be declared whether accepted or not; and
  - over £75 must be declined except in exceptional circumstances and where approval has been given in advance by the Chief Officer and Chair of the Audit Committee. The specific justification for any approval must be recorded in the Gifts and Hospitality register.
61. Modest offers to pay for some or all of **the travel and accommodation** costs related to attendance at events may be accepted and always declared (whether accepted or declined).
62. Offers which go beyond modest and are of the type that the ICB would not be able to reciprocate should be declined and declared. If the recipient of the offer believes there are exceptional circumstances that justify acceptance, a case should be made to the relevant Director whose approval – and justification – must be recorded on the Register. All offers of any paid-for overseas travel and accommodation must be reported to the Chief Officer and Audit Chair, both of whose written agreement that there are clear and demonstrable benefits to the ICB's work would be required before any such offer can be accepted.
63. Invitations to sponsored events which have clear relevance to the invitee's corporate remit will not usually count as 'hospitality'. However, where there is a lavish quality to the event – eg it includes free and expensive food and / or drinks, free accommodation, etc, the offer of such events must be recorded on the register and the provisions at 58. and 59. above shall apply.

### **Sponsored Events**

64. Sponsorship of ICB events by appropriate external bodies should only be approved if a reasonable person would conclude that the event will result in a clear benefit for the ICB / NHS.
65. During dealing with sponsors there must be no breach of patient or individual confidentiality, no unfair benefit or commercial advantage should accrue to the sponsor nor any information provided to the sponsor that is not already available in the public domain.
66. Sponsors or their representatives may attend and / or take part in events but they must not have a dominant influence over the content or purpose of the event.
67. Acceptance of sponsorship never equates to endorsement of sponsors – this should be made clear on all event and promotional materials.



68. All of these points must be set out in writing with the sponsor as conditions of the ICB's acceptance and the arrangements declared to the relevant ICB Director.

### **Other matters of personal conduct (other Standards of Business Conduct)**

69. Charitable Collections - Individual

Whilst we support officers who wish to undertake charitable collections amongst immediate colleagues, no reference or implication should be drawn to suggest that the ICB is supporting the charity.

70. Permission is not required for informal collections amongst immediate colleagues on an occasion like retirement, marriage, birthday or a new job.

71. Charitable Collections - Organisational

Charitable collections that reference the ICB must be authorised and documented by the NW London Company Secretary in advance

72. Political activities

Any political activity should not identify an individual as an officer of the ICB. Conferences or functions run by a party political organisation should not be attended in an official capacity, except with prior written permission of the Chief Officer.

73. Corporate Responsibility

- 71.1 All staff have a responsibility to respect and promote the corporate or collective decision of the ICB even though this may conflict with their personal views. This applies particularly if we are yet to decide on an issue or has decided in a way with which they personally disagree. Anyone may comment as they wish as individuals however, if they decide to do so, they should make it clear that they are expressing their personal view and not the view of the ICB.
- 71.2 When speaking in an official capacity, whether to the media, in a public forum or in a private or informal discussion, staff should ensure that they reflect the current policies or view of the organisation. For any public forum or media interview, approval should be sought in advance:
- in the case of the Governing Body, from the Chair and Chief Officer; and
  - in the case of all other officers, the NW London Director of Communications.
- 71.3 All staff must ensure their comments are well-considered, well-informed, made in good faith, in the public interest and without malice.
- 71.4 Staff must follow the guidance for communication with the media; disciplinary action may be taken if this is not followed.

74. Use of Social Media

Staff should be aware that social networking websites are public forums and should not assume that their entries will remain private. Staff communicating via social media must comply with the relevant acceptable use of IT and all other associated policies. Staff must not:

- conduct themselves in a way that brings the ICB into disrepute; and
- disclose information that is confidential to the ICB, staff or patients.

75. Confidentiality

Staff must, at all times, operate in accordance with the General Data Protection Regulation and Data Protection Act 2018 and maintain the confidentiality of

information of any type, including but not restricted to patient information; personal information relating to officers; commercial information. This duty of confidence remains after staff (however employed) leave the ICB. For the avoidance of doubt, this does not prevent the disclosure of information where there is a lawful basis for doing so (e.g. consent). Staff should refer to the suite of Information Governance and Information Technology policies for detailed information.

76. Gambling

No officer may bet or gamble when on duty or on ICB premises, with the exception of small lottery syndicates or sweepstakes related to major sporting / competed events such as the World Cup, Grand National, Eurovision Song Contest (etc) among immediate colleagues within the same offices and where no profits are made or the lottery is wholly for purposes that are not for private or commercial gain (e.g. to raise funds to support a charity see 67 & 68 above).

77. Lending and borrowing

The lending or borrowing of money between officers should be avoided, whether informally or as a business, particularly where the amounts are significant. It is a particularly serious breach of discipline for any officer to use their position to place pressure on someone in a lower pay band, a business contact, or a member of the public to loan them money.

78. Trading on official NHS Premises

Trading on official premises is prohibited, whether for personal gain or on behalf of others.

79. Individual Voluntary Arrangements, County Court Judgment (CCJ), Bankruptcy/Insolvency

Any officer who becomes bankrupt, insolvent, has an active CCJ, or made individual voluntary arrangements with organisations must inform their line manager and HR as soon as possible. Officers who are bankrupt or insolvent cannot be employed, or otherwise engaged, in posts that involve duties which might permit the misappropriation of public funds or involve the approval of orders or handling of money.

80. Arrest or Conviction

An officer who is arrested, subject to continuing criminal proceedings, or convicted of any criminal offence must inform their line manager and HR as soon as is practicably possible.

### **Breaches of this policy**

81. Breaches of this policy by a Governing Body member may result in removal from office in line with the ICB's Constitution or in other disciplinary action being taken.

82. Breaches of this policy by employed staff and others working with or for the organisation may result in disciplinary action being taken in accordance with the ICB's disciplinary procedure and other relevant policies.

83. Where it is proven that actual fraud has taken place, this could result in criminal proceedings against the individual. Any suspicion of fraud should be reported as soon as practicable to the ICB's Local Counter Fraud Specialist (LCFS). The LCFS will

undertake further investigation as appropriate and outlined in the Anti-Fraud and Bribery Policy.

84. The ICB is required to publish anonymised reports of material breaches of this policy on their websites. All breaches, material or otherwise, will be reported formally to the ICB's Audit Committee.
85. The detailed requirements and guidance regarding breaches is at Annex E of this policy.

## **ANNEX A - EXAMPLES OF CONFLICTS OF INTEREST**

The most common types of conflicts of interest include:

- direct financial interest;
- indirect financial interest;
- non-financial personal interests;
- conflicts of loyalty; and Patents

### **• Direct financial interest**

The most easily recognisable form of conflict of interest arises when a Governing Body or staff member obtains, or is perceived to obtain, a direct financial benefit over and above the remuneration and terms of service package agreed by the remuneration committee or by national Agenda for Change arrangements. Examples include:

- the award of a contract to a company or other business with which a Governing Body or staff member is involved, for example, a company contracted to provide primary care or community based services and which a GP Governing Body member has a financial interest as a director, employee or shareholder; or
- the sale of assets at below market value to a Governing Body or staff member.

The General Medical Council's guidance 'Good Medical Practice' (2013) is clear that: "You must be honest in financial and commercial dealings with patients, employers, insurers and other organisations or individuals. In particular:

- a. before taking part in discussions about buying or selling goods or services, you must declare any relevant financial or commercial interest that you or your family might have in the transaction."

Additionally, the guidance on managing conflicts of interest states:

"You must not allow any interests you have to affect the way you prescribe for, treat, refer or commission services for patients. If you are faced with a conflict of interest, you must be open about the conflict, declaring your interest formally, and you should be prepared to exclude yourself from decision making"

### **Indirect financial interest**

This arises when a close relative of a Governing Body or staff member benefits from the decisions of the ICB. Governing Body or staff members will benefit indirectly if their financial affairs are bound with those of the relative in question through the legal concept of "joint purse", as would be the case if the relative were the spouse, partner, dependent child of the Governing Body or staff member, or directly connected in some other way. For example, the Governing Body or staff member being involved in a decision to award a contract to an organisation where the member's or staff's spouse is a director.

### **Non-financial personal interests**

These occur where Governing Body members or staff receive no financial benefit, but are influenced by external factors. For instance:

- to gain some other intangible benefit or kudos;
- awarding contracts to friends or personal business contacts.

### **Conflicts of loyalty**

Governing Body members or staff may have competing loyalties between the ICB to which they owe a primary duty and some other person or entity, including their GP practice, and patients.

Governing Body or staff members should also avoid using knowledge gained in other roles to influence decisions so as to acquire a competitive advantage over other service providers.

### **Patents**

Members of staff must note that:

They must declare patents and other intellectual property rights they hold (either individually, or by virtue of their association with a commercial or other organisation), including where applications to protect have started or are ongoing, which are, or might be reasonably expected to be, related to items to be procured or used by the ICB

They should seek prior permission from their manager before entering into any agreement with bodies regarding product development, research, work on pathways etc., where this impacts on the ICB's own time, or uses its equipment, resources or intellectual property.

**Annex B – Declarations of Interest Form**



NWLGOV002  
Conflict of Interest Form

**Annex C – Declaration of Offers and Receipt of Gifts/Hospitality**

SECTION 1: Personal Details					
Title		Surname		Forename	
Directorate/Service				Location	
Job Title				Telephone	
SECTION 2: Receipt/offer of Hospitality and Care					
Nature of Benefit offered:					
Value:					
Company or individual from which offer:					
Was the gift/hospitality accepted:		YES/NO			
Was accepted with prior approval or retrospective approval:		YES/NO			
If yes, by who (if not the individual authorising):					
Signed:					Date:
Print name:					
SECTION 2: Authorisation (For completion by Line Manager/Supervisor)					
Title		Surname		Forename	
Directorate/Service:				Location	
Job Title:				Telephone	
Signed				Date	

Please return completed form to:  
ICB Governance Lead

## Annex D - PMS Review – governance of decision-making

### Issue

Due to the natural and unavoidable financial interests PMS Reviews create for GP decision makers in the ICB, extra care is required to manage – and demonstrate clearly that we have managed – those interests when deciding on the outcome of PMS reviews. As constituted, the Governing Body cannot take the decision as, once the conflicted members have withdrawn (ie recused), a quorum is not achievable.

### Requirements

What follows is a short guide to help agree what governance route is required. It is worth noting that, whichever route is taken, the fundamental requirements in **all cases** are that the decision-making bodies:

- i. are independent from any relevant conflicts of interest;
- ii. are quorate;
- iii. have sufficient and explicit authority to take the decision on behalf of the Governing Body; and
- iv. are suitably qualified to test the key components of the decisions required, ie affordability, clinical suitability / impact, strategic and operational fit and / or test assurances thereon<sup>2</sup>.

### Key factors to note:

- as above, the Governing Body cannot manage its conflicts and remain quorate on PMS matters;
- whilst PMS reviews are part of the remit of the Primary Care Committee, its authority does **not** extend to the approval of impacts on the ICB's core funding baseline; and
- if proposals require the expenditure of ICB core funding, an explicit delegation of authority must be obtained from the Governing Body to a decision making body that can meet requirements i-iv above.

### Decision Tree

1. If the PMS review recommendation only affects monies delegated from NHSE for Primary Care commissioning then the PCC can take the decision. PCC should, as a matter of good practice, seek the Investment Committee's view on the process for handling conflicts of interest early on in the review process and, at the point of decision, report back to the IC on the outcome (of the Col management); OR
2. If the PMS Review recommendation has material impact on, or spends any of, ICB core baseline monies, then:

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<sup>2</sup> Noting that any assurances relied upon in decision-making also need to be free of conflicts of interest.



- a. a delegation of authority from the **Governing Body** to the Finance Committee must be sought; and, once obtained,
- b. the **Primary Care Commissioning Committee** approval must be a recommendation to the **Finance Committee** - it cannot be a final decision; and
- c. the cover sheet for the **Finance Committee** paper must set out how the conflicts of interest have been managed throughout the review so to demonstrate that the assurances the **PCC** relies upon to make its recommendation to the Finance Committee are robust and free from bias.

In all cases, the **Governing Body** should be briefed on the **process**, taking care to not include any detail that risks creating a conflict of interest for GB members.

**Annex E – Conflict of Interest Breaches**

1. It is the duty of every 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 ICB's policy on conflicts of interest management, and to report these concerns.
2. These individuals should not ignore their suspicions or investigate themselves, but rather speak to the NW London Governance Lead. If an independent route outside of the executive line is required, the relevant Lay Member Lead for Audit and Governance should be contacted. In the event that there is a concern regarding either of those independent members, and the Company Secretary is viewed as an inappropriate point of escalation in the circumstances, this should be raised with the relevant Governing Body Chair and Accountable Officer in the first instance.
3. Effective management of conflicts of interest requires an environment and culture where individuals feel supported and confident in declaring relevant information, including notifying any actual or suspected breaches of the rules. The individuals listed above are able to provide advice, support, and guidance on how conflicts of interest should be managed and to ensure that individuals who wish to come forward to notify an actual or suspected breach of the rules are supported appropriately. All such reports of breaches will be treated in the strictest of confidence, as far as statutory responsibilities allow.
4. Each suspected breach will be looked into objectively by a non-conflicted member of the NW London Governance staff who will then report their findings to the NW London Company Secretary. The Company Secretary will assess the materiality of the breach, actions already taken and what further action(s) are required. All reports will be shared with the lead Lay Members for Audit and Governance.
5. For breaches deemed to be material, an anonymised Register of Breaches will be published on the ICB's website, setting out:
  - the date and summary of the breach;
  - how it had been investigated;
  - the outcome of the investigation;
  - actions taken to address the breach and prevent its recurrence; and
  - any governance arrangements and reporting mechanisms (including escalation to regulators) triggered by the breach.
6. All breaches, material or otherwise, will be reported to the ICB's Audit Committee. Serious breaches will also be reported to NHS England via the Improvement and Assurance Framework Quarterly Returns mechanism.
7. Statutorily regulated healthcare professionals who work for, or are engaged by, ICBs are under professional duties imposed by their relevant regulator to act appropriately with regard to conflicts of interest. The ICB will report statutorily regulated healthcare professionals to their regulator if they believe that they have acted improperly, so that these concerns can be investigated. Statutorily regulated healthcare professionals should be made aware that the consequences for inappropriate action could include fitness to practice proceedings being brought against them, and that they could, if appropriate, be struck off by their professional regulator as a result.

8. It is ICB policy that anyone who wishes to report a suspected or known breach of the policy, who is not an employee or worker of the ICB, should also ensure that they comply with their own organisation's whistleblowing policy, since most such policies should provide protection against detriment or dismissal.

9. The individuals listed at 2. above are in a position to cross refer to and comply with other policies within the ICB on raising concerns, counter fraud, or similar as and when appropriate. All such notifications should be treated with appropriate confidentiality at all times in accordance with policies, (eg Whistleblowing) and applicable laws. The person making such disclosures should expect an appropriate explanation of any decisions taken as a result of any investigation.

10. Finally, providers, patients and other third parties can make a complaint to NHS Improvement in relation to ICBs' conduct under the Procurement Patient Choice and Competition Regulations. The regulations are designed as an accessible and effective alternative to challenging decisions in the Courts.

**Annex F - Procurement Checklist**

**[Separate PDF attachment]**



Annex-F  
Procurement-Checklis

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**Annex G - Template form for register of procurement decisions**

**[separate PDF attachment]**



Annex-G  
Procurement-Decisior

## **Annex H – Template for Registers of interests, gifts and hospitality and procurements**

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<sup>i</sup> The Gifts and Hospitality register and Procurement Registers should also be updated at least every 6 months.



Annex H Register of  
Interest GB Members