

Health & Wellbeing Board Conflicts of Interest Policy v1 Draft

Contents

1.0 Purpose and scope

2.0 Introduction

3.0 Statutory requirements

4.0 Standards of business conduct

5.0 Conflict of interest: definition

6.0 Principles for managing conflicts of interest

7.0 Maintaining a register of interests and register of decisions

8.0 Declaring and registering interests

9.0 Managing conflicts of interest: general

10.0 Managing conflicts of interest: contractors and people who provide services to the Board

11.0 Mitigating conflicts of interest

12.0 Transparency in designing and procuring services

13.0 Responsibilities

14.0 Breaches of the policy

15.0 Equality and diversity statement

16.0 Monitoring compliance and effectiveness of the policy

17.0 References

1. Purpose and scope

- 1.1. This policy sets out how NHS Shropshire Clinical Commissioning Group (SCCG) and Shropshire Council (SC) will manage conflicts of interest arising from the operation of the Health and Wellbeing Board (HWBB) and the Better Care Fund (BCF).
- 1.2. This policy, which incorporates the guidance published in December 2014, applies to members of the Health and Wellbeing Board and its sub-committees, SCCG and SC employees involved in commissioning, contracting, procurement processes and decision making in relation to the Better Care Fund.
- 1.3. The aim of this policy is to protect both the organisation and the individuals involved from any appearance of impropriety and demonstrate transparency to the public and other interested parties.
- 1.4. It is the responsibility, of all relevant individuals to familiarise themselves with this policy and comply with its provisions.
- 1.5. Relevant individuals should also refer to their respective codes of conduct.

2. Introduction

- 2.1. Managing conflicts of interest is essential for protecting the integrity of SCCG and SC
- 2.2. Conflicts of interest are inevitable in many aspects of public life. However, by recognising where and how they arise and dealing with them appropriately, the HWBB and its members, will be able to ensure proper governance, robust decision making, and appropriate decisions about the use of public money.
- 2.3. Where an individual, i.e. an employee, Board member, or a member of a committee or a sub-committee of the Board has an interest, or becomes aware of an interest which could lead to a conflict of interests in the event of the Board considering an action or decision in relation to that interest, that must be considered as a potential conflict, and is subject to the provisions of this policy.

3. Statutory requirements

- 3.1. As required by section 140 (conflicts of interest) of the National Health Service Act 2006, as inserted by section 25 of the 2012 Act “will make arrangements to manage conflicts and potential conflicts of interest to ensure that decisions made by the group will be taken and seen to be taken without any possibility of the influence of external or private interest.”
 - 3.1.1. Maintain an appropriate registers of interests, which will be published to our website and made available on request;
 - 3.1.2. Ensure individuals declare any conflict or potential conflict in relation to a decision to be made by the Board, and record them in the register as soon as they are declared, and within 28 days;
 - 3.1.3. Have arrangements, as set out in this policy, for managing conflicts of interest and potential conflicts of interest in such a way as to ensure that they do not, and do not appear to, affect the integrity of the Board’s decision-making processes.
 - 3.1.4. Have regard to guidance published in relation to conflicts of interest.
 - 3.1.5. Will not award a contract for the provision of 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
 - 3.1.6. Will keep, and publish, a record of how it managed any such conflict in relation to contracts it enters into.

4.0 Standards of business conduct

4.1. They Employees, members, committee and sub-committee members of the Board (and its committees) should act in good faith and in the interests of the Board and should follow the *Seven Principles of Public Life*, set out by the Committee on Standards in Public Life (the Nolan Principles)

4.2. Individuals contracted to work on behalf of the Board, or otherwise providing services or facilities to the Board, will be made aware of their obligation with regard to declaring conflicts or potential conflicts of interest. This requirement will be written into their contract.

5.0 Conflict of interest: definition

5.1 A conflict of interest occurs where an individual's ability to exercise judgement or act in one role is, or could be, impaired or otherwise influenced by his or her involvement in another role or relationship. The individual does not need to exploit his or her position or obtain an actual benefit, financial or otherwise. A *potential* for competing interests and/or a *perception* of impaired judgement or undue influence can also be a conflict of interest.

5.2. Conflicts can arise from an indirect financial interest (e.g. payment to a spouse) or a non-financial interest (e.g. kudos or reputation). Conflicts of loyalty may arise (e.g. in respect of an organisation of which the individual is a member or has an affiliation). Conflicts can arise from personal or professional relationships with others, e.g. where the role or interest of a family member, friend or acquaintance may influence an individual's judgement or actions or could be perceived to do so.

5.3. For individuals involved in commissioning, a conflict of interest may, therefore, arise when their own judgment as a commissioner could be, or be perceived to be, influenced and impaired by their own concerns and obligations as a provider, as a member of a particular peer, professional or special interest Board, or as a friend or family member.

5.5 A conflict of interest will include:

5.5.1. **A direct pecuniary interest:** where an individual may financially benefit from the consequences of a commissioning decision (for example, as a provider of services);

5.5.2. **An indirect pecuniary interest:** for example, where an individual is a partner, member or shareholder in an organisation that will benefit financially from the consequences of a commissioning decision;

5.5.3. **A non-pecuniary interest:** where an individual holds a non-remunerative or not-for profit interest in an organisation, that will benefit from the consequences of a commissioning decision (for example, where an individual is a trustee of a voluntary provider that is bidding for a contract);

5.5.4. **A non-pecuniary personal benefit:** where an individual may enjoy a qualitative benefit from the consequence of a commissioning decision which cannot be given a monetary value (for example, a reconfiguration of hospital services which might result in the closure of a busy clinic next door to an individual's house);

5.5.5. **A close relationship with an individual or organisation with an interest:** Where an individual is closely related to, or in a relationship, including friendship, with an individual in the above categories.

5.6. Below are some examples of what might constitute a conflict of interest within these categories:

5.6.1. **Direct pecuniary interest:** The individual is a GP with a Special Interest or has a partner working in a Care Home with whom the BCF might contract for beds.

5.6.2. **Indirect pecuniary interest:** Substantial shareholder in a company that might bid for a BCF contract.

5.6.3. **Non-pecuniary interest:** Trustee of a charity that might provide services for the BCF.

5.6.4. **A non-pecuniary personal benefit:** Living next door to a busy care home that might lose a contract with the BCF thus resulting in less traffic.

5.6.5. **A close relationship with an individual or organisation with an interest:** A friend runs a company that seeks a contract with the BCF.

5.7. Members' declarations should include the following:

5.7.1. Directorships, including non-executive directorships, held in private companies or PLCs;

5.7.2. Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the HWBB;

5.7.3. Shareholdings (more than 5%) of companies in the field of health and social care;

5.7.4. A position of authority in an organisation (e.g. charity or voluntary organisation) in the field of health and social care;

5.7.5. Any connection with a voluntary or other organisation contracting for NHS services;

5.7.5. Research funding/grants that may be received by the individual or any organisation in which they have an interest or role;

5.7.6. Any other role or relationship which the public could perceive would impair or otherwise influence the individual's judgement or actions in their role within the HWBB.

5.8 It is important that individuals remember that:

5.8.1. A *perception* of wrongdoing, impaired judgement or undue influence can be as detrimental as them actually occurring;

5.8.2. If in doubt, it is better to assume a conflict of interest and manage it appropriately, than to ignore it;

5.8.3. For a conflict to exist, financial gain is not necessary.

6.0 Principles for managing conflicts of interest

6.1 Conflicts of interest will be managed by the HWBB, in line with the following underpinning principles, which will be applied at all stages of the commissioning process.

6.1.1 **Doing business properly appropriately.** The HWBB will endeavour to ensure needs assessments, consultation mechanisms, commissioning strategies and procurement procedures are right from the outset, making conflicts of interest much easier to identify, avoid or deal with, because the rationale for all decision-making will be transparent and clear and should withstand scrutiny.

6.1.2 **Being proactive not reactive.** The HWBB will seek to identify and minimise the risk of conflicts of interest at the earliest possible stage and ensure appropriate action is taken. This will include considering potential conflicts of interest when individuals come into a decision-making role, and by ensuring individuals understand their obligations to declare conflicts of interest. Rules should assume people will volunteer information about

conflicts and will exclude themselves from decision making where they exist, but there should also be prompts and checks to reinforce this.

6.1.3 Assuming that individuals will seek to act ethically and professionally, but may not always be sensitive to all conflicts of interest. There will be prompts and checks in place to reinforce the procedures outlined in this policy, recognising that while most individuals involved in commissioning will seek to do the right thing for the right reasons, they may not always do it in the right way because of a lack of awareness of the roles and procedures, insufficient information about a particular situation, or lack of insight into the nature of a conflict.

6.1.4. Being balanced and proportionate. HWBB policy and guidance is to be clear and robust but not overly prescriptive or restrictive. Rules should protect and empower people by ensuring decision-making is efficient, transparent and fair, not constrain people by making it overly complex or slow.

6.1.5 Openness. The HWBB will ensure early engagement with the public in relation to proposed commissioning plans.

6.1.6. Responsiveness and best practice. The HWBB will ensure that commissioning intentions are based on local health and social care needs and reflect evidence of best practice.

6.1.7. Securing expert advice. The HWBB will ensure that plans take into account advice from appropriate health and social care professionals, and will draw on commissioning support where appropriate.

6.1.8. Engaging with providers. The HWBB will ensure early engagement with both incumbent and potential new providers over potential changes to the services commissioned for the local population.

6.1.9. The HWBB will **create clear and transparent commissioning specifications** that reflect the depth of engagement and set out the basis on which any contract awarded.

6.1.10. The HWBB will **follow proper procurement processes and legal arrangements**, including even-handed approaches to providers.

6.1.11. The HWBB will **ensure sound record-keeping, including an up to date register of interests.**

6.1.12. The HWBB will have a **clear, recognised and easily enacted system for dispute resolution.**

7.0 Maintaining a register of interests and register of procurement decisions

7.1 The HWBB will maintain a register of the interests of the members of the Board and the members of its committees or sub-committees and individuals engaged in commissioning activity on behalf of the Board.

7.2 When entering an interest on the register of interests, the HWBB will ensure that it includes sufficient information about the nature of the interest and the details of those holding the interest.

7.3. The register will be made available for inspection at the following locations:

7.3.1. The register will be published on the Councils website

7.3.2 The register(s) will also be available on request for inspection at the Council headquarters (address below) and upon application in writing to the following addresses:

7.3.3. By post: Shropshire Council, Shirehall, Abbey Forgate, Shrewsbury SY2 6ND

7.4. The full register of interests will be reviewed and updated regularly (at least every six months) and reviewed at least annually by the Health and Overview Scrutiny Committee.

7.5. The HWBB will maintain a register of procurement decisions taken, including:

7.5.1. The details of the decision;

7.5.2. Who was involved in making the decision (i.e. committee members and others with decision-making responsibility);

7.5.3. A summary of any conflicts of interest in relation to the decision and how this was managed by the HWBB.

7.5.4. The register of procurement decisions will be updated whenever a procurement decision is made.

8.0 Declaring and registering interests

8.1. The HWBB needs to be aware of all situations where an individual has private interests which have the potential to result in a conflict of interest. All individuals identified in paragraph 1.2 must act in such a way as to avoid being placed in a position that creates a potential conflict between their private interests. All individuals must declare relevant and material interests to the HWBB.

8.2. Individuals will declare any interest that they have, in relation to a decision to be made in the exercise of the commissioning functions of the Board, in writing to the HWBB, using a standard declaration form as soon as they are aware of it and in any event no later than 28 days after becoming aware. (Notes on how to complete the form, and how it should be submitted are included on the form.)

8.3. Where an individual is unable to provide a declaration in writing, for example if a conflict becomes apparent in the course of a meeting, they will make an oral declaration before witnesses, and provide a written declaration as soon as possible thereafter.

8.5 Where individuals are unsure whether a situation gives potential for a conflict of interest, they should seek advice from the Chair of the Health & Wellbeing Board, who will obtain appropriate advice to inform a decision. If in doubt, the individual concerned should assume that a potential conflict of interest exists.

8.6 Any declaration of interest will be included in the HWBB register of interests.

8.7 Declarations of interest will be made and regularly confirmed or updated in the following circumstances:

8.7.1 **On appointment:** Applicants for any directly related appointment to the CCG or SC will be asked to declare any relevant interests. When an appointment is made, a formal declaration of interests will again be made and recorded.

8.7.2. **Quarterly:** All registered interests will be confirmed at least quarterly.

8.7.3. **At meetings:** All attendees will be asked to declare any interest that they have in any agenda item before it is discussed or as soon as it becomes apparent. Even if an interest is declared in the Register of Interests, it should be declared in meetings where matters relating to that interest are discussed. Declarations of interest will be recorded in minutes of meetings.

8.7.4. **On changing role or responsibility:** Where an individual changes role or responsibility with the CCG or SC, any change to the individual's interests will be declared.

8.7.5. On any other change of circumstances: Wherever an individual's circumstances change in a way that affects the individual's interests (e.g. where an individual takes on a new role outside the CCG or SC or sets up a new business or relationship), a further declaration should be made to reflect the change in circumstances. This could involve a conflict of interest ceasing or a new one materialising.

9.0 Managing conflicts of interest: general

9.1. Individual members of the Board, committees or sub-committees, and employees will comply with the arrangements determined by this policy for managing conflicts or potential conflicts of interest.

9.2. For every interest declared, either in writing or by oral declaration, arrangements will be put in place to manage the conflict of interests or potential conflict of interests, to ensure the integrity of the decision making process. The arrangements will depend on the nature and extent of the conflict of interests, but may include:

9.2.1. If the conflict of interests is so material that it would be inappropriate for the individual to partake in discussions around the decision-making process, as well as the decision itself, then the individual concerned will be excluded from relevant meetings, or relevant parts of those meetings.

9.2.2. Where the conflict of interests makes it inappropriate for the individual concerned to participate in the decision-making, however it is deemed appropriate for the individual to partake in the discussion, then the individual will be able to attend the meeting, having declared their interest, and join in the discussion, but will not have a vote in relation to the decision.

9.3. The relevant individual arrangements for managing the conflict of interests, or potential conflicts of interests, will be discussed with the individual and followed up in writing as soon as possible after the declaration has been made. The arrangements will confirm the following:

9.3.1. When an individual should withdraw from a specified activity, on a temporary or permanent basis;

9.3.2. Any other specified actions or constraints.

9.4. Where an interest has been declared, either in writing or by oral declaration, the declarer will ensure that before participating in any activity that is, or may be, connected with the declared interest, they have received confirmation of the arrangements to manage the conflict of interest or potential conflict of interest from the HWBB.

Meetings

9.6. Where an individual member, employee or person providing services to the Board is aware of an interest which:

9.6.1. Has not been declared, either in the register or orally, they will declare this at the start of the meeting;

9.6.2. Has previously been declared, in relation to the scheduled or likely business of the meeting, the individual concerned will bring this to the attention of the Chair of the meeting, together with details of arrangements which have been confirmed for the management of the conflict of interests or potential conflict of interests.

9.7. The Chair of the meeting will then determine how this should be managed and inform the member of their decision. Where no arrangements have been confirmed, the Chair of the meeting may require the individual to withdraw from the meeting or part of it. The individual will then comply with these arrangements, which must be recorded in the minutes of the meeting.

9.8. Where the Chair of any meeting of the Board, including committees, sub-committees, has a personal interest, previously declared or otherwise, in relation to the scheduled or likely business of the meeting, they must make a declaration and the Deputy Chair will act as Chair for the relevant part of the meeting. Where arrangements have been confirmed for the management of the conflict of interests or potential conflicts of interests in relation to the Chair, the meeting must ensure these are followed. Where no arrangements have been confirmed, the Deputy Chair may require the Chair to withdraw from the meeting or part of it. Where there is no Deputy Chair, the members of the meeting will select one.

9.9. Any declarations of interests, and arrangements agreed in any meeting of the HWBB, committees or sub-committees, will be recorded in the minutes and published in the register of interests.

9.10. 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 interests or potential conflicts of interests, the Chair (or deputy) will determine whether or not the discussion can proceed.

9.11. In making this decision the Chair will consider whether the meeting is quorate, in accordance with the number and balance of membership set out in the Boards terms of reference. 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 interests, the Chair of the meeting shall consult on the action to be taken. This may include:

9.11.1. Requiring another of the Boards committees or sub-committees, which can be quorate to progress the item of business; or if this is not possible,

9.11.2. Inviting on a temporary basis one or more of the following to make up the quorum so that the Board can progress the item of business:

9.11.2.1. A member of the clinical commissioning group who is not usually a member of the HWBB;

9.11.2.2. A member of the Council who is not usually a member of the HWBB

9.11.2.3. A member of a Health and Wellbeing Board in another locality;

9.11.2.4. A member of a CCG in another locality.

9.12. These arrangements must be recorded in the minutes.

Other transactions

9.13. In any transaction undertaken in support of the HWBB exercise of its commissioning functions (including conversations between two or more individuals, e-mails, 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 line manager (in the case of employees) of the transaction.

9.14. The HWBB will take such steps as deemed appropriate, and request information deemed appropriate from individuals, to ensure that all conflicts of interest and potential conflicts of interest are declared.

10.0 Managing conflicts of interest: contractors and people who provide services to the Board

10.1. Anyone seeking information in relation to procurement, or participating in procurement, or otherwise engaging with the HWBB in relation to the potential provision of services or facilities to the Board, will be required to make a declaration of any relevant conflict / potential conflict of interest.

10.2. Anyone contracted to provide services or facilities directly to the HWBB will be subject to the same provisions of this policy in relation to managing conflicts of interests. This requirement will be set out in the contract for their services.

10.3. The HWBB will manage conflicts and potential conflicts of interest when awarding a contract by prohibiting the award of a contract where the integrity of the award has been, or appears to have been, affected by a conflict.

10.4 The HWBB will keep appropriate records of how conflicts in individual cases have been managed.

11.0 Mitigating conflicts of interest

11.1. Where a conflict of interest exists, there are various ways in which the conflict may be managed, depending on its impact. The level of mitigating action will be determined by the Chair of the HWBB in consultation with the Chair of the Health Overview Scrutiny Committee, and in the case of an employee by the line manager.

11.2. This decision will be recorded either in the relevant minutes or in the register of interests and communicated to the individual making the declaration in writing.

12.4 Where mitigation arises the Chair of the HWBB would be expected to conduct informal discussions with the individual concerned to ensure they fully understand the action requested of them, and they have an opportunity to seek clarity or raise concerns.

12.0 Transparency in designing and procuring services

12.1. The Board recognises the importance in making decisions about the services it procures in a way that does not call into question the motives behind the procurement decision that has been made. The Board will procure services in a manner that is open, transparent, non-discriminatory and fair to all potential providers.

12.2. The HWBB will ensure adherence to good practice in relation to procurement, will not engage in anti-competitive behaviour that is against the interest of patients, and will protect the right of patients to make choices about their health and social care. Good practice includes acting transparently, proportionately and without discrimination and treating all providers and potential providers equally, in particular from not treating one provider more favourably than another on the basis of ownership.

12.3. The HWBB will publish a Strategy which will detail the Commissioning Intentions of the Board, and will:

12.3.1. Be compliant with The NHS (Procurement, Patient Choice and Competition) Regulations 2013, ensuring that service redesign and procurement processes are in line with the three main principles of procurement law, namely equal treatment, non-discriminatory and transparency. This includes ensuring the same information is given to all.

12.3.2. Ensure that potential providers, together with local members of the public, are engaged in the decision-making processes used to procure services;

12.3.3. Ensure that service redesign and procurement processes are conducted in an open, transparent, non-discriminatory and fair way.

13.0 Responsibilities

13.1. The HWBB has overall responsibility for managing conflicts of interest and has delegated this responsibility to the Health and Wellbeing Coordinator, who will be responsible for:

13.1.1. Creating and maintaining the Register of Interest;

13.1.2. Ensuring that for every interest declared either in writing or by oral declaration, arrangements are in place to manage any conflict or potential conflict of interest to ensure the integrity of the HWBB's decision making process;

13.1.3. Recording in writing the means whereby such conflicts of interest will be managed within a week of its notification;

13.1.4. Communicating these means to the individual concerned on behalf of the chair of the relevant committee.

13.1.5. Ensuring that these means are available for inspection in the Register of Interests.

13.2. Oversight of the management of conflicts of interest will be provided by the Health Overview Scrutiny Committee.

14.0 Breaches of the policy

14.1. If an individual fails to declare an interest or the full details of the interest, this may result in disciplinary action resulting in the individual being dismissed or removed from their role.

14.2. Any unwitting failure to declare a relevant and material interest or position of influence, and/or to record a relevant or material interest or position of influence that has been declared, will not necessarily render void any decision made by the HWBB or its properly constituted committees or sub-committees, although the HWBB will reserve the right to declare such a contract void.

15.0 Equality and Diversity Statement

15.1. At all times all those individuals who must comply with this policy will be treated equally and without discrimination, regardless of age, disability, gender reassignment, marriage or civil partnership, maternity or pregnancy, race, religion or belief, sex and sexual orientation.

16.0 Monitoring compliance and effectiveness of the policy

16.1. The policy will be reviewed annually by the Health Overview Scrutiny Committee. HWBB members will be reminded of the policy and register of interests at least quarterly.

17.0 References

1. Managing conflicts of interest: Statutory Guidance for clinical commissioning groups CCGs, NHS England, March December 2014
<http://www.england.nhs.uk/wp-content/uploads/2014/12/man-confl-int-guid-1214.pdf> 3
<http://www.england.nhs.uk/wp-content/uploads/2013/03/manage-con-int.pdf>
2. National Health Service Act 2012 <http://www.legislation.gov.uk/ukpga/2012/7/enacted>
3. National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013
http://www.legislation.gov.uk/uksi/2013/500/pdfs/uksi_20130500_en.pdf
4. Committee on Standards in Public Life
<http://www.public-standards.gov.uk/>
5. Substantive guidance on the Procurement, Patient Choice and Competition Regulations, Monitor
<https://www.gov.uk/government/publications/procurement-patient-choice-and-competition-regulations-guidance>
6. Based upon the publication from ICAC and CMC: *Managing Conflicts of Interest in the Public Sector - Toolkit November 2004*, Tool 9.2 management options ready reckoner (page 60) and framework adaptation by Telford and Wrekin CCG.