

# Conflicts of Interest Policy

## Version Control Sheet

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# 1 INTRODUCTION TO THE POLICY

## 1.1 Introduction

Conflict of interest occurs where an individual's ability to exercise judgement, or act in a role, is or could be impaired or otherwise influenced by their involvement in another role or relationship.

The Integrated Care Board (ICB) manages conflicts of interest as part of its day-to-day activities. Effective handling of conflicts of interest by the ICB is crucial to give confidence to patients, taxpayers, healthcare providers and Parliament that decisions are robust, fair and transparent and offer value for money. It is essential in order to protect healthcare professionals and maintain public trust in the NHS. Failure to manage conflicts of interest could lead to legal challenge and even criminal action in the event of fraud, bribery or corruption.

NHS England guidance on ICB functions and governance states:

- Guiding principle – decisions are made in the public interest by avoiding any undue influence
- ICBs have been created to give statutory NHS providers, local authority and primary medical services nominees a role in decision-making. It should not be assumed that they are personally or professionally conflicted just by virtue of being an employee, director, partner or otherwise holding a position with one of these organisations
- Distinguish between those individuals who should be involved in formal decision taking and those whose input informs decisions - consider the perspective the individual brings and the value they add to both discussions around particular decisions and in actually taking part in decisions, including the ability to shape understanding of how best to meet patients' needs and deliver care for the population
- Actions to mitigate conflicts of interest should be proportionate and should seek to preserve the spirit of collective decision-making wherever possible
- The way conflicts are declared and managed should contribute to a culture of transparency about how decisions are made.

## 1.2 Aims and Objectives

It is not possible to avoid conflicts of interest, they are inevitable in many aspects of public life, including the NHS. Healthcare professionals have always had to manage competing interests.

This Policy provides advice on recognising where and how conflicts of interest arise and managing these within a proper governance framework to ensure that conflicts of interest do not affect, or appear to affect, the integrity of the ICB's decision-making process.

This Policy establishes how the ICB will ensure that best practice is followed

in managing potential conflicts of interest. The Policy further sets out the safeguards which are put in place by the ICB to ensure transparency, fairness and probity in decision-making, including:

- arrangements for declaring interests
- maintaining a register of interests
- keeping a record of steps taken to manage conflicts
- excluding individuals from decision-making when a conflict arises
- engagement with a range of potential providers on service design
- managing situations where individuals have failed to declare an interest
- conflicts of interest training

The Policy follows the advice from NHS England that conflicts of interest can be managed by:

- Doing business appropriately – conflicts of interest become easier to identify, avoid and /or manage when the processes for needs assessments, consultation mechanisms, commissioning strategies and procurement procedures are right from the outset, because the rationale for all decision making will be clear and transparent and should withstand scrutiny.
- Being proactive not reactive – seeking to identify and minimise the risk of conflicts of interest at the earliest possible opportunity.
- Assuming that individuals will seek to act ethically and professionally, but may not always be sensitive to conflicts of interest.
- Being balanced, sensible and proportionate – rules should be clear and robust but not overly prescriptive or restrictive. Decision-making should be transparent and fair whilst not being overly constraining, complex or cumbersome.
- Being transparent – clearly documenting the approach and decisions taken at every stage in the commissioning cycle so that a clear audit trail is evident.
- Creating an environment and culture where individuals feel supported and confident in declaring relevant information and raising any concerns.

The benefits of managing conflicts of interest are:

- Maintaining confidence and trust in the ICB and its partners.
- Enabling the ICB to demonstrate that they are acting fairly and transparently and that the duty to patients and the local population will always be put before any personal financial interest.
- Ensuring that the ICB operate within the legal framework.

### **1.3 Constitutional and Statutory Requirements**

The ICB is subject to the Health and Care Act 2022.

The ICB is also subject to procurement rules set out in the NHS (Procurement, Patient Choice and Competition) Regulations 2013 and the Public Contract Regulations 2015; as well as the Bribery Act 2010.

The ICB also adheres to relevant guidance issued by professional bodies on conflicts of interest.

The ICB's Constitution defines what constitutes a conflict of interest and sets out arrangements for the management of conflicts of interest. This should be read in conjunction with this Policy.

This Policy is not, nor does it purport to be, a full statement of the law.

#### **1.4 Scope of the Policy**

This Policy applies to all ICB employees, members of, and advisors to the Board and its committees who must comply with the arrangements outlined in this Policy.

**Where an individual fails to comply with this Policy, disciplinary action may be taken or the individual removed from office.**

Furthermore, individuals contracted to work on behalf of the ICB or otherwise providing services or facilities to the ICB will be made aware of their obligation with regard to declaring interests including potential conflicts of interest. This will be written into their contract for services.

This Policy should be read in conjunction with the following:

- ICB Constitution
- ICB Anti-Fraud, Bribery and Corruption Policy
- ICB Standards of Business Conduct Policy
- ICB Procurement Policy
- ICB Whistleblowing Policy
- ICB Disciplinary Policy

#### **1.5 Accountability**

**It is the responsibility of everyone in the ICB to appropriately manage conflicts of interest. Everyone is responsible for familiarising themselves with this policy and to comply with the provisions of it.**

##### **ICB Board / Audit Committee**

The ICB Board, with support from the Audit Committee, will oversee this Policy and will ensure that there are systems and processes in place to support all individuals who hold positions of authority or who can make or influence decisions to:

- Declare their interests through a Register of Interests, which is published and made available to the public via the ICB website or on request.
- Declare any relevant interests through discussions and proceedings so that any comments they make are fully understood by all others within that context.
- Ensure that where any conflict could have an effect on any decision or process the individual concerned will have no part in making or influencing the relevant decision.

The ICB Board will take such steps as it deems appropriate, and request information it deems appropriate from individuals, to ensure that all conflicts of interest and potential conflicts of interest are declared.

All members of the ICB Board and its committees must act in accordance with this policy and lead by example in acting with the utmost integrity and ensuring adherence to all relevant regulations, policies and procedures.

### **Conflicts of Interest Guardian**

The Chair of the ICB's Audit Committee will act as the Conflicts of Interest Guardian. The Guardian, in collaboration with the ICB's Director of Corporate Affairs and Governance Leads at West Yorkshire and Place level, will:

- Act as a conduit for members of the public and healthcare professionals who have any concerns with regards to conflicts of interest;
- Be a safe point of contact for employees or workers of the ICB to raise any concerns in relation to this policy;
- Support the rigorous application of conflict of interest principles and policies;
- Provide independent advice and judgment where there is any doubt about how to apply conflicts of interest policies and principles in an individual situation;
- Provide advice on minimising the risks of conflicts of interest.
- Decide whether information should be published or not, if an individual requests that information should not be included in the public register.

### **Meeting Chairs**

Meeting Chairs have particular responsibility for ensuring the appropriate management of conflicts of interest during the course of all of the ICB meetings. They are responsible for ensuring:

- They are familiar with the content of the registers of interests as pertinent to their Board or committee.
- They prepare for the meeting mindful of any actual or potential conflicts of interest that may arise relevant to the business of that meeting.



- That declarations of interest are always an item on the agenda.
- That members are asked to declare any interests that are likely to lead to a conflict or potential conflict that could impact (or has the potential to impact) on any items on the agenda.
- Any declaration is clearly noted in the minutes both at the start of the meeting and at the relevant item. If there is any doubt as to whether or not a conflict of interest could arise, a declaration should be made and noted in the minutes.
- That any declarations arising during the course of a meeting are handled appropriately and the agreed arrangement minuted.
- That the quoracy of the meeting or for individual items is checked if an interest is declared. If the meeting is no longer quorate, then the chair must agree how this should be managed.

### **Independent Members / Non-Executive Members**

Independent Members / Non-Executive Members play a critical role in the ICB, providing scrutiny, challenge and an independent voice in support of robust and transparent decision-making and management of conflicts of interest.

### **Chief Executive**

The ICB's Chief Executive has overall accountability for the ICB's management of conflicts of interest, supported by the Place Accountable Officers. The Chief Executive has overall responsibility for this Policy, ensuring that a process for managing conflicts of interest is in place. The Chief Executive should consult with the Chair.

The Chief Executive will ensure that for every interest declared, either in writing or by oral declaration, arrangements are put in place to manage the conflict of interest or potential conflict of interests to ensure the integrity of the ICB's decision-making process.

Where necessary, the Chief Executive will put in writing to the relevant individual arrangements for managing the conflict of interest or potential conflicts of interest within a week of declaration. This will confirm the following:

- When an individual should withdraw from a specified activity, on a temporary or permanent basis.
- Monitoring of the specified activity undertaken by the individual, either by a line manager, colleague or other designated individual.

Where the Chief Executive is conflicted or potentially conflicted, they will seek advice from the Conflicts of Interest Guardian.

### **Director of Corporate Affairs / ICB Governance Leads**

The Director of Corporate Affairs, supported by the ICB's Governance Leads at West Yorkshire and Place has responsibility for:

- The day-to-day management of conflicts of interest matters and queries.
- Maintaining the ICB's Register of Interests and the other registers referred to in this Policy.
- Supporting the Conflicts of Interest Guardian to enable them to carry out the role effectively.
- Providing advice, support and guidance on how conflicts of interest should be managed.
- Ensuring that appropriate administrative processes are put in place.

### **ICB Contracting and Procurement Leads**

The ICB Contracting and Procurement Leads based in each of the five Places are collectively responsible for procurement and maintaining the Register of Procurement decisions.

### **Line Managers**

Line managers are responsible for ensuring their direct reports are aware of this policy, and assisting them in complying by ensuring they are aware of its implications for their work.

### **All Employees / Appointments to the ICB**

To ensure openness and transparency in business transactions, all employees and appointments to the ICB are required to:

- Ensure that the interests of patients and the local population remain paramount at all times.
- Be impartial and honest in the conduct of their own official business.
- Use public funds entrusted to them to the best advantage of the service, always ensuring value for money.
- Ensure they do not abuse their official position for personal gain or the benefits of their family or friends.
- Ensure that they do not seek to advantage or further private or other interests in the course of their official duties.
- Ensure that they declare all conflicts of interest and outside employment.

### **Transactions in support of commissioning functions**

In any transaction undertaken in support of the ICB's exercise of its commissioning functions (including conversations between two or more individuals, emails, correspondence and other communications), individuals must ensure, where they are aware of an interest, that they conform to the arrangements confirmed for the management of that interest. Where an individual has not had confirmation of arrangements for managing the interest,

they must declare their interest at the earliest possible opportunity in the course of that transaction, and declare that interest as soon as possible thereafter. The individual must also inform either their Director (in the case of employees) or the Chair of the ICB Board, of the transaction.

### **Privileged Information**

No one should use confidential information acquired in the pursuit of their role within the ICB to benefit themselves or another connected person or create the impression of having done so.

Individuals should take care not to provide any third party with a possible advantage by sharing privileged, personal or commercial information, or by providing information that may be commercially useful in advance of that information being made available publicly (such as by informing a potential supplier of an up-and-coming procurement in advance of other potential bidders), or any other information that is not otherwise available and in the public domain.

The ICB will implement the processes within this Policy to ensure that conflicts of interest are managed appropriately within the organisation.

## **2 DEFINITION OF AN INTEREST**

### **2.1 Definition of an Interest**

A conflict of interest is defined as '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'.

A conflict of interest may be 'actual' i.e. there is a material conflict between one or more interests or 'potential' i.e. there is the possibility of a material conflict between one or more interests in the future.

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

Conflicts of interest can arise in many situations, environments and forms of commissioning, with an increased risk when organisations find themselves in a position of being at once commissioner and provider of services.

It is important to remember that:

- A perception of wrongdoing, impaired judgement or undue influence can be as detrimental as any of them actually occurring.
- If in doubt, it is better to assume a conflict of interest and manage it appropriately rather than ignore it.
- For a conflict to exist, financial gain is not necessary.

## 2.2 Types of Interest

Interests can be captured in four different categories. A benefit may arise from the making of a gain or the avoidance of a loss:

### 1. Financial Interests

This is where an individual may get direct financial benefits from the consequences of a decision. This could, for example, include being:

- A director, including a non-executive director, or senior employee in a private company or public limited company or other organisation which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations. This includes involvement with a potential provider of a new care model.
- A shareholder (or similar ownership interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations.
- A management consultant for a provider.
- A provider of clinical private practice.

This could also include an individual being:

- In employment outside of the ICB;
- In receipt of secondary income;
- In receipt of a grant from a provider;
- In receipt of any payments (for example honoraria, one-off payments, day allowances or travel or subsistence) from a provider;
- In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role;
- Having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider).

### 2. Non-Financial Professional Interests

This is where an individual may obtain a non-financial professional benefit from the consequences of a decision, such as increasing their professional reputation or status or promoting their professional career. This may, for example, include situations where the individual is:

- An advocate for a particular group of patients;
- A GP with special interests e.g. in dermatology, acupuncture etc;
- An active member of a particular specialist professional body (although

routine GP membership of the RCGP, British Medical Association or a medical defence organisation would not usually by itself amount to an interest which needed to be declared);

- An advisor for the Care Quality Commission (CQC) or the National Institute for Health and Care Excellence (NICE);
- Engaged in a research role.
- The development holding of patents and other intellectual property rights which allow staff to protect something that they create, preventing unauthorised use of products or the copying of protected ideas;

### **3. 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. This could include, for example, where the individual is:

- A voluntary sector champion for a provider;
- A volunteer for a provider;
- A member of a voluntary sector board or has any other position of authority in or connection with a voluntary sector organisation;
- Suffering from a particular condition requiring individually funded treatment;
- A member of a lobby or pressure group with an interest in health.

### **4. 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 (as those categories are described above) for example, a:

- Spouse / partner
- Close family member or relative e.g. parent, grandparent, child, grandchild or sibling
- Close friend or associate
- Business partner.

Whether an interest held by another person gives rise to a conflict of interests will depend upon the nature of the relationship between that person and the individual, and the role of the individual within the ICB.

The above categories and examples are not exhaustive, and it is not possible or desirable to define all instances in which an interest may be a real or

perceived conflict.

It is for each individual to exercise their judgement and the ICB will exercise discretion on a case-by-case basis, having regard to the principles set out within this Policy, in deciding whether any other role, relationship or interest which would impair or otherwise influence the individual's judgement or actions in their role within the ICB. If so, this should be declared and will be appropriately managed.

If any individual is unsure as to whether an interest should be declared then that individual should seek advice from an ICB Governance Lead, Chief Executive, Place Accountable Officer, Conflicts of Interest Guardian, or from the Board/Committee chair if appropriate.

**The question of whether or not to declare an interest is an individual judgement.**

### **3 PRINCIPLES OF GOOD GOVERNANCE**

#### **3.1 The Seven Principles of Public Life**

This Policy reflects the seven principles of public life established by the Nolan Committee, which are as follows:

- **Selflessness** – holders of public office should act solely in terms of the public interest.
- **Integrity** – Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- **Objectivity** – Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Accountability** - holders of public office are accountable for their decisions and actions and must submit themselves to whatever scrutiny necessary to ensure this.
- **Openness** - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

- **Honesty** - Holders of public office should be truthful.
- **Leadership** - Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

### 3.2 The Seven Key Principles of the NHS Constitution<sup>1</sup>

This Policy reflects the seven key guiding principles of the NHS Constitution, which are underpinned by core NHS values:

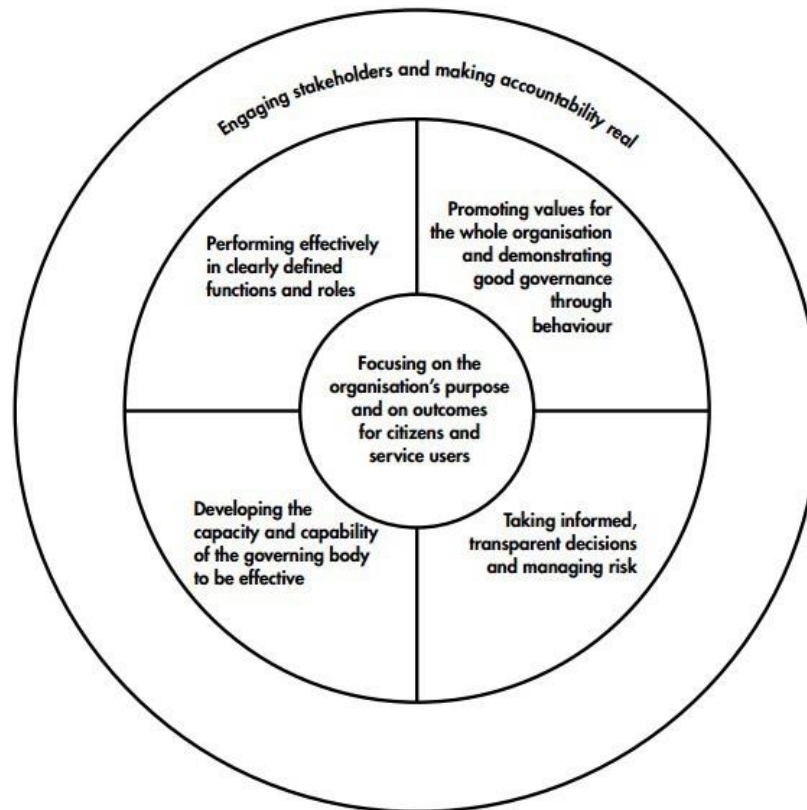
- The NHS provides a comprehensive service, available to all.
- Access to NHS services is based on clinical need, not an individual's ability to pay.
- The NHS aspires to the highest standards of excellence and professionalism.
- The patient will be at the heart of everything the NHS does.
- The NHS works across organisational boundaries.
- The NHS is committed to providing best value for taxpayers' money.
- The NHS is accountable to the public, communities and patients that it serves.

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<sup>1</sup> <https://www.gov.uk/government/publications/the-nhs-constitution-for-england/the-nhs-constitution-for-england#principles-that-guide-the-nhs>

### 3.3 The Good Governance Standards for Public Services<sup>2</sup>

This Policy reflects the six core principles of good governance:



### 3.4 The Equality Act 2010<sup>3</sup>

This Policy is written with regard to the Equality Act 2010.

### 3.5 The UK Corporate Governance Code<sup>4</sup>

The Code sets standards of good practice in relation to board leadership and effectiveness, remuneration, and accountability. This Policy reflects the Code.

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<sup>2</sup>[Good Governance Standard for Public Services | CIPFA](#)

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2010/15/contents>

<sup>4</sup> <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf>



### **3.6 Standards for Members of NHS Boards and CCG Governing Bodies in England<sup>5</sup>**

This Policy is written with regard to the Standards.

## **4 DECLARING CONFLICTS OF INTEREST**

4.1 Declarations of interest should be made as soon as reasonably practicable and by law within 28 days after the interest arises (this could include an interest an individual is pursuing). Further opportunities to make declarations include:

### **On appointment**

All applicants for any appointment to the ICB or its Board or any committees will be asked to declare any relevant interests at the outset of the application process. When an appointment is made, a formal declaration of interests should be made using the ICB's On-line Declaration of Interests System.

The ICB will assess the materiality of any interests declared, in particular whether the individual (or any person with whom they have a close association) could benefit from any decision the ICB might make, as part of the appointment process. This is particularly relevant for the ICB Board, committees and sub-committees but will also be considered for all appointments and especially those operating as a senior level.

### **Annually**

All interests must be reviewed at least annually. The Corporate Governance Team will coordinate the declaration process. This will be complemented by a quarterly check that the register of interests is accurate and up to date, and has taken account of new starters / leavers. Where there are no interests, a 'nil return' should be recorded.

### **At meetings**

At meetings all attendees will be asked to declare any interest they have in any agenda items at the start of the meeting or as soon as it becomes apparent. This applies even if the matter is recorded in the Register of Interests. Declarations of interest will be an agenda item at each meeting and any interests declared will be recorded in the minutes. Minutes should clearly specify the nature and extent of the interest, an outline of the discussion, the action taken to manage the conflict and the decisions made with regard to the course of action taken.

Where an interest has been previously declared, in relation to the scheduled or likely business of any meeting where the business to which that interest relates is discussed, the individual concerned will bring this to the attention of

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<sup>5</sup> <http://www.professionalstandards.org.uk/docs/default-source/publications/standards/standards-for-members-of-nhs-boards-and-ccgs-2013.pdf?sfvrsn=2>

the chair of the meeting, together with details of arrangements which have been confirmed for the management of the interest.

### **On changing role, responsibility or circumstances**

Whenever an individual's role, responsibility or circumstances change in a way that affects the individual's interests (for example, where an individual takes on a new role outside the ICB, enters into a new business or relationship, starts a new project/piece of work or may be affected by a procurement decision e.g. if their role may transfer to a proposed new provider) a further declaration should be made. It is an individual's responsibility to make a further declaration as soon as possible, and in any event, within 28 days, rather than waiting to be asked. This could involve a conflict of interest ceasing to exist or a new one materialising.

- 4.2 The Conflicts of Interest Guardian will ensure they are available to provide any advice to any individual who believes they have, or may have, a conflict of interest.
- 4.3 Although the interest may be declared, this does not remove the individual's responsibilities of removing themselves from a position or situation which may result in a potential breach of this policy.
- 4.4 If an individual fails to declare an interest that, had it been known, may have affected the decision-making process, disciplinary action or criminal sanctions may be taken.
- 4.5 Access to the ICB's On-line Declaration of Interests System, and details of who to contact for assistance, are available via the ICB's intranet.

## **5 REGISTER OF INTERESTS**

- 5.1 The ICB must ensure that, when individuals declare interests, they understand that this includes all the interests of the relevant individuals within their organisation who have a relationship with the ICB and who would potentially be in a position to benefit from the ICB's decisions.
- 5.2 The ICB will maintain a Register of Interests for:
  - (a) members of and advisors to the board,
  - (b) members of and advisors to its committees or sub-committees, and
  - (c) its employees.

- 5.3 The Corporate Governance Team will ensure the transfer of all interests declared to the relevant register as soon as possible, and within 28 days.
- 5.4 The Register of Interests is held by the Director of Corporate Affairs on behalf of the Chief Executive and will be reviewed on a regular basis to ensure it is accurate and up to date and reported to the Audit Committee.
- 5.5 The ICB will publish the Register of Interests for 'decision-making staff' on the ICB's website. A copy will also be available at the ICB's headquarters.
- 5.6 The ICB defines 'decision-making staff' as:
- Executive directors who have decision making roles which involve the spending of taxpayers' money.
  - Members of advisory groups which contribute to direct or delegated decision making on the commissioning or provision of taxpayer funded services.
  - Those at Agenda for Change Band 8d and above.
  - Administrative and clinical staff who have the power to enter into contracts on behalf of their organisation.
  - Administrative and clinical staff involved in decision making concerning the commissioning of services, purchasing of good, medicines, medical devices or equipment, and formulary decisions.
- 5.7 In respect of the interpretation of the last two bullet points at 5.6 above, it is expected that this will not include staff graded at lower than Band 8d except by agreed exception.
- 5.8 All interests will remain on the public register for a minimum of six months after the interest has ceased to be relevant. The ICB will retain a private record of historic interests for a minimum of six years after the date on which it ceased to be relevant. The register of interests will state that historic interests are retained by the ICB, with advice to contact the Corporate Governance Team to submit a request for this information.

## **6 APPOINTMENTS**

### **6.1 Appointing Board / Committee Members / Senior Employees**

- 6.1.1 On appointing Board, committee or sub-committee members and senior staff, the ICB will consider whether conflicts of interest should exclude individuals from being appointed to the relevant role.
- 6.1.2 This will be considered on a case-by-case basis and will include an

assessment of the materiality of the interest, in particular, whether the individual (or any person with whom they have a close association) could benefit (whether financially or otherwise) from any decision the ICB might make. The ICB will determine the extent of the interest and the nature of the appointee's proposed role within the ICB. If the interest is related to an area of business significant enough that the individual would be unable to operate effectively and make a full and proper contribution in the proposed role, then that individual should not be appointed to the role.

## **6.2 Outside Employment**

6.2.1 Outside employment means employment and other engagements, outside of formal employment arrangements.

6.2.2 Staff must inform and obtain prior permission from the ICB by notifying their line manager if they wish to engage in outside employment in addition to their work with the ICB. The purpose of this is to ensure that the ICB is aware of any potential conflict of interest with their ICB employment, in line with the relevant Working Time Regulations.

6.2.3 Staff should declare any outside employment using the form in the Standards of Business Conduct Policy.

6.2.4 Examples of work which might conflict with the business of the ICB include:

- Employment with another NHS body;
- Employment with another organisation which might be in a position to supply goods/services to the ICB including paid advisory positions and paid honorariums which relate to bodies likely to do business with the ICB;
- Directorships
- Self-employment, including private practice, charitable trustee roles, political roles and consultancy work, in a capacity which might conflict with the work of the ICB or which might be in a position to supply goods/services to the ICB.

6.2.5 In particular, it is unacceptable for employees, advisors or consultants to the ICB on matters of procurement to be in receipt of payments from the pharmaceutical or medical devices sector.

6.2.6 The ICB reserves the right to refuse permission where it believes a conflict will arise which cannot be effectively managed.

### **6.3 Holding public office**

6.3.1 Individuals who intend to seek to hold a public office, through either election or appointment, are required to inform their line manager of their intention and to indicate what the role will involve, including identifying any actual or potential conflicts of interest with their role with the ICB. Notification that a person wishes to seek public office should be sought in advance of any application being made to the public body with whom the officer holder, if successful, will be associated.

6.3.2 Under no circumstances should the individual make use of privileged information acquired in the pursuit of their role with the ICB in their application, manifesto, any public statement, or during the course of their period of office. Additionally, a holder of a public office should ensure that their role in public office does not require them to approve the allocation of resources to or from the ICB, to negotiate with or engage with the ICB in any other way, to lobby the ICB, to scrutinise the ICB or hold it to account in any other way.

## **7 DECLARATION OF GIFTS AND HOSPITALITY**

### **7.1 Gifts**

7.1.1 A 'gift' is defined as any item of cash or goods, or any service, which is provided for personal benefit, free of charge or at less than its commercial value.

7.1.2 All offers of gifts must be declared in accordance with the Standards of Business Conduct Policy. Full guidance is contained in that policy.

### **7.2 Hospitality**

7.2.1 A blanket ban on accepting or providing hospitality is neither practical nor desirable from a business point of view. However, individuals should be able to demonstrate that the acceptance or provision of hospitality would benefit the NHS or ICB.

7.2.2 Full guidance is contained in the Standards of Business Conduct Policy – please refer to this.

### **7.3 Commercial Sponsorship**

- 7.3.1 All offers of commercial sponsorship must be declared in accordance with the Standards of Business Conduct Policy. Full guidance on declaring offers of commercial sponsorship, including attendance at sponsored training events, is contained in that policy.

## **8 REGISTER OF GIFTS AND HOSPITALITY**

- 8.1 The ICB will maintain a Register of Gifts and Hospitality and the ICB Governance Lead will ensure the transfer of all declarations to the register as soon as possible, and within 28 days.
- 8.2 The Register of Gifts and Hospitality is held by the ICB Governance Lead on behalf of the Chief Executive and will be reviewed on a regular basis to ensure it is accurate and up to date, reported to the Audit Committee and made publicly available on the ICB's website.

## **9 GOVERNANCE ARRANGEMENTS AND DECISION-MAKING**

### **9.1 Chairing arrangements and decision-making processes**

- 9.1.1 Declarations of interest will be a standing item on all meeting agendas.
- 9.1.2 The chair of a meeting has ultimate responsibility for deciding whether there is a conflict of interest and for taking the appropriate course of action in order to manage the conflict of interest.
- 9.1.3 In the event that the chair of a meeting has a conflict of interest, the vice chair is responsible for deciding the appropriate course of action in order to manage the conflict of interest. If the vice chair is also conflicted, then the remaining non-conflicted voting members of the meeting should agree between themselves how to manage the conflict.
- 9.1.4 In making such decisions, the chair (or vice chair or remaining conflicted members as above) may wish to consult with the Conflicts of Interest Guardian, Chief Executive, Place Accountable Officer, Director of Corporate Affairs, or ICB Governance Leads.
- 9.1.5 It is good practice for the chair, with support of the committee's Governance Lead and, if required, the Conflicts of Interest Guardian to proactively consider ahead of meetings what conflicts are likely to arise and how they should be managed, including taking steps to ensure that supporting papers for particular agenda items of private sessions/meetings are not sent to conflicted

individuals in advance of the meeting.

- 9.1.6 NHS England have produced a template declaration of interest checklist with the intention of providing support in conflicts of interest management to the Chair prior to, during and following the meeting
- 9.1.7 The chair should ask at the beginning of each meeting if anyone has any conflicts of interest to declare in relation to the business to be transacted at the meeting. Each member of the meeting should declare any interests which are relevant to the business of the meeting whether or not those interests have previously been declared. Interests declared at meetings are cross referenced with the register of interests to ensure that it is up-to-date.
- 9.1.8 It is the responsibility of each individual member of the meeting to declare any relevant interests. However, should the chair or any other member of the meeting be aware of facts or circumstances which may give rise to a conflict of interest but which have not been declared then they should bring this to the attention of the chair. The chair will decide whether there is a conflict of interest and the appropriate course of action to take in order to manage the conflict of interest.
- 9.1.9 If, after a meeting, the chair or any other member becomes aware that a conflict of interest has not been declared, they should raise this with the committee's ICB Governance Lead in the first instance. The ICB Governance Lead will consider the appropriate course of action, including escalation to the Conflicts of Interest Guardian, Chief Executive, Place Accountable Officer or Director of Corporate Affairs.
- 9.1.10 When a member of the meeting (including the chair or vice chair) has a conflict of interest in relation to one or more items of business to be transacted at the meeting, the chair (or vice chair or remaining non-conflicted members where relevant as described above) must decide how to manage the conflict. The appropriate course of action will depend on the particular circumstances, but could include one or more of the following:
- Where the chair has a conflict of interest, deciding that the vice chair (or another non-conflicted member of the meeting if the vice chair is also conflicted) should chair all or part of the meeting;
  - Requiring the individual who has a conflict of interest not to attend the meeting;
  - Ensuring that the individual concerned does not receive the supporting papers or minutes of the meeting which relate to the matter(s) which give rise to the conflict;
  - Requiring the individual to leave the discussion when the relevant matter(s) are being discussed and when any decisions are being taken in relation to

those matter(s). In private meetings, this could include requiring the individual to leave the room and in public meetings to either leave the room or join the audience in the public gallery;

- Allowing the individual to participate in some or all of the discussion when the relevant matter(s) are being discussed but requiring them to leave the meeting when any decisions are being taken in relation to those matter(s). This may be appropriate where, for example, the conflicted individual has important relevant knowledge and experience of the matter(s) under discussion, which it would be of benefit for the meeting to hear, but this will depend on the nature and extent of the interest which has been declared.
- Noting the interest and ensuring that all attendees are aware of the nature and extent of the interest, but allowing the individual to remain and participate in both the discussion and in any decisions. This is only likely to be the appropriate course of action where it is decided that the interest which has been declared is either immaterial or not relevant to the matter(s) under discussion.

9.1.11 Where the conflict of interest relates to outside employment and an individual continues to participate in meetings pursuant to paragraph 9.1.10, he/she should ensure that the capacity in which they continue to participate in the discussions is made clear and correctly recorded in the meeting minutes. Where it is appropriate for them to participate in decisions they must only do so if they are acting in their ICB role.

9.1.12 If an individual leaving the meeting impacts upon quoracy, the chair reserves the right to adjourn and reconvene the meeting when appropriate membership can be ensured.

9.1.13 Where more than 50% of the members of a meeting are required to withdraw from a meeting or part of it, owing to the arrangements agreed for the management of conflicts of interest or potential conflicts of interests, the chair (or vice) will determine whether or not the discussion can proceed.

9.1.14 In making the decision the Chair will consider whether the meeting is quorate, in accordance with the number and balance of membership set out in the ICB's Standing Orders and/or the terms of reference of the relevant committee, group etc. Where the meeting is not quorate, owing to the absence of certain members, the discussion will be deferred until such time as a quorum can be convened. Where a quorum cannot be convened from the membership of the meeting, owing to the arrangements for managing conflicts of interest or potential conflicts of interest, the Chair of the meeting shall consult with the Chief Executive on the action to be taken. This may include:

- Requiring another of the ICB's committees or sub-committees, which can be quorate, to progress the item of business.



- Inviting on a temporary basis one or more of the following to make up the quorum (where these are permitted members of the Board/committee/sub-committee in question) so that the ICB can progress the item of business:
  - An individual appointed by a partner member to act on its behalf in the dealings between it and the ICB;
  - A member of a relevant Health & Wellbeing Board;
  - A member of a Board of another ICB.

9.1.15 These arrangements must be recorded in the minutes.

## 9.2 Minute Taking

9.2.1 The ICB must ensure complete transparency in its decision-making processes through robust record-keeping. If any conflicts of interest are declared or otherwise arise in a meeting, the chair must ensure the following information is recorded in the minutes:

- Who has the interest;
- The nature of the interest and why it gives rise to a conflict, including the magnitude of any interest;
- The items on the agenda to which the interest relates;
- How the conflict was agreed to be managed;
- Evidence that the conflict was managed as intended (for example, recording the points during the meeting when particular individuals left or returned to the meeting).

## 10 MANAGING CONFLICTS OF INTEREST THROUGHOUT THE COMMISSIONING CYCLE

**The NHS WY ICB will operate within the legislative framework pertaining at the time, recognising that new legislation is planned for the autumn of 2023 which, according to the NHS Long Term Plan, will ‘remove the counter-productive effect that general competition rules and powers can have on the integration of NHS care.’**

10.1 The ICB recognises the importance of making decisions about the services it procures/commissions in a manner which does not call into question the reasons behind the procurement decision which has been made. The ICB will commission and procure services in a manner which is open, transparent and non-discriminatory.

10.2 Conflicts of interest need to be managed appropriately throughout the whole commissioning cycle. At the outset of a commissioning process, the relevant interests of all individuals involved should be identified and clear

arrangements put in place to manage any conflicts of interest. This includes consideration as to which stages of the process a conflicted individual should not participate in, and, in some circumstances, whether that individual should be involved in the process at all.

- 10.3 The ICB will identify and appropriately manage any conflict of interest that may arise where staff are involved in both the management of existing contracts and procurement of related / replacement contracts.
- 10.4 The ICB must identify as soon as possible where staff might transfer to a provider (or their role may materially change) following the award of a contract. This should be treated as a relevant interest, and the ICB will ensure it manages the potential conflict.

## **10.5 Designing service requirements**

- 10.5.1 The way in which services are designed can either increase or decrease the extent of perceived or actual conflicts of interest. Particular attention should be given to public and patient involvement in service development.
- 10.5.2 Public involvement supports transparent and credible commissioning decisions. It should happen at every stage of the commissioning cycle from needs assessment, planning and prioritisation to service design, procurement and monitoring. The ICB has legal duties under the Act to properly involve patients and the public in their respective commissioning processes and decisions.

## **10.6 Provider engagement**

- 10.6.1 It is good practice to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient needs. This may include providers from the acute, primary, community, and mental health sectors, and may include NHS, third sector and private sector providers. Such engagement, done transparently and fairly, is entirely legal. However, conflicts of interest, as well as challenges to the fairness of the procurement process, can arise if a commissioner engages selectively with only certain providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid. The ICB must be particularly mindful of these issues when engaging with existing/potential providers in relation to the development of new care models.

- 10.6.2 Provider engagement should follow the three main principles of procurement

law, namely equal treatment, non-discrimination and transparency. This includes ensuring that the same information is given to all at the same time and procedures are transparent. This mitigates the risk of potential legal challenge.

10.6.3 As the service design develops, it is good practice to engage with a range of providers on an on-going basis to seek comments on the proposed design e.g., via the commissioners website and/or via workshops with interested parties (ensuring a record is kept of all interaction). NHS England has issued guidance on the use of provider boards in service design.

10.6.4 Engagement should help to shape the requirement to meet patient need, but it is important not to gear the requirement in favour of any particular provider(s). If appropriate, the advice of an independent clinical adviser on the design of the service should be secured.

10.6.5 Individuals should ensure that decisions are documented to ensure that the ICB meets its obligations under, but not limited to, the NHS (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 and the Public Contracts Regulations 2015, and any subsequent regulations made during the currency of the policy.

## **10.7 Specifications**

10.7.1 The ICB should seek, as far as possible, to specify the outcomes that it wishes to see delivered through a new service, rather than the process by which these outcomes are to be achieved. As well as supporting innovation, this helps prevent bias towards particular providers in the specification of services. However, they also need to ensure careful consideration is given to the appropriate degree of financial risk transfer in any new contractual model.

10.7.2 Specifications should be clear and transparent, reflecting the depth of engagement, and set out the basis on which any contract will be awarded.

## **10.8 Procurement and Awarding Grants**

10.8.1 The ICB will need to be able to recognise and manage any conflicts or potential conflicts of interest that may arise in relation to the procurement of any services or the administration of grants.

10.8.2 “Procurement” relates to any purchase of goods, services or works and the term “procurement decision” should be understood in a wide sense to ensure

transparency of decision making on spending public funds. The decision to use a single tender action, for instance, is a procurement decision and if it results in the ICB entering into a new contract, extending an existing contract, or materially altering the terms of an existing contract, then it is a decision that should be recorded.

10.8.3 NHS England and ICBs must comply with two different regimes of procurement law and regulation when commissioning healthcare services: the NHS procurement regime, and the public procurement regime:

- The NHS procurement regime – the NHS (Procurement, Patient Choice and Competition (No.2)) Regulations 2013: made under S75 of the 2012 Act; apply only to NHS England and CCGs; enforced by NHS Improvement;
- The public procurement regime – Public Contracts Regulations 2015 (PCR 2015) apply to all public contracts over the threshold value (€750,000, currently £589,148); enforced through the Courts. The general principles arising under the regulations of equal treatment, transparency, mutual recognition, non-discrimination and proportionality may apply even to public contracts for two bodies, including NHS England and Improvement's functions in relation to the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 (PPCCR) healthcare services falling below the threshold value if there is likely to be interest from providers.

Whilst the two regimes overlap in terms of some of their requirements, they are not the same – so compliance with one regime does not automatically mean compliance with the other. It is acknowledged that further regulations are expected to come into force during the currency of this policy.

10.8.4 The National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013<sup>23</sup> state: *CCGs must not award a contract for the provision of NHS health care services where conflicts, or potential conflicts, between the interests involved in commissioning such services and the interests involved in providing them affect, or appear to affect, the integrity of the award of that contract; and CCGs must keep a record of how it managed any such conflict in relation to NHS commissioning contracts it has entered into.*

10.8.5 Paragraph 24 of PCR 2015 states: *“Contracting authorities shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators”*. Conflicts of interest are described as *“any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure”*.

10.8.6 The Procurement, Patient Choice and Competition Regulations 2013 (PPCCR) place requirements on commissioners to ensure that they adhere to good practice in relation to procurement, run a fair, transparent process that does not discriminate against any provider, do not engage in anti-competitive behaviour that is against the interest of patients, and protect the right of patients to make choices about their healthcare. Furthermore the PPCCR places requirements on commissioners to secure high quality, efficient NHS healthcare services that meet the needs of the people who use those services. The PCR 2015 are focussed on ensuring a fair and open selection process for providers.

10.8.7 Complete transparency around procurement will provide:

- Evidence that the ICB is seeking and encouraging scrutiny of its decision-making process;
- A record of the public involvement throughout the commissioning of the service;
- A record of how the proposed service meets local needs and priorities for partners such as the Health and Wellbeing Boards, local Healthwatch and local communities;
- Evidence to the Audit Committee and internal and external auditors that a robust process has been followed in deciding to commission the service, in selecting the appropriate procurement route, and in addressing potential conflicts.

## **10.9 Register of Procurement Decisions**

10.9.1 The ICB maintains a register of procurement decisions taken, either for the procurement of a new service or any extension or material variation of a current contract.

10.9.2 The register is updated whenever a procurement decision is taken and is publicly available on the ICB's website and upon request at the ICB's headquarters.

## **10.10 Declarations of Interests for Bidders/Contractors**

10.10.1 Anyone seeking information in relation to procurement, or participating in a procurement, or otherwise engaging with the ICB in relation to the potential provision of services or facilities to the ICB, will be required to make a declaration of any relevant actual or potential conflict of interest. Bidders will be asked to complete a formal declaration at the invitation to tender stage of the procurement process. This allows the ICB to ensure that it complies with the principles of equal treatment and transparency.

10.10.2 It will not usually be appropriate to declare such a conflict on the register of procurement decisions, as it may compromise the anonymity of bidders during the procurement process.

10.10.3 However, the ICB will retain an internal audit trail of how the conflict or perceived conflict was dealt with to allow them to provide information at a later date if required. These records must be retained for a period of at least three years from the date of award of the contract.

## **10.11 Contract Monitoring**

10.11.1 The management of conflicts of interest applies to all aspects of the commissioning cycle, including contract management.

10.11.2 Any contract monitoring meeting needs to consider conflicts of interest as part of the process i.e., the chair of a contract management meeting should invite declarations of interests; record any declared interests in the minutes of the meeting; and manage any conflicts appropriately and in line with this guidance. This equally applies where a contract is held jointly with another organisation such as the Local Authority or with other ICBs under lead commissioner arrangements.

10.11.3 The individuals involved in the monitoring of a contract should not have any direct or indirect financial, professional or personal interest in the incumbent provider or in any other provider that could prevent them, or be perceived to prevent them, from carrying out their role in an impartial, fair and transparent manner.

10.11.4 The ICB should be mindful of any potential conflicts of interest when they disseminate any contract or performance information/reports on providers, and manage the risks appropriately.

## **11 PUBLICATION OF REGISTERS**

11.1 The ICB will publish the registers of interest, the register of gifts and hospitality, and the register of procurement decisions, on the ICB's website.

11.2 In exceptional circumstances, where the public disclosure of information could give rise to a real risk of harm or is prohibited by law, an individual's name and/or other information may be redacted from the publicly available register(s). Where an individual believes that substantial damage or distress

may be caused, to him/her or somebody else by the publication of information about them, they are entitled to request that the information is not published. This can be done via the ICB's On-line Declaration of Interests System, and will be reviewed by the Corporate Governance Team, who will inform the Conflicts of Interest Guardian. Decisions not to publish information must be made by the Conflicts of Interest Guardian for the ICB, who should seek appropriate legal advice where required, and the ICB will retain a confidential un-redacted version of the register(s).

- 11.3 All persons who are required to make a declaration of interest or a declaration of gifts or hospitality will be made aware that the registers will be published in advance of publication. The ICB's fair processing notice will detail this requirement.
- 11.4 The register of interests (including the register of gifts and hospitality) will be published as part of the ICB's Annual Report and Annual Governance Statement.
- 11.5 An interest will remain on the public register for a minimum of 6 months after the interest has expired. In addition, the ICB will retain a private record of historic interests for a minimum of 6 months after the date on which it expired.

## **12 RAISING CONCERNS AND BREACHES**

### **12.1 Raising Concerns**

- 12.1.1 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.
- 12.1.2 There will be situations when interests will not be identified, declared or managed appropriately and effectively. This may happen innocently, accidentally, or because of the deliberate actions of staff or organisations. For the purposes of this policy these situations are referred to as 'breaches'.
- 12.1.3 It is the duty of every ICB employee, board member, committee or sub-committee 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 in accordance with the terms of this policy and the ICB's Whistleblowing Policy or with the whistleblowing policy of the relevant employer organisation (where the breach is being reported by an employee or worker of another organisation).

12.1.4 These individuals should not ignore their suspicions or investigate these themselves, but rather speak to an ICB Governance Lead, Chief Executive, Place Accountable Officer, Director of Corporate Affairs or Conflicts of Interest Guardian to raise their concerns. Concerns can also be raised in writing. The ICB welcomes the raising of concerns and is committed to dealing with them responsibly and professionally. If anyone raises a concern, the matter will always be given serious consideration.

12.1.5 The ICB will treat all disclosures in a confidential and sensitive manner in line with the ICB's policies and applicable laws. The identity of the individual raising the concern may be kept confidential so long as it does not hinder or frustrate any investigation.

## **12.2 Managing Breaches**

12.2.1 All concerns received will be documented by the Director of Corporate Affairs and fully investigated to determine if a breach of the Conflicts of Interest Policy has occurred. In most instances, the Conflicts of Interest Guardian will investigate the concern, with support from an ICB Governance Lead.

12.2.2 The Director of Corporate Affairs will arrange for the notification to NHS England, where a serious breach is deemed to have occurred. When determining the materiality of a breach, the following points will be considered:

- The nature, seriousness and consequences of the breach.
- Has anyone gained an unfair advantage as a result of the breach?
- Has any final decision been made that was prejudiced by the breach? When was that decision made? This has a potential impact in relation to time limits for bringing judicial review claims.
- Is there any appearance of bias in the decision-making as a result of the breach, in particular were any financial interests not declared / not dealt with appropriately?
- Has any legally binding contract been entered into by the ICB as a result of the decision? If so, the following points will be considered:
  - The length and value of the contract;
  - The consequences of terminating the contract, including considerations of continuity and safety of services to patients and the implications of entering into any interim service provision arrangements.

12.2.3 The individual making a disclosure will receive an appropriate explanation of any decisions taken as a result of any investigation.



12.2.4 A review of lessons learned will be conducted by the Director of Corporate Affairs following any incident of non-compliance with this policy and the report reviewed by the ICB's Audit Committee. Anonymised details of breaches will be published on the ICB's website for the purpose of learning and development.

12.2.5 The Director of Corporate Affairs will arrange for anonymised details of serious breaches to be published on the ICB's website for the purpose of learning and development. The Associate Director for Communications and Engagement will be advised.

12.2.6 Providers, patients and other third parties can make a complaint to NHS England in relation to a commissioner's 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.

### **12.3 Fraud and Bribery**

12.3.1 Suspected fraud, bribery and corruption can be reported in line with the ICB's Anti-Fraud, Bribery and Corruption Policy:

- To the ICB's Local Counter Fraud Specialists:
  - Rosie Dickinson who can be contacted by calling 07825 228 175 or emailing [rosie.dickinson1@nhs.net](mailto:rosie.dickinson1@nhs.net)
  - Shaun Fleming who can be contacted by calling 07484 243 063 or emailing [shaunfleming@nhs.net](mailto:shaunfleming@nhs.net)
  - Steve Moss who can be contacted by calling 07717 356 707 or emailing [steven.moss@nhs.net](mailto:steven.moss@nhs.net)
- Using the NHS Fraud, Bribery and Corruption Reporting Line on 0800 028 40 60 or by filling in an online form at [www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk) as an alternative to internal reporting procedures and if staff wish to remain anonymous. All reports of fraud, bribery and corruption will be taken seriously and thoroughly investigated by professionally trained staff.

## **13 IMPACT OF NON-COMPLIANCE**

13.1 Failure to comply with the ICB's policies on conflicts of interest management can have serious implications for the ICB and any individuals concerned.

### **13.2 Civil Implications**

13.2.1 If conflicts of interest are not effectively managed, the ICB could face civil challenges to the decisions it makes. For instance, if breaches occur during a service re-design or procurement exercise, the ICB risks a legal challenge

from providers that could potentially overturn the award of a contract, lead to damages claims against the ICB, and necessitate a repeat of the procurement process. This could delay the development of better services and care for patients, waste public money and damage the ICB's reputation.

13.2.2 In extreme cases, staff and other individuals could face personal civil liability, for example a claim for misfeasance in public office.

### **13.3 Criminal Implications**

13.3.1 Failure to manage conflicts of interest could lead to criminal proceedings including for offences such as fraud, bribery and corruption. This could have implications for the ICB and linked organisations, and the individuals who are engaged by them.

13.3.2 The Fraud Act 2006 states a person is guilty of fraud if he is in breach of any of the sections listed below;

Section 2 - Fraud by false representation;

Section 3 - Fraud by failing to disclose information; and,

Section 4 - Fraud by abuse of position.

13.3.3 Fraud can generally be defined as an act by a person (or persons) with a dishonest intention to make a gain for themselves (or someone else), or to inflict a loss (or a risk of a loss) on another. Fraud is a criminal offence which carries a maximum custodial sentence of 10 Years imprisonment. The Anti-Fraud Bribery and Corruption policy sets out details of potential sanctions and redress available to the ICB where Fraud is uncovered. Please see the policy for further information.

13.3.4 Bribery is generally defined as giving or offering someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so. The Bribery Act 2010, makes it a criminal offence to give, promise or offer a bribe, and to request, agree to receive or accept a bribe, either at home or abroad. It also includes bribing a foreign official and the corporate offence of failure to prevent bribery. Commercial organisations, including NHS bodies, will be exposed to criminal liability, punishable by an unlimited fine, for failing to prevent bribery. The corporate offence is not a stand-alone offence, but always follows from a bribery and/or corruption offence committed by an individual associated with the company or organisation in question. The offences of bribing another person, accepting a bribe and bribery of foreign public officials can also be committed by a body corporate. Offences under the Bribery Act 2010 carry a maximum custodial sentence of 10 years imprisonment. The Anti-Fraud Bribery and Corruption policy sets out details of

potential sanctions and redress available to the ICB where Bribery or Corruption is identified. Please see the policy for further information. In relation to a body corporate the penalty for these offences is an unlimited monetary fine.

### **13.4 Disciplinary Implications**

13.4.1 Individuals who fail to disclose any relevant interests or who otherwise breach the ICB's rules and policies relating to the management of conflicts of interest are subject to investigation and, where appropriate, to disciplinary action.

13.4.2 Individuals should be aware that the outcomes of such action may, if appropriate, result in the termination of their employment or position with the ICB.

### **13.5 Professional Regulatory Implications**

13.5.1 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.

13.5.2 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. The consequences for inappropriate action could include fitness to practise proceedings being brought against individuals, and they could, if appropriate, be struck off by their professional regulator as a result.

## **14 TRAINING**

14.1 The training requirement in respect of conflicts of interest is currently being developed by NHS England.

## **15 PUBLIC SECTOR EQUALITY DUTY**

An Equality Impact Assessment has been carried out for this Policy – no impact was identified.

## **16 IMPLEMENTATION AND DISSEMINATION**

The Policy will be disseminated to all employees, Board and Committee members, via the ICB intranet and ICB newsletters.

## **17 MONITORING COMPLIANCE**

17.1 The ICB's Audit Committee will monitor compliance with the Policy.

### **17.2 Internal Audit**

17.2.1 There will be a requirement to undertake an audit of conflicts of interest management as part of the ICB's internal audit on an annual basis.

17.2.2 The results of any audit will be reflected in the ICB's annual governance statement.