Managing Conflicts of Interests

NHS Clinical Commissioning Groups

Benchmarking of the 2017-18 mandated audit reviews
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The overall purpose of the insight is to enable individual organisations to consider how they compare with others against the prescribed framework issued by NHSE for managing conflicts of interest.

1. Context

Section 140 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) (‘the Act’) sets out the minimum requirements of what CCGs must do in terms of managing conflicts of interest. To further support CCGs to manage the risks of conflicts of interest, NHS England has issued revised guidance; Managing Conflicts of Interest: Revised Statutory Guidance for CCGs 2017.

A small number of amendments have been made to the 2016 guidance to ensure it is fully aligned with the new cross – system guidance on Managing Conflicts of Interest in the NHS, which was published in February 2017 and sets out a series of common principles and rules for managing conflicts of interest and gifts and hospitality across the whole NHS.

Key changes from the June 2016 version of the guidance are;

- **Register of interest**: A requirement that CCGs have systems in place to satisfy themselves on an annual basis that their registers of interest are accurate and up-to-date. Only the declared interest of decision making staff are required to be included on the published register.

- **Gifts from supplier or contractors**: Gifts of low value (up to £6), such as promotional items, can be accepted and do not need to be declared, but all other gifts from suppliers or contractors must be declined and declared.

- **Gifts from other sources**: Gifts under £50 can be accepted from non-suppliers and non-contractors, and do not need to be declared. Gifts with a value of over £50 can be accepted on behalf of an organisation, but not in a personal capacity and must be declared.

- **Hospitality - meals and refreshments**: Hospitality under £25 can be accepted and does not need to be declared. Hospitality between £25 and £75 can be accepted, but must be declared. If the value of the hospitality is over £75, it must be declared and should be refused unless senior approval is given.

- **Sponsored Events**: A new section on sponsored events.

- **New Care Models commissioning**: A new annex has been appended (annex K) which summarises key aspects of the guidance that need particular consideration within the context of new care models commissioning.
One of the requirements of the guidance is that CCGs undertake an annual audit of conflicts of interest management as part of their internal audit plans (refer to paragraphs 142-144 of the guidance). This is an important mechanism for CCGs to confirm and obtain assurance that the safeguards set out in the revised statutory guidance have been embedded. The outcome of the audit is reported in the CCG’s annual governance statement, and discussed as part of the annual end-of-year governance meeting with NHS England regional teams.

NHS England provided a framework to support CCGs’ to undertake an internal audit of conflicts of interest management, including the scope and approach. The framework covers the following five key areas (comprising a total of 26 individual elements):

- **Including:** policies/procedures comply with legal requirements and statutory guidance, appropriate number of lay members and a conflict of interest guardian is/are appointed, required training has been provided, and any joint committees / primary care commissioning committees are appropriately constituted.

- **Including:** declarations are being made and recorded in accordance with legal requirements and statutory guidance.

- **Including:** each of the relevant registers are maintained and published in accordance with legal requirements and statutory guidance.

- **Including:** the mechanisms for the management of conflicts within meetings, when making procurement decisions and in relation to contract management.

- **Including:** processes are in place for managing breaches and for the publications of anonymised details of breaches on the CCG’s website.
MIAA undertook this mandated audit review across its 29 CCG clients in accordance with NHS England guidance and compliance levels were assigned against each of the 5 scope areas (see above) as follows:

- Fully Compliant (Green)
- Partially Compliant (Amber)
- Non-Compliant (Red)

This report sets out the level of compliance of the 29 individual CCGs against the statutory guidance in relation to managing conflict of interest (February 2017). The assessment against the 26 individual areas combines to give an overall assessment for each of the 5 scope areas.

2. Overall Profile of Compliance

Table 1 below summarises the level of compliance attained by each of the 29 CCGs against the 5 scope areas outlined within the issued guidance.

**Table 1: Outcomes of Assessment against Conflict of Interest Framework**

| Scope Area | CCG1 | CCG2 | CCG3 | CCG4 | CCG5 | CCG6 | CCG7 | CCG8 | CCG9 | CCG10 | CCG11 | CCG12 | CCG13 | CCG14 | CCG15 | CCG16 | CCG17 | CCG18 | CCG19 | CCG20 | CCG21 | CCG22 | CCG23 | CCG24 | CCG25 | CCG26 | CCG27 | CCG28 | CCG29 |
|------------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
Table 1 highlights that none of the CCGs were assessed overall as non-compliant against any of the 5 high level areas. The strongest area of compliance related to ‘Identifying and managing non-compliance’ with 90% of the CCGs assessed as fully compliant overall, followed by ‘Declarations of Interest’ with 86%.

‘Governance Arrangements’ was the area requiring the most attention, with 72% of the CCGs assessed as partially compliant overall. Scoring in this area was impacted upon due to the delay in the national training programme. However, it should be noted that there were a number of the individual elements that were assessed as fully compliant (refer to Table 2).

‘Register of Interests, gifts and hospitality and procurement decisions’ was an area that was clearly split with 52% of CCGs being fully compliant overall and 48% partially compliant overall.
Table 2 below sets out the top areas of compliance across the 26 individual elements assessed (contained within the 5 scope areas) against the framework prescribed by NHS England.

**Table 2: Top Areas of Compliance**

<table>
<thead>
<tr>
<th>Top Areas of Compliance</th>
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</thead>
<tbody>
<tr>
<td>1. All CCG’s had the scope and responsibilities of the Primary Care Commissioning Committee or Joint Committee and any sub-committees clearly defined in an approved terms of reference. (Governance – element 8)</td>
</tr>
<tr>
<td>2. All CCG’s constitutions included a statement of conduct detailing what is expected of its employees, governing body members, members of committees and sub-committees; and members of the CCG (Declarations of Interest – element 11)</td>
</tr>
<tr>
<td>3. All CCG’s had an individual or team assigned responsibility for maintaining the registers of interest, gifts and hospitality and procurement decisions and this has been clearly communicated to CCG employees, governing body members, members of committees and sub-committees (Register of Interests processes – element 13)</td>
</tr>
<tr>
<td>4. All CCG’s had processes to confirm that conflicts of interest are managed appropriately during contract monitoring processes. (Decision making processes – element 24)</td>
</tr>
<tr>
<td>5. All CCG’s had processes for managing breaches clearly detailed in the CCG’s conflicts of interest policy. (Identifying and managing non-compliance – element 25)</td>
</tr>
<tr>
<td>6. 97% of CCG’s has a Conflicts of Interest Guardian and had publicised this. (Governance – element 8)</td>
</tr>
<tr>
<td>7. 97% of CCG’s Chair of the Primary Care Commissioning Committee or Joint Committee was a lay member and not the CCG audit committee chair. (Governance – element 12)</td>
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</tbody>
</table>
Table 3 below sets out the lowest areas of compliance across the 26 individual elements assessed (contained within the 5 high level areas) against the framework prescribed by NHS England.

### Table 3: Lowest Areas of Compliance

<table>
<thead>
<tr>
<th>Areas of Lowest Compliance</th>
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<tbody>
<tr>
<td>1. <strong>66%</strong> of the CCGs need to ensure training is undertaken once the national programme has been rolled out. <em>(Governance – element 5)</em></td>
</tr>
<tr>
<td>2. <strong>28%</strong> need to ensure the CCG has processes in place to confirm on a six monthly basis that the register(s) of interests is accurate and up-to-date. <em>(Register of Interests – element 14)</em></td>
</tr>
<tr>
<td>3. <strong>24%</strong> need to ensure the CCG maintains a register of gifts and hospitality which should include as a minimum:</td>
</tr>
<tr>
<td>- Recipient’s name</td>
</tr>
<tr>
<td>- Current position(s) held by the individual (within the CCG)</td>
</tr>
<tr>
<td>- Date of offer and/or receipt</td>
</tr>
<tr>
<td>- Details of the gift or hospitality</td>
</tr>
<tr>
<td>- The estimated value of the gift or hospitality <em>(Register of Interests – element 18)</em></td>
</tr>
<tr>
<td>4. <strong>21%</strong> need to ensure the CCG maintains one or more registers of interest for all CCG employees, members of its governing body, members of committees and sub-committees; and practice staff with involvement in CCG business. Register(s) of interests should as a minimum include:</td>
</tr>
<tr>
<td>- Name of the person declaring the interest;</td>
</tr>
<tr>
<td>- Position within, or relationship with, the CCG (or NHS England in the event of joint committees);</td>
</tr>
<tr>
<td>- Type of interest e.g., financial interests, non-financial professional interests;</td>
</tr>
<tr>
<td>- Description of interest, including for indirect interests details of the relationship with the person who has the interest;</td>
</tr>
<tr>
<td>- The dates from which the interest relates; and the actions to be taken to mitigate the risk. <em>(Registers of Interest – element 17)</em></td>
</tr>
<tr>
<td>5. <strong>28%</strong> need to ensure that when decisions are made in meetings, evidence is maintained to show conflicts have been considered and, if any potential conflicts exist, that the following items are recorded in the minutes:</td>
</tr>
<tr>
<td>- Who has the interest;</td>
</tr>
<tr>
<td>- The nature of the interest and why it gives rise to a conflict, including the magnitude of any interest;</td>
</tr>
<tr>
<td>- The items on the agenda to which the interest relates;</td>
</tr>
<tr>
<td>- How the conflict was agreed to be managed; <em>(Decision making processes – element 25)</em></td>
</tr>
</tbody>
</table>
3. Analysis of the 5 Areas

3.1 Governance Arrangements

For this section, only 28% (8) of the CCGs assessed by MIAA achieved full compliance overall, with 72% (21) assessed as partially compliant overall. It should be noted that the delay of the national training programme impacted the ratings, however, a number of CCGs provided training to staff through different avenues.

Q: Are arrangements in place to ensure conflicts of interest training is undertaken once rolled out by NHS England?

Q: Do your policies and procedures require updating to reflect NHS England statutory guidance?

Q: Are conflicts of interest embedded within the appointment and recruitment process of relevant officers?

Chart 1: Assessment of compliance against Governance Arrangements

Key themes:
- All CCGs had established a Primary Care Co-Commissioning Committee or a Joint Committee, which were underpinned by an approved terms of reference.
- For the majority of CCGs, a standing invitation is made to the CCG’s local Health Watch representative and a local authority representative from the local Health and Wellbeing Board to join the Primary Care Commissioning.
- All but 3% of CCGs have appointed a COI guardian and have the required minimum number of lay members.
- The majority of CCGs have a policy in place, but a number require review and update to ensure they are aligned to the latest guidance.
- The main area for focus for all CCGs is to ensure training is provided at induction and annually thereafter. This had been hampered by the delay in the national training programme.
3.2 Declarations of Interest and Gifts and Hospitality

86% (25) of the CCGs achieved overall compliance in their declarations of interests and hospitality arrangements, with 14% (4) assessed as partially compliant overall. Key areas for enhancement include the need to ensure that declarations of interests are received from new starters and that declarations of interest are a standing item on meeting agendas.

**Q:** Are there clear processes to ensure all new starters complete declarations of interest?

**Q:** Are declarations of interest a standing agenda item on all meeting agendas?

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**Chart 2: Assessment of compliance against Declarations of Interest and Hospitality**

- **Fully Compliant:** 86%
- **Partially Compliant:** 14%

**Key themes:**
- Overall, there was strong levels of compliance against the 3 individual elements:
  - The majority of CCGs ensured declarations of interest and notification of any gifts and hospitality were made within the 28 days limit and included declarations of interest as a standing agenda item on meeting agendas.
  - All CCG's had updated their constitution to include a statement of conduct detailing what is expected of its employees, governing body members, members of committees and sub-committees; and members of the CCG i.e. GP with regards to declaring conflict of interest.
3.3 Registers of Interest, gifts and hospitality and procurement decisions

52% (15) of the CCGs achieved full compliance overall, in their management of registers of interests, gifts and hospitality and procurement decisions. 48% (14) of the CCGs were partially compliant overall, largely due to the need to update the registers in line with the NHSE guidance.

Q: Do you have processes in place to confirm that registers are accurate and up to date?
Q: Do your registers of interests, gifts and hospitality and procurement decisions include as a minimum NHS England statutory guidance?
Q: Have they been published on your website?

Key themes:

- All CCGs had assigned responsibility for maintaining its registers in their policy.
- A number of CCGs need to ensure registers are maintained and reflect all elements of guidance from NHS England templates.
- Whilst registers were available at all CCG headquarters, CCGs need to ensure registers are available on the individual CCG websites.
3.4 Decision Making Processes and Contract Monitoring

Our review confirmed that 62% (18) of the CCGs achieved overall compliance in their decision making process and contract monitoring arrangements. 38% (11) were assessed as partially compliant overall. Areas highlighted included recording in detail within meeting minutes why an interest would give rise to a potential conflict of interest and how this was managed.

Q: Do your minutes from committees, sub committees and working groups adequately demonstrate that conflicts of interest have been considered and key information documented?

Q: Do the contract monitoring processes at your organisation demonstrate that conflicts of interest are managed appropriately?

Chart 4: Assessment of Compliance of Decision making processes and contract monitoring

Key themes:

- All but 1 CCGs had fully operating mechanisms in place which require bidders or potential contractors to declare any interests as part of the bidding process.
- 93% of the CCGs retained evidence that conflicts of interests are effectively managed when making commissioning decisions.
- Records from meetings of working groups and sub committees need to be enhanced in all but one CCG’s, reflect the consideration of conflicts of interest.
- All CCGs had processes to confirm that conflicts of interest are managed appropriately during contract monitoring processes.
3.5 Identifying and managing non-compliance

90% (26) of the CCGs achieved compliance overall in identifying and managing non-compliance. 10% (3) were partially-compliant mainly due to policies required to be updated to reflect the process for managing breaches and non-compliance.

Q: Does your policy clearly set out the processes for managing breaches?

Q: Has the process been clearly defined for managing non-compliance with policies and procedures?

Key themes:

- The majority of CCG's had processes for managing breaches clearly detailed in the CCG's conflicts of interest policy.
- The majority of CCGs assessed, had processes in place to ensure anonymised details of breaches are published on the CCG’s website and reported to NHS England.
- All but one CCG had defined the process to be followed for managing breaches and non-compliance with policies and procedures (including how this will be addressed when it relates to contracts already entered into).
The Insight provides information to support organisations in comparing the management of conflicts of interest. It is intended to prompt and inform discussions on this important aspect of corporate governance.

1. Are arrangements in place to ensure conflicts of interest training is undertaken once rolled by NHS England?
2. Does your policy require updating to include the latest NHS England statutory requirements?
3. Are conflicts of interest embedded within the recruitment process?
4. Are there clear processes to ensure all new starters complete declarations of interest?
5. Are declarations of interest a standing agenda item on all meeting agendas?
6. Do you have processes in place to confirm that registers are accurate and up to date?
7. Do your registers of interests, gifts and hospitality and procurement decisions include as a minimum NHS England statutory guidance?
8. Have they been published?
9. Do your minutes from committees, sub committees and working groups adequately demonstrate that conflicts of interest have been considered and key information documented?
10. Do the contract monitoring processes at your organisation demonstrate that conflicts of interest are managed appropriately?
11. Does your policy clearly set out the processes for managing breaches?
12. Has the process been clearly defined for managing non-compliance with policies and procedures?

We would be keen to hear your views on the issues raised and your ideas on how further benchmarking in this or other areas would be of benefit.

For more information or to request a benchmarking topic please speak to your Senior Audit Manager or contact:

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