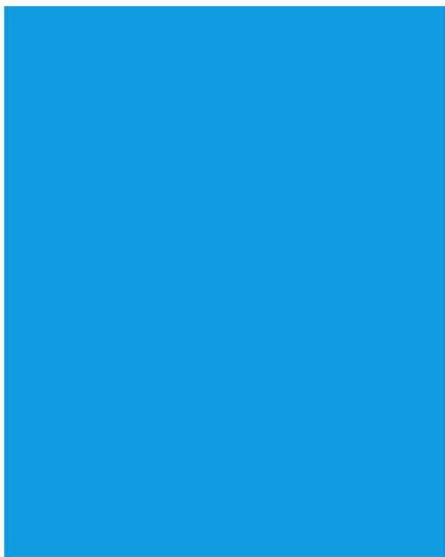


Code of Conduct:
Managing conflicts of interest
where GP practices are
potential providers of CCG-
commissioned services



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Managing conflicts of interest

Introduction

Managing potential conflicts of interest appropriately is needed to protect the integrity of the NHS commissioning system and protect clinical commissioning groups (CCGs) and GP practices from any perceptions of wrong-doing.

The attached 'Code of Conduct' sets out additional safeguards that CCGs are advised to use when commissioning services for which GP practices could be potential providers. This will be incorporated alongside the general safeguards described in *Towards establishment: Creating responsive and accountable CCGs*¹, into the guidance that the Board publishes for CCGs in relation to managing conflicts of interest.

As best practice continues to evolve, the NHS Commissioning Board will reflect it in the guidance it gives to CCGs.

Background

The NHS Commissioning Board (NHS CB) will be responsible for commissioning primary care services under the GP contract.

At the same time, it is an essential feature of the reforms that CCGs should be able to commission a range of community-based services, including primary care services, to improve quality and outcomes for patients. Where the provider for these services might be a GP practice², CCGs will need to be able to demonstrate that those services:

- clearly meet local health needs and have been planned appropriately;
- go beyond the scope of the GP contract; and
- the appropriate procurement approach is used.

Such services will be commissioned using the NHS standard contract rather than the GP contract (as current 'local enhanced services' are).

Subject to transitional arrangements (to be confirmed), the resources currently associated with local enhanced services (with the exception of public health services) will form part of CCGs' baseline allocations, so that they can determine how best to use these resources.

¹ <http://www.commissioningboard.nhs.uk/files/2012/09/towards-establishment.pdf>

² This could also be a provider consortium of practices, or a provider organisation in which GPs have a financial interest. The term 'GP practice' is generally used to denote any of these arrangements.

CCGs could also make payments to GP practices for:

- promoting improvements in the quality of primary medical care (e.g. reviewing referrals and prescribing)³; or
- carrying out designated duties as healthcare professionals in relation to areas such as safeguarding.

Procurement requirements

The Secretary of State for Health will make **regulations under section 75 of the Act** placing requirements on commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behaviour, and promote the right of patients to make choices about their healthcare. These regulations are likely to set out high-level requirements in relation to managing conflicts.

The Department is consulting (at the time of publication) on these regulations and engaging with prospective CCGs and a range of other stakeholders in developing these regulations, which will build on existing rules and guidance and come into effect from April 2013. The consultation document is available at the following link:

<https://www.wp.dh.gov.uk/publications/files/2012/08/PCCR-consultation-Final.pdf>

The NHS CB will publish **procurement guidance for CCGs** to support them in meeting the requirements of the section 75 regulations.

CCGs will need to decide, subject to the proposed Department of Health (DH) regulations on procurement, choice and competition and subject to current procurement rules set out in the Public Contracts Regulations 2006, where it is appropriate to commission community-based services through competitive tender or an Any Qualified Provider (AQP) approach and where through single tender. In general, commissioning through competitive tender or AQP will introduce greater transparency and help reduce the scope for conflicts.

There may, however, be circumstances where CCGs could reasonably commission services from GP practices on a single tender basis, i.e. where they are the only capable providers.

Legislative requirements

The Health and Social Care Act:

³ The NHS Commissioning Board will give CCGs delegated powers to commission local enhanced services for these activities.

- places a duty on the NHS Commissioning Board to publish guidance for CCGs on managing conflicts and a duty on CCGs to have regard to such guidance; and
- requires that CCGs set out in their constitution their proposed arrangements for managing conflicts of interest.

Towards establishment: Creating responsive and accountable CCGs and its supporting appendix on managing conflicts of interest sets out general safeguards that CCGs should have in place to manage conflicts of interest, including:

- arrangements for declaring interests;
- maintaining a register of interests;
- excluding individuals from decision-making where a conflict arises; and
- engagement with a range of potential providers on service design.

The attached 'Code of Conduct' provides more specific, additional safeguards that CCGs are advised to have in place when commissioning services that could potentially be provided by GP practices.

Principles and main content

The proposed additional safeguards are designed to:

- maintain confidence and trust between patients and GPs;
- enable CCGs and member practices to demonstrate that they are acting fairly and transparently and that members of CCGs will always put their duty to patients before any personal financial interest;
- ensure that CCGs operate within the legal framework but are not bound by over-prescriptive rules that risk stifling innovation or slowing down the services they wish to commission to improve quality and productivity; and
- build on existing guidance, in particular the Procurement Guide for commissioners of NHS-funded services and Principles & Rules of Cooperation & Competition.

The Code adds to the general guidance in *Towards establishment: Creating responsive and accountable CCGs* by providing advice on:

- the additional factors that CCGs should address when drawing up plans for services that might be provided by GP practices;
- the steps that CCGs should take to assure their Audit Committee, Health and Wellbeing Board(s) and, where necessary, their auditors that these services are appropriately commissioned from GP practices;

- recommended procedures for decision-making in cases where all the GPs (or other practice representatives) sitting on a decision-making group have a potential financial interest in the decision;
- arrangements for publishing details of payments to GP practices;
- the potential role of commissioning support services; and
- the supporting role of the NHS Commissioning Board.

Code of Conduct

1. Factors to address when commissioning services from GP practices

The attached template sets out the factors on which CCGs are advised to assure themselves and their Audit Committee – and be ready to assure local communities, Health and Wellbeing Boards and auditors – when commissioning services that may potentially be provided by GP practices. Setting out these factors in a consistent and transparent way as part of the planning process will enable CCGs to seek and encourage scrutiny and enable local communities and Health and Wellbeing Boards to raise questions if they have concerns about the approach being taken. CCGs will be expected to make completed templates, or their equivalent, publicly available.

The first set of questions are intended to apply equally to:

- services that a CCG is proposing to commission through competitive tender where GP practices are likely to bid;
- services that a CCG is proposing to commission through an 'Any Qualified Provider' (AQP) approach, where GP practices are likely to be among the qualified providers that offer to provide the service; and
- services that a CCG is proposing to commission through single tender from GP practices.

These questions – most of which are also relevant when commissioning services from non-GP providers – focus on demonstrating that the service meets local needs and priorities and has been developed in an inclusive fashion, involving other health professionals and patients and the public as appropriate. These are matters on which the local Health and Wellbeing Board will clearly wish to take a view.

The question on pricing applies to the AQP and single tender approaches.

There are specific questions on AQP about safeguards to ensure that patients are aware of the range of choices available to them. These requirements apply also to GP practices as providers of services, but it is essential that CCGs too satisfy themselves and others that these safeguards will be in place before commissioning the service.

The remaining questions are specific to single tenders from GP practices and focus on providing assurance that:

- there are no other capable providers, i.e. that this is the appropriate procurement route: Where relevant, commissioning support services

- (CSSs) should ensure that they provide robust advice to CCGs on this point; and
- the proposed service goes beyond the scope of the services provided by GP practices under their GP contract - CCGs are advised to discuss with their NHS CB local area team if they are in any doubt on this point.

2. Providing assurance

CCGs are advised to address the factors set out in the template when drawing up their plans to commission a service for which GP practices may be potential providers. This will provide appropriate assurance:

- to Health and Wellbeing Boards and to local communities that the proposed service meets local needs and priorities; and
- to the Audit Committee and, where necessary, 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.

CCGs are advised to set these factors out when fulfilling their duty in relation to public involvement.

The factors include involving Health and Wellbeing Board(s), in accordance with duties on CCGs.

3. Preserving integrity of decision making process when all or most GPs have an interest in a decision

Where certain members of a decision-making body (be it the governing body, its committees or sub-committees, or a committee or sub-committee of the CCG) have a material interest, they should either be excluded from relevant parts of meetings, or join in the discussion but not participate in the decision-making itself (i.e. not have a vote). In many cases, e.g. where a limited number of GPs have an interest, it should be straightforward for relevant individuals to be excluded from decision-making.

In other cases, all of the GPs or other practice representatives on a decision-making body could have a material interest in a decision, particularly where the CCG is proposing to commission services on a single tender basis from all GP practices in the area, or where it is likely that all or most practices would wish to be qualified providers for a service under AQP. In these cases, CCGs are advised to:

- refer the decision to the governing body and exclude all GPs or other practice representatives with an interest from the decision-making process, i.e. so that the decision is made only by the non-GP members of the governing body including the lay members and the registered nurse and secondary care doctor;
- consider co-opting individuals from a Health and Wellbeing Board or from another CCG onto the governing body – or inviting the Health and Wellbeing Board or another CCG to review the proposal – to provide additional scrutiny, although such individuals would only have authority to participate in decision-making if provided for in the CCG's constitution; and
- ensure that rules on quoracy (set out in the CCG's constitution) enable decisions to be made.

Depending on the nature of the conflict, GPs or other practice representatives could be permitted to join in the governing body's discussion about the proposed decision, but should not take part in any vote on the decision.

4. Transparency - publication of contracts

CCGs should ensure that details of all contracts, including the value of the contracts, are published on their website as soon as contracts are agreed. Where CCGs decide to commission services through AQP, they should publish on their website the type of services they are commissioning and the agreed price for each service.

CCGs should ensure that such details are also set out in their annual report. Where services are commissioned through an AQP approach, they should ensure that there is information publicly available about those providers who qualify to provide the service.

5. Role of commissioning support

Commissioning support services (CSSs) can play an important role in helping CCGs decide the most appropriate procurement route, undertake procurements and manage contracts in ways that manage conflicts of interest and preserve integrity of decision-making. CCGs are advised to ensure that any services they commission from CSSs, or that they secure through in-house provision, include this type of support. When using a CSS, CCGs should have systems to assure themselves that a CSS's business processes are robust and enable the CCG to meet its duties in relation to procurement.

Where a CCG is undertaking a procurement, it is likely to help demonstrate that the CCG is acting fairly and transparently if CSSs prepare and present information on bids, including an assessment of whether providers meet pre-qualifying criteria and an assessment of which provider provides best value for money.

A CCG cannot, however, lawfully sub-delegate commissioning decisions to an external provider of commissioning support. Although CSSs are likely to play a key role in helping to develop specifications, preparing tender documentation, inviting expressions of interest and inviting tenders, the CCG itself will need to:

- sign off the specification and evaluation criteria;
- sign off decisions on which providers to invite to tender; and
- make final decisions on the selection of the provider.

6. Role of the NHS Commissioning Board

The NHS Commissioning Board (NHS CB) will be able to support CCGs, where necessary, in meeting their duties in relation to managing conflicts of interest.

Where, in particular, a CCG is commissioning any service from a primary care provider that is related to the services that some or all GP practices provide under the GP contract, CCGs should discuss the matter with the NHS CB local area team to ensure that the proposed arrangements do not cut across or duplicate the Board's role in commissioning primary care services.

The Board will also need to be able to assure itself that CCGs are meeting their statutory duties in managing conflicts of interest, including having regard to the guidance published by the Board. Where there were any concerns that a CCG was not meeting these duties, the Board could ask for further information or explanations.

Template

[To be used when commissioning services from GP practices, including provider consortia, or organisations in which GPs have a financial interest]

NHS [insert name]

Clinical Commissioning Group

Service:	
Question	Comment/Evidence
Questions for all three procurement routes	
How does the proposal deliver good or improved outcomes and value for money – what are the estimated costs and the estimated benefits? How does it reflect the CCG's proposed commissioning priorities?	
How have you involved the public in the decision to commission this service?	
What range of health professionals have been involved in designing the proposed service?	
What range of potential providers have been involved in considering the proposals?	
How have you involved your Health and Wellbeing Board(s)? How does the proposal support the priorities in the relevant joint health and wellbeing strategy (or strategies)?	
What are the proposals for monitoring the quality of the service?	
What systems will there be to monitor and publish data on referral patterns?	

Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers which are publicly available?	
Why have you chosen this procurement route? ⁴	
What additional external involvement will there be in scrutinising the proposed decisions?	
How will the CCG make its final commissioning decision in ways that preserve the integrity of the decision-making process?	

Additional question for AQP or single tender (for services where national tariffs do not apply)	
How have you determined a fair price for the service?	

Additional questions for AQP only (where GP practices are likely to be qualified providers)	
How will you ensure that patients are aware of the full range of qualified providers from whom they can choose?	

Additional questions for single tenders from GP providers	
What steps have been taken to demonstrate that there are no other providers that could deliver this service?	
In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?	
What assurances will there be that a GP practice is providing high-quality services under the GP contract before it has the opportunity to provide any new services?	

⁴ Taking into account S75 regulations and NHS Commissioning Board guidance that will be published in due course, Monitor guidance, and existing procurement rules.

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