

# Managing conflicts of interest in the NHS: Q&A for NHS provider managers

## What does this mean for me?

A guide for provider manager staff across the health system

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**Managing Conflicts of Interest in the NHS:  
Q&A for clinical staff**

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## Introduction

Managing Conflicts of Interest in the NHS – Guidance for staff and organisations” (the **guidance**) came into force on 1 June 2017 and is applicable to the following organisations, which will put in place organisational policies and procedures to make sure staff can understand and meet the requirements of the guidance:

- Clinical Commissioning Groups (‘CCGs’) (through the [statutory guidance for CCGs](#))
- NHS trusts and NHS foundation trusts (through the NHS Standard Contract)
- NHS England (through Standards of Business Conduct)

The guidance does not apply to bodies not listed above (private or third sector healthcare provider organisations, for example). However, those organisations are invited to consider implementing some of the principles of the guidance (where relevant and appropriate) as good practice, and these Q&A will be relevant in that context.

The Q&A's below are based on the principles set out in the guidance, but you should also familiarise yourself with, and apply, your own organisation's policies and any relevant professional codes.

## Board level conflicts

### **1. I am a provider chief executive, and I also lead our local STP. I am conscious of the perception that I might put my organisation first in any decisions made which would look like a conflict of interest, even if these are the right decisions made by the area as a whole. What should I do?**

- a. The rules in the guidance on outside employment will apply, so if your STP has a formal governance structure then you should declare the details of your position as a provider chief executive to the STP so this interest can be published on their register(s). As STPs will differ in the degree to which their governance is formalised, the location and management of register(s) will vary. The important thing is to apply the principles of the guidance and make sure your outside interests are transparent so if in doubt, declare – regardless of the governance structures of the STP. If the chair considers that your interest might create the risk of conflict with an item of the group's business, they might take a range of management actions relating to your participation in the group to make sure that this risk is managed. If you are the chair, and have an interest that might be seen to prejudice your judgement, the vice chair (or other non-conflicted member) should chair all or part of that meeting. You must also declare the details of your lead role within the STP to your provider organisation so that this interest can be published on their register(s). You should also take personal responsibility for making any decision-making or advisory groups you are part of (whether within your local provider organisation or within the STP) aware of your interests so they can be appropriately managed.

### **2. I am the chief nurse for a local provider, but in the move to new care models I am also undertaking a wider role as lead for quality and safety across our accountable care organisation (ACO). How do I make sure my role in the ACO is transparent, so I cannot be accused of favouring my provider?**

- a. The rules in the guidance on outside employment will apply, so you should declare the details of your position as chief nurse for the local provider to the ACO so this interest can be published on their register(s). As emerging ACOs (or other new care models) will differ in the degree to which their governance is

formalised, the location and management of register(s) will vary. The important thing is to apply the principles of the guidance and make sure your outside interests are transparent so if in doubt, declare – regardless of the formal legal status of the ACO. You must also declare the details of your quality and safety lead role within the ACO to your provider organisation so that this interest can be published on their register(s). You should also take personal responsibility for making any decision-making or advisory groups you are part of (whether within your local provider organisation or within the ACO) aware of your interests so they can be appropriately managed.

**3. I hold a non-executive director (NED) role in my local NHS provider trust, but am employed outside the NHS. If I engage with current / potential NHS suppliers in my outside employment, how does the guidance apply to me?**

- a. The rules in the guidance on outside employment will apply, so you must declare this outside employment to the NHS organisation in which you hold a non-executive role. Depending on the nature of your outside employment, the terms and conditions of your appointment, and the terms of the trust's own conflicts of interest policy, you might need to seek prior approval from your organisation (or its council of governors in the case of an NHS foundation trust). You should also take personal responsibility for making the Board and any other decision-making or advisory groups you are part of aware of your interest.

**4. I am a governor at my local provider, but I also volunteer outside the NHS. If I engage with current / potential NHS suppliers in my voluntary role outside the provider, should I declare this?**

- a. Governor's interests are not directly covered by the national policy. However, you should have to declare in accordance with the trust's *Standing Orders for the Council of Governors*; please take advice from the trust company secretary.

### Strategic decision making groups

**5. I sit on my organisation's medicines committee, which makes decisions about the medicines and devices we use. What are my responsibilities relating to conflicts of interest?**

- a. Any group making key strategic decisions like this is subject to the guidance. Other examples would be groups making decisions around contracts, procurement or grants. You should make sure that all interests, or potential conflicts, are declared in accordance with local arrangements within 28 days of any changes. In meetings, you have a personal responsibility for declaring any material interests at the beginning of each meeting and as they arise, which will be added to the organisation's register if not already included. If the chair considers that your interest might create the risk of conflict with an item of the group's business, they might take a range of management actions relating to your participation in the group to make sure that this risk is properly managed.

**6. Do advisory committees include managed clinical networks and local professional networks?**

- a. Your involvement in these networks would be unlikely to create a conflict with your role at your employing organisation. If you're not sure, speak to the person in your organisation who has responsibility for conflicts of interest.

## Loyalty interests

- 7. In my NHS role, I work in the neurological service. Every Saturday afternoon I volunteer in my local charity shop. The charity raises money for neurological research. Do I need to declare this as a loyalty interest?**
  - a. You don't need to declare this because you are not in a position of authority within the charity. However, if you take on a position of authority in the charity, such as sitting on their board, you would need to declare this as a loyalty interest as it could be seen to influence decisions you take at work.
- 8. In my NHS role, I work in the diagnostics service. I also sit on an independent advisory group which makes recommendations about new scanner development. Do I need to declare this?**
  - a. Yes you do. This might be seen to influence how your organisation spends taxpayers' money.
- 9. My department is recruiting two new members of staff, and a close friend of mine might apply. Do I need to declare this?**
  - a. Yes, if you know there is a reasonable chance of them applying. You need to make this known so that the organisation can decide on the right level of involvement for you in the recruitment and / or management process.
- 10. My wife works for a company which supplies surgical equipment to the hospital that I work for. Do I need to declare this?**
  - a. If your wife has decision making responsibilities in the company, then yes. If you're not sure, speak to the person in your organisation who has responsibility for conflicts of interest. If in doubt, declare.

## Outside employment

- 11. Since I joined my organisation, I have set up my own company to do some consultancy work. This isn't directly related to my day job...do I still have to declare it?**
  - a. You should declare any outside employment and other similar engagements such as directorships, charity trustee roles, consultancy work, etc as it arises and in some cases you might be required to seek prior approval from your organisation. Your organisation might have legitimate reasons, within employment law, to know about these outside engagements – even if it doesn't give rise to the risk of conflict of interest.

## Gifts

- 12. The family of a patient receiving NHS treatment has offered me a £30 gift voucher...what do I do?**
  - a. Gifts of cash or vouchers to individuals should always be declined, and some organisations' policies will require such offers to be declared, even where they are declined. For example the statutory guidance for CCGs requires such offers to be declined and declared. You could, if appropriate, suggest that they donate the voucher to the trust's related charity or charitable funds, where it will be used to promote the work of the trust.

**13. An NHS patient's family has offered me a case of wine, which I estimate to be worth £45. I have already accepted a bottle of whiskey from this family earlier this year, which retails at £25...what do I do?**

- a. Because the original gift was valued at less than £50, it was fine to accept this as long as it wouldn't be seen to affect your professional judgement. However, because the cumulative value of multiple gifts from the same family over a 12 month period now exceeds £50, it would not be appropriate to accept the second gift personally. It should be treated with caution and might only be accepted on behalf of the organisation, and should be declared if accepted.

**14. A supplier has offered me a branded pen....what do I do?**

- a. Gifts from actual or potential suppliers and contractors should always be declined, but the exception to this is low cost promotional items worth less than £6 – so assuming it isn't a particularly expensive pen it's fine to accept it. If a gift or more than one gift together is worth more than £6, it should always be declined.

### Hospitality

**15. I am attending an event sponsored by a pharmaceutical company and lunch is provided. I estimate the value to be £15. What do I do?**

- a. Provided you have used a common sense approach to estimate the value, there is a legitimate business reason for attending, and the hospitality will not affect, or be seen to affect, your professional judgment, this lunch can be attended. However if the company offering the lunch is an actual or potential supplier or contractor then senior approval would be required and the hospitality should be declared.

**16. I am attending an event sponsored by a pharmaceutical company and they have offered to pay for my travel and accommodation...can I accept?**

- a. You can accept modest offers to pay for travel and accommodation but you must declare them if you accept. You would need senior approval before accepting any offer of first class domestic travel and accommodation or foreign travel and accommodation, or other unusually generous offer. You would also need senior approval if the company offering to pay for the travel and accommodation is an actual or potential supplier or contractor.

### Identification of interests and publication of registers

**17. I don't have any interests which create a risk of conflict. Do I still need to make a declaration?**

- a. If you meet your organisation's definitions of "decision making staff" then yes. You will need to update your declarations or make a nil return on appointment, when you change roles and in the annual declaration round arranged by the organisation. Check your organisation's policy to see if this applies to you.

**18. How do I know if a conflict of interest is so significant that it cannot be managed without removing an individual from their role altogether?**

- a. There will undoubtedly be some circumstances where a conflict of interest is so profound and acute that the organisation is likely to conclude that it is not possible to manage the conflict and the appropriate course of action might be to require an individual to step down from – or not be appointed to - a particular role. The guidance sets out principles to help guide decision making in these circumstances. Each case will be different and will depend on the specific circumstances, and it is impossible for any guidance document to provide a comprehensive and definitive set of rules to cover every potential

eventuality. The guidance is intended to complement rather than replace the exercise of good judgement on a case by case basis.

**19. Does the organisation need to make publicly available the number of nil returns? I.e. should the register account for 100% of decision making staff?**

- a. The published register should, as a minimum, account for all interests declared by decision making staff. Best practice would be for the number of nil returns to be specified, so that there is transparency around the number of staff who have no interests to declare. Your organisation should have processes in place to enable staff to make representations that information on their interests should not be published in certain circumstances, for example where this could give rise to a real risk of harm or is prohibited by law.

**20. I am a decision making member of staff, and have declared my interests. However I would prefer that these were not made public. Is this ok?**

- a. In general, no. This guidance is about transparency and public confidence so the default will be to publish the interests of decision making staff. However, your organisation should have processes in place to enable staff to make representations that information on their interests should not be published in certain circumstances, for example where this could give rise to a real risk of harm or is prohibited by law. If you have particular concerns then you should contact the person named in your organisational policy to discuss this.

**21. I manage my organisation's register(s) of interests. If one of our employees objects to their interests being published, and their objection is upheld, how does this relate to FOI?**

- a. The Freedom of Information Act sets out a number of exemptions that allow you to withhold information from a requester. You should consult the Act to decide whether your employee's circumstances fall under one of these exemptions. <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/> . This might require the organisation to balance the public interest in knowing about the interest against the private circumstances of the individual's privacy.

## **Sponsored events**

**22. I am arranging an educational event and have been offered sponsorship by a local university and a pharmaceutical company. How do I apply the guidance in both cases?**

- a. If the event will result in clear benefit for the organisation and the NHS, sponsorship can be accepted if it is declared to your organisation, and the same rules apply for both sponsors. Local policy might require that you obtain senior approval before accepting the sponsorship. There must be no breach of patient or individual confidentiality or data protection rules, and no information should be shared which is not already in the public domain or from which the sponsor might gain a commercial advantage. You will also need to be transparent about the sponsor's support and make it clear on all event materials that sponsorship does not equate to endorsement of the company or its products.

**23. I'm an events manager and am arranging a specialty-specific event for clinicians in my area. A pharmaceutical company has offered support for funding the event in exchange for a presentation slot. Can I accept this?**

- a. At an organisation's discretion, sponsors or their representatives might attend or take part in the event but they should not have a dominant influence over the content or the main purpose of the event. You should also consider the require-

ments concerning confidentiality, commercial advantage and transparency, as set out in question 21.

### Sponsored posts

**24. I am a directorate manager and am considering advertising for a specialty-specific sponsored post. Is there a difference between posts sponsored by academic institutions/charities as opposed to commercial organisations?**

- a. No, the guidance would not distinguish between these two types of sponsor.

**25. My directorate is developing a formulary, and I am putting together a procurement panel to decide on which products are included. If a nurse is in post through sponsorship, does this mean that he/she can't participate in the panel?**

- a. It depends whether you are satisfied that the potential conflicts of interest which might arise can be properly managed. You must make sure that procurement processes are conducted in an open and transparent manner, compliant with procurement and other relevant law, to make sure there is no discrimination against or in favour of any provider. Refer to the Q&A on procurement (below) for more information.

**26. I have the opportunity to establish an additional post in my team through external sponsorship. This additional capacity would really benefit the team. Can I still do this?**

- a. Yes you can, as long as you have formal prior approval from your organisation. You will need to:
  - i. Get formal written confirmation from the sponsor that the arrangements will have no effect on purchasing decisions or prescribing and dispensing habits - and you should audit this for the duration of the sponsorship.
  - ii. Make sure that the sponsor does not have any undue influence over the duties of the post or have any preferential access to services, materials or intellectual property relating to or developed in connection with the sponsored post. For example, make sure that all relevant companies are invited to open days; do not undertake any mailings on behalf of the sponsoring company.
  - iii. Have a written agreement in place detailing the circumstances under which your organisation can exit sponsorship arrangements if conflicts of interest which cannot be managed arise.
  - iv. Avoid establishing rolling sponsorship of the post unless you have put checkpoints in place to review and confirm whether the arrangements are still appropriate.
  - v. Make sure that the sponsored post holder does not promote or favour the sponsor's specific products, and that they provide information about alternative products and suppliers as well as the sponsor's.

**27. An employee in my team is on a sponsored post – I expect all members of staff in my team to shape the duties of their post. Does this put me / them in breach of the guidance?**

- a. No, as long as this does not mean that the sponsor themselves has any undue influence over the duties of the post or preferential access to services, materials or intellectual property relating to or developed in connection with the sponsored post. As the manager, you must carefully review the activities being undertaken by the individual and be prepared to step in (as set out in local policy) if conflict arises and terminate the sponsorship if the conflict cannot be managed.

**28. The guidance says that rolling sponsorship of posts should be avoided unless checkpoints are in place to confirm that arrangements are still appropriate. Do you have any recommendations for how these checkpoints should work and how often they should be scheduled?**

- a. Organisations should identify these checkpoints at their own discretion, appropriate to the particular post and at the start of the sponsorship agreement. However, some suggested considerations are:
  - i. Confirming with sponsored postholders on a regular basis that they are not being put under any pressure to recommend specific products or dispensing appliance contractors (with reference to the NHS position on direction of prescriptions)
  - ii. Regularly auditing the number of patients using the sponsors' products or dispensing appliance contractor (recognising that trends suggesting bias will be hard to define and might vary) and making sure that patient choice is respected
  - iii. Being prepared to terminate the sponsorship should a conflict arise that cannot be managed.

**29. How does the guidance apply to staff holding honorary NHS contracts?**

- a. The guidance will apply in full to all those holding honorary NHS contracts. If you hold an honorary contract with an NHS organisation, you should apply the guidance in your capacity as an employee of that organisation and make any declarations to them.

## Procurement

**30. I am arranging a procurement panel for my organisation. How should I apply the guidance?**

- a. Nothing in the guidance waives or modifies your other existing legal obligations around procurement. That is (in summary) procurement should be managed in an open and transparent manner, compliant with procurement and other relevant law, to make sure there is no discrimination against or in favour of any provider. You and your organisation should:
  - i. Keep a clear audit trail of how conflicts of interest have been identified and managed as part of the procurement process.
  - ii. Refer to existing guidance published by NHS Improvement and NHS England on procurement processes.
  - iii. Conduct procurement processes in a manner that does not constitute anti-competitive behaviour - which is against the interest of patients.
- b. In putting together the procurement panel, you should make sure steps are taken to identify and manage conflicts of interest. For example, it would be advisable to:
  - i. Review the Register entries for each person under consideration for the panel, to make sure that any conflicts are identified. Individuals with actual or potential conflicts should only be appointed to the panel where you are satisfied that the potential conflict can be properly managed
  - ii. Make sure each individual on the panel is aware that they will be 'Decision making staff' as a result of this appointment, and that they make updated declarations of interests upon appointment to the panel;
  - iii. Where a conflict arises, make sure that it is managed appropriately to minimise any risk to the organisation, and that a comprehensive written record is kept to show how the conflict was managed. This might include removing people from the panel if required.

## Sponsored research

### **31. I have successfully applied for funding for a piece of management research relating to my professional area. Do I need to declare this?**

- a. Yes, you should declare your source of funding to your organisation. The funding must not constitute an inducement to prescribe, supply, administer, recommend, buy or sell any medicine, medical device, equipment or service. Your proposed research must go through the relevant health research authority or other approvals process. There must be a written protocol and written contract between you, your organisation, and/or institutes at which the study will take place and the sponsoring organisation, which specifies the nature of the services to be provided and any payment for those services.

## Donations

### **32. My trust recently tested the market for potential suppliers of dialysis equipment. One of the potential suppliers has since offered a donation to the trust's charity. Can we accept?**

- a. In these circumstances the donation should be treated with caution and not routinely accepted. It might only be accepted if there are exceptional circumstances present. If accepted, the reason why it was deemed acceptable should be recorded together with the actual or estimated value.

### **33. My trust has a registered charity; can I make my patients and their families aware of this in case they want to donate?**

- a. You can make them aware of the charity, but you should not actively solicit charitable donations unless this is a prescribed or expected part of your duties for the organisation.

### **34. What do you mean by "pre-approved charitable campaigns?" Does this include other charities that support the NHS, but which are not directly part of the trust's own charity?**

- a. Yes. For example, a national cancer charity is running a campaign to raise research funds and, in your capacity as a cancer service manager, you would like to host a coffee morning to support this campaign. You can do this, but you need permission from your organisation if you are hosting the event in your capacity as an NHS employee. You will need to issue receipts for all donations made to the fund. Donations should never be made to an individual.

### **35. If a member of staff receives a charitable donation in the form of a funeral directors' cheque, how does the guidance apply?**

- a. Donations, when received, should be passed to or paid into the Charity office, who will issue a receipt indicating which charitable fund has been credited. It is unlawful to make or accept a "charitable" donation to an individual. Organisations should maintain records in line with their wider obligations under charity law.

### **36. When the guidance talks about "active solicitation" of charitable donations, what does this cover? Does it include acknowledging funds received, such as on a Donors' roll or in the acknowledgements of a manuscript?**

- a. The principles in the guidance do not stop you from making people aware of a charity which is affiliated to your trust, and acknowledging donations that have been made. However, you should not ask for donations unless this is a prescribed or expected part of your duties for the organisation.

## Shareholdings and other ownership interests

**37. I hold a small shareholding in a large medical devices company. I don't have any controlling interest...do I still need to declare this?**

- a. If the medical devices company might reasonably be expected to do business with your organisation then yes, you should make a declaration whatever the size of your shareholding. It doesn't matter whether you have a controlling interest or not.

**38. I have purchased an annuity. I don't manage the fund but I know that it is predominantly invested in the biomedical sciences industry. Do I need to declare this?**

- a. No – you don't need to declare shares or securities held in collective investment or pension funds or units of authorised unit trusts.

**39. I have a savings account and a mortgage with a Building Society. Do I need to declare them?**

- a. Building Society savings accounts and mortgages usually give a vote at the Society's AGM, and so they can count as 'ownership interests'. However, you would only have to declare these interests if the Building Society is doing, or might be reasonably expected to do, business with the NHS organisation.

## Patents

**40. In my spare time I have developed a prototype car radio, which I am in the process of patenting. Do I need to declare this?**

- a. If the patent related to a product which might be expected to be procured by your organisation then yes, you should declare it. In this case, a car radio wouldn't reasonably be expected to be procured or otherwise used by an NHS organisation so there's no need to declare the patent.

**41. I am in the process of developing a patentable quality improvement methodology for my clinical specialty. I want to use some of my non-contact time for this; the finished product will really benefit my team. Do I need to declare this?**

- a. Yes, and you will need to seek prior permission from your organisation before entering into any development agreements which impact on the organisation's own time, or use its equipment, resources or intellectual property.

## Breaches

**42. I have become aware of a situation at work where I am concerned that the rules around conflicts of interest might have been breached. What should I do?**

- a. Your organisation should have a clear policy setting out how to raise concerns, and who to notify or speak to if you are unsure of whether there has been / is potential for a breach. If you are unsure or unwilling to speak to those individuals, you could contact-
  - i. Your organisation's *Freedom to Speak Up Guardian*
  - ii. The Local Counter-Fraud Specialist

## Disclosure UK

### 43. In my directorate, only 57% of clinicians have given their consent to Disclosure UK. How can I help to improve this?

- a. You could suggest that the scheme is included as a discussion point for clinical appraisal, or Local Clinical Excellence Awards. If you want to raise awareness by discussing the scheme with your clinicians you can find further details on the scheme: <http://www.abpi.org.uk/our-work/disclosure/Pages/disclosure.aspx>. Whether or not individuals have consented to the scheme, they **must** declare all of their relevant interests on the organisation's register in accordance with the policy. The organisation might also have made compliance with *Disclosure UK* compulsory under local policy.