# CONFLICT OF INTEREST POLICY

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Conflict of Interest Policy

NHS West Cheshire Clinical Commissioning Group
January 2017

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INTRODUCTION

1. NHS West Cheshire Clinical Commissioning Group strives to achieve the highest standards of business conduct at all times and is committed to conducting its business with honesty and impartiality. One of the overriding objectives of the group is to ensure that decisions made by the group are both taken and seen to be taken without any possibility of the influence of external or private interest.

2. This policy sets out the arrangements that have been established by NHS West Cheshire Clinical Commissioning Group to identify, record and manage conflicts of interest that may arise during the discharge of its functions. Its purpose is to:
   • ensure that the individuals covered by this policy know what to do when a conflict of interest arises or where there is a potential conflict of interest;
   • ensure that the group is able to demonstrate to external parties that it has appropriate arrangements in place to deal with conflicts of interest;
   • ensure that individuals covered by this policy are protected from any appearance of impropriety.

3. The policy should be read in conjunction with the group’s constitution, which provides a statement of conduct, and its policy on standards of business conduct and in conjunction with both the group’s and national guidance on NHS funded services.

4. National guidance which provides further information on ensuring probity and transparency around decisions of the allocation of resources are available. Specifically, guidance from the British Medical Association provides expert advice on managing potential conflicts of interest:

SCOPE

5. The group’s conflicts of interest policy applies to the following people, hereafter referred to as individuals:
   i) members of the group;
   ii) the members of the group’s governing body;
   iii) the members of the group’s committees or subcommittees or of the committees or sub-committees of its governing body;
   iv) its employees, including seconded, temporary staff or staff working for the group under a contract of service or in an advisory capacity.

6. The policy shall be applied:
a) in any meeting which takes place in the course of conducting the group’s business and decision making, including joint committee arrangements (e.g. decision making in relation to co-commissioning of primary care with NHS England). **NB: oversight will be provided by the primary care commissioning committee (separate to the governing body), which is chaired by a lay member, membership of the committee has the lay/executive membership in the majority (rather than the clinical members) and the approved terms of reference (in the clinical commissioning group constitution) include representatives from Healthwatch, the local authority including the health and wellbeing board.**

b) in all written material created and or communicated in the course of conducting the group’s business and decision making, whether such material is electronically transmitted or not;

c) in any other work and decision making undertaken for or on behalf of the group.

**RESPONSIBILITY FOR MANAGING CONFLICTS OR POTENTIAL CONFLICTS OF INTERESTS INCLUDING THE CONFLICT OF INTEREST GUARDIAN**

7. The management of conflicts or potential of interest is the responsibility of the group’s governing body, including the 3 lay members of the clinical commissioning group. The governing body’s audit committee is responsible for ensuring that there is an effective system in place to manage and to protect the reputation of the group arising from conflicts or potential conflicts of interest. The lay member chair of the audit committee will be conflict of interest guardian.

8. The conflict of interest guardian (lay member) will have no provider interest, is not a medical doctor or a healthcare provider and is therefore independent and impartial. The guardian can act as a conduit for members of the public who have any concerns in regard to conflict of interest. The guardian will ensure that the clinical commissioning group applies conflict of interest principles and policies rigorously and provides independent advice and judgment where there is any doubt about how to apply them to individual cases. The guardian will have a lead role in ensuring that the governing body and the wider organisation behaves with the utmost probity at all times and be able to give an independent view on possible internal conflicts of interest.

9. The scope of the conflict of interest guardian’s work is twofold:

- To judge whether there is a risk of a conflict of interest arising
- To advise how this risk should be minimised

10. The conflict of interest guardian operates in two modes:

a. Reactively, when the clinical commissioning group as a whole or individual GP members seek advice on a specific issue;

b. Proactively when a potential conflict of interest risk is identified and acts on it. The guardian is a voting member and is familiar with the work of the organisation and the roles of the GP leads. The guardian is therefore in an informed position to identify such risks when they arise.
11. In either mode the conflict of interest guardian discusses the issue with the GPs involved and any other relevant party and issues written advice or judgement for the governing body. The members of the governing body, its committees and sub-committees have agreed that they will accept the advice or judgement of the conflict of interest guardian in such cases.

12. The group’s chief finance officer will oversee arrangements to ensure that the group’s registers of interests are publicly accessible (via the clinical commissioning group’s website) and will advise on how declarations should be made and how interests should be managed. The chief finance officer will develop procedures for managing those interests that are common to a number of individuals or to specific activities of the group. The chief finance officer will ensure the conflict of interest policy is published in-line with NHS England guidance and ensure to provide appropriate training, which is anticipated from NHS England, for its individuals in-line with the guidance.

13. The group’s head of governance will put in writing to the chief finance officer any individual arrangements for managing an interest or potential conflict of interest within a week of declaration.

14. The governing body will approve such arrangements for managing individuals’ declared interests. It will take such steps as it deems appropriate, and request information it deems appropriate from any individual to ensure that all conflicts of interest and potential conflicts of interest are declared.

CONFLICTS OF INTEREST

15. As a general principle, anyone working for, or on behalf of, the clinical commissioning group who is involved in taking decisions, or who is able to influence a decision must declare their interests to the group.

16. Individuals who believe that their circumstances may give rise to a potential conflict of interest are required to declare this in order to preserve the integrity of the group and its processes. Exceptionally, individuals may need to withdraw from the group’s processes. Where decision making takes place at membership council, governing body, committee or sub-committee meetings of the group the chair of the meeting will have responsibility to ensure those individuals who are conflicted are absented from decision making/voting.

17. The clinical commissioning group considers that a conflict of interest may arise where there is:

   a) a direct pecuniary interest. That is where an individual may personally benefit from the consequences of a decision.

   b) an indirect pecuniary interest. That is where for example, an individual working on behalf of the group, or their partner in a partnership, or a company in which they have shares, or a body of which the individual is a trustee, or a director or a member may benefit from the consequence of a decision.
18. If a relative, including a spouse or someone living with an individual acting on behalf of the group could benefit either directly or indirectly from a decision and the individual is aware of this, the individual should treat that person as if they were themselves and declare that interest to the group.

19. In determining whether they may have a conflict of interest, individuals should consider whether there may be a perception of wrong doing, or of impaired judgement or undue influence if they participated in taking a decision. If in doubt, the individual would be expected to assume that a conflict of interest exists.

20. In any case where an individual has an interest, which would lead to a conflict of interests where the group was 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.

21. If in doubt, individuals will assume that a potential conflict of interests exists and declare that interest. Interests, as provided in current CVs or biographies, are relevant and material include but are not limited to:

   a) directorships and non-executive directorships held in private companies or public limited companies with the exception of those of dormant companies;
   b) ownership or part ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
   c) majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS;
   d) voluntary or remunerated positions, such as trusteeship, governor, local authority positions, other public positions;
   e) any connection with a voluntary or other organisation contracting for NHS services;
   f) research funding/grants that may be received by an individual or their practice/department;
   g) interest in pooled funds that are under separate management (any relevant company included in this fund that has a potential relationship with the clinical commissioning group must be declared).

**REGISTER OF INTERESTS**

22. The group will maintain registers of the interests of the following individuals:

   a) members of the group;
   b) members of the group’s governing body;
   c) members of the group’s committees or subcommittees or of the committees or sub-committees of its governing body;
   d) its employees, including seconded, temporary staff or staff working for the group under a contract of service or in an advisory capacity.

23. A declaration of interests form is available from the group’s head of governance. A review/update of declarations of interest will be routinely requested on a quarterly basis and published every six months. The group’s head of governance will acknowledge receipt of the declaration and confirm the declaration has been accepted and entered onto the register.
24. The registers of interest (personal declarations, gifts and hospitality and procurement) will be published on the group’s website at www.westcheshireccg.nhs.uk; the governing body will review the group’s registers of interest at least annually and when any material change occur;

25. The governance section of the group’s website will also include information on local (from potential breaches of policy) and national learning/guidance/best practice in relation to managing conflicts of interest.

OPERATIONAL MANAGEMENT

26. The governing body has approved the following arrangements in order to manage conflicts or potential conflicts of interests that may arise during the course of the group’s work.

a) Members of the governing body and staff must declare, within 28 days of appointment (from outside of the organisation or to a new post within the organisation), their interests or to confirm that they have no interests. Should any new interests arise all members of the group must re-declare their interests within 28 days of the start date of the new interest.

b) Agendas for all meetings of the group’s membership council, governing body, their committees and sub-committees and advisory groups must include an agenda item which invites individuals to declare their interests in matters on the agenda.

c) Declarations of interest must be recorded in the minutes of meetings, as listed above, and if a new interest is declared, the secretary to the meeting must ensure that the interest is submitted to the corporate governance manager who will update the group’s register to record that interest.

d) Where a declared interest is deemed material to the discussion of the membership council, governing body or their committees and sub-committees and advisory groups, the individual shall withdraw from discussions pertaining to that agenda item.

e) Individuals who have declared an interest, should not chair or lead discussions on the relevant items at meetings of the membership council, governing body, their committees and sub-committees and advisory groups.

f) Where the chair of the meeting declares an interest in an item on the agenda, then the vice chair will take over the chair for that item. If the vice chair has also declared an interest then the group will nominate another member to chair the meeting. This will be recorded in the minutes of the meeting.
g) Minutes of meetings shall record whether an individual with an interest was allowed to remain in the room (by approval from the Chair) whilst the item giving rise to conflict was addressed; whether they contributed to the discussion, or if at any time the individual was asked to leave the meeting whilst a decision was made. Subject to arrangements that may have been agreed with the chief finance officer or approved by the governing body, and recorded prior to the meeting, the decision on whether an individual with a conflict is allowed to stay and listen or contribute to the meeting is at the discretion of the chair of the meeting.

h) Where a meeting is unable to form a quorum, due to the number of declared interests in a matter under discussion at that meeting, the chair will seek advice from the chief finance officer on how the matter should be handled and if necessary, the matter shall be deferred until a future meeting when a quorum can be formed.

i) Individuals who have declared an interest may not vote on items in which they have an interest and may, at the discretion of the chair, be asked to leave the room during any voting process.

j) Individuals shall confirm on appointment (as set out in all job descriptions for new posts) that they will not mis-use their position or the information acquired in the course of their work on behalf of the group to further their own interests.

27. In the event of a meeting not achieving its quorum, due to the declared interests of its members, it may be necessary to invite other individuals to sit on a specially convened committee or, or to refer the matter requiring consideration to the group’s governing body. The group’s chief finance officer will advise on the appropriate course of action which may include “accountable officer approval” if appropriate, in-line with the scheme of reservation and delegation for specific decisions and these decisions will be published/provided to the governing body.

28. Where all members of a meeting are conflicted, the chief finance officer will determine whether a committee or alternative committee of the group or governing body or the governing body itself is able to consider making a decision. In such circumstances it may be necessary to invoke the permissive clause, as set out in the group’s constitution. Where it is necessary to apply the arrangements set out in this paragraph, the governing body’s audit committee will be informed of this matter at its next committee meeting.

MANDATORY TRAINING

29. Conflict of interest training will be provided as part of induction to the clinical commissioning group and undertaken annually thereafter (from April 2017).

CONTRACTORS

30. Anyone seeking information in relation to a procurement exercise, or participating in a procurement exercise, or otherwise engaging with the group in relation to the potential provision of services or facilities to the group, will be required to make a declaration of interest.
31. Anyone contracted to provide services or facilities directly to the group will be subject to the same provisions of this policy, the group’s constitution and procurement policy in relation to managing conflicts of interests, as an individual listed in paragraph 4.

EXAMPLES OF SCENARIOS WHERE POTENTIAL CONFLICTS OF INTEREST MAY ARISE

Advisors

32. During the development of its commissioning plans, the group may seek advice from clinicians, or other individuals, either on an informal [voluntary] or formal [paid] basis, including those working in its member practices and or from local or regional providers of health services, who have an interest in the services that they are being asked to advise on. The group will take steps to avoid a situation where engaging providers in an advisory capacity [hereafter referred to as advisors] does not give rise to a provider being excluded from any subsequent process to provide a service to the group, due to an advisors involvement in the decisions to procure that service. In seeking advice from advisors with interests, the group will:

a) promote transparency in its recruitment of advisors from provider organisations;

b) note the interests of advisors in the minutes of meetings of advisory groups;

c) make available to interested providers the information that is available to its advisors;

d) maintain a record of its advisory groups, their remit, membership, declarations of interests, papers considered by those groups of those groups, the minutes of their meetings and the recommendations that the groups’ propose;

e) conform with best procurement practice;

f) establish a procedure for managing the interests of advisors during the various stages of its commissioning processes;

g) ensure that advisors who are considered to have ‘significant’ interests do not chair meetings of advisory groups;

h) advisors with a declared interest must not be involved in procuring, tendering, managing or monitoring a contract in which they have an interest.

Health Services Contracts Involving Member Practices

33. Where the group is engaged in activities which may lead to services being commissioned from some or the majority of its member practices, it will ensure that individuals who may benefit from the decision are not involved in taking that the decision.

34. This provision includes:

a) an individual from a member practice participating in the development of a proposal to commission services from member practices, providing that individual is not the sole beneficiary, or one of a small number of beneficiaries, from the proposal;
b) a member of the group’s membership council or governing body or their committees or sub-committees, who may benefit from the proposal, from contributing to discussions on such matters in meetings, but it would prevent the individual from participating in taking the decision and in voting on the matter at such meetings.

35. In determining whether a service should be commissioned solely or partly from member practices, the group will adhere to national procurement guidelines.

TRANSPARENCY IN PROCURING SERVICES

36. The group recognises the importance of 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 group will procure services in a manner that is open, transparent, non-discriminatory and fair to all potential providers, this includes to ensure a declaration of interests is provided by all providers involved in tendering and procurement processes.

37. The group will produce a procedural note approved by its governing body which promotes:

   a) the engagement of all relevant clinicians (not just members of the group) and potential providers, together with local members of the public, in the decision-making processes used to procure services;

   b) transparency in its service redesign and procurement processes.

DATA PROTECTION

38. The declarations provided by individuals will be processed by the group in accordance with data protection principles as set out in the Data Protection Act 1998. Data will be processed only to ensure that the governing body members act in the best interests of the group and the public and patients the group has been established to serve. Information will not be used for any other purpose.

39. Signing the declaration form will also signify that individuals consent to their data being processed for the purposes set out in this policy, including that the information will be made public in the form of a register of interests.

BREACHES OF THIS POLICY

40. Individuals should be aware that a breach of this policy could render them liable to prosecution, and the organisation may incur potential fines. Employees in breach of policy may be terminated from their employment, position or arrangement with the group. Individuals who fail to disclose any relevant interests as required by this policy or the group’s constitution may be subject to disciplinary action which could ultimately result in the termination of their employment, position or arrangement with the group.
41. The chief finance officer is responsible for ensuring that arrangements are in place for the implementation of this policy and to publish any breaches on the clinical commissioning group’s website.

42. Any breaches (material or immaterial) to the conflict of interest policy will be formally recorded on a register and investigated by the chief finance officer with oversight by the conflict of interest guardian. Investigation reports will be presented to the audit committee and governing body as appropriate, in line with the group’s governance structure.

43. Managing breaches to the conflicts of interest policy will also be undertaken in-line with human resources policies (e.g. the whistleblowing policy), which are available on the group’s website. The conflict of interest guardian will report any breaches to conflicts of interest to NHS England via the formal quarterly reporting system already in place.

44. Clinical commissioning group employees, governing body members, committee or sub-committee members and GP practice members can report any suspected or known breaches of the conflicts of interest policy to the conflict of interest guardian on a strictly confidential basis. When reporting a suspected or known breach of the policy, the individual should ensure to comply with the whistleblowing policy.

IMPACT OF NON-COMPLIANCE

45. Failure to comply with the policies on conflicts of interest management, pursuant to this statutory guidance, can have serious implications for the clinical commissioning group and any individuals concerned.

Civil implications

46. If conflicts of interest are not effectively managed, clinical commissioning groups could face civil challenges to decisions they make. For instance, if breaches occur during a service re-design or procurement exercise, the clinical commissioning group risks a legal challenge from providers that could potentially overturn the award of a contract, lead to damages claims against the clinical commissioning group, 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 clinical commissioning group’s reputation. In extreme cases, staff and other individuals could face personal civil liability, for example a claim for misfeasance in public office.

Criminal implications

47. 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 clinical commissioning group and linked organisations, and the individuals who are engaged by them.

48. The Fraud Act 2006 created a criminal offence of fraud and defines three ways of committing it:
• Fraud by false representation;
• Fraud by failing to disclose information; and,
• Fraud by abuse of position.

49. An essential ingredient of the offences is that, the offender's conduct must be dishonest and their intention must be to make a gain, or cause a loss (or the risk of a loss) to another. Fraud carries a maximum sentence of 10 years imprisonment and /or a fine if convicted in the Crown Court or 6 months imprisonment and/or a fine in the Magistrates' Court. The offences can be committed by a body corporate.

50. Bribery is generally defined as giving or offering someone a financial or other advantage to encourage that person to perform their functions or activities. The Bribery Act 2010 reformed the criminal law of bribery, making it easier to tackle this offence proactively in both the public and private sectors. It introduced a corporate offence which means that commercial organisations, including NHS bodies, will be exposed to criminal liability, punishable by an unlimited fine, for failing to prevent bribery. The offences of bribing another person, being bribed and bribery of foreign public officials can also be committed by a body corporate. The Act repealed the UK’s previous anti-corruption legislation (the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Acts of 1906 and 1916 and the common law offence of bribery) and provides an updated and extended framework of offences to cover bribery both in the UK and abroad.

51. The offences of bribing another person, being bribed or bribery of foreign public officials in relation to an individual carries a maximum sentence of 10 years imprisonment and/or a fine if convicted in the Crown Court and 6 months imprisonment and/or a fine in the Magistrates’ Court. In relation to a body corporate the penalty for these offences is a fine.

52. Any individual who fails to disclose any relevant interests or who otherwise breach the clinical commissioning group’s rules and policies relating to the management of conflicts of interest are subject to investigation and, where appropriate, to disciplinary action. Clinical commissioning group staff, governing body and committee members in particular should be aware that the outcomes of such action may, if appropriate, result in the termination of their employment or position.

53. Statutorily regulated healthcare professionals who work for, or are engaged by the clinical commissioning group are under professional duties imposed by their relevant regulator to act appropriately with regard to conflicts of interest. Clinical commissioning groups are asked to report statutorily regulated healthcare professionals to their regulator if they believe that they have acted improperly, so that these concerns can be investigated. Statutorily regulated healthcare professionals should be made aware that the consequences for inappropriate action could include fitness to practise proceedings being brought against them, and that they could, if appropriate, be struck off by their professional regulator as a result.
ANTI-FRAUD BRIBERY AND CORRUPTION ARRANGEMENTS

54. This policy should be read in conjunction with the clinical commissioning group’s anti-fraud, bribery and corruption policy which is available on the group’s website. Any concerns relating to fraud, bribery and corruption matters should be referred to the clinical commissioning group’s Anti-Fraud Specialist, Roger Causer on 0151 285 4675.”

55. In addition, the clinical commissioning group should act in line with requirements of the Bribery Act 2010 in the role of procurement and commissioning of services and the overall responsibilities for the prevention of fraud, bribery and corruption as follows:

- Under the Bribery Act 2010, any money, gift or consideration received by an employee from a person or company seeking a contract within the clinical commissioning group will have been deemed to have been received under a bribe. Any gift received from a supplier such as pens, pencils or calendars may not be declared but if unsure, clarification should be sought from your Line Manager. Any hospitality other than meals or buffets provided by suppliers must be declared in writing to the Head of Governance.

- If any employee or individual involved in the commissioning and procurement of services on behalf of the clinical commissioning group feels that they have been offered an incentive or bribe to place an order or contract, this should also be declared in writing immediately in the first instance to the Head of Governance who will seek appropriate advice from the clinical commissioning group Chief Finance Officer and Anti-Fraud Specialist if required.

56. The clinical commissioning group’s declaration of interest form has an agreement statement (January 2017) and by signing the form staff, governing body members and clinical leads are agreeing with this statement:

57. Individuals, by signing the declaration of interest form will confirm they have read and understood the clinical commissioning group’s declaration of interests policy and other relevant documents and understand that failure to abide by the requirements of such will render them liable for disciplinary action, which may include termination of appointment. Any suspicions or allegations of corrupt activity will be appropriately investigated and may lead to prosecution.

January 2017
PURPOSE

1. The purpose of this operating procedure is to set out how the group intends to manage the interests of those providers with whom it engages to assist it in the development of its commissioning plans. The procedure should be read in conjunction with the group’s policy on managing conflicts of interest, which requires anyone working for, or on behalf of, the group who is involved in taking decisions, or who is able to influence a decision to declare their interests to the group.

PRINCIPLES

2. The group’s commissioning arrangements will comply with the principles of public procurement which are:

   a) Transparency;
   b) Proportionality;
   c) Non-discrimination;
   d) equality of treatment.

3. The group will promote transparency when commissioning services by:

   i) Publishing its commissioning plans;
   ii) Publishing the services that it is prioritising over the next 12 – 36 months;
   iii) Publishing the services that it intends to use competitive procurement process to deliver and those likely to be delivered via single tender actions;
   iv) Publishing the services currently under review and the scope of their review;
   v) Notifying providers of existing services of the group’s intention to review services that it provides at least nine months in advance of their contract ending;
   vi) promoting a patient’s right to choose a provider of their choice via its website and via its published materials.
MANAGING INTERESTS

4. The group’s arrangements for managing conflicts or potential conflicts of interest that may arise when it engages clinicians, or other representatives of provider organisations, to advise it on its commissioning activities shall be structured around the activities associated with its:

   i) pre-procurement work;

   ii) work during procurement;

   iii) work following procurement.

5. In drawing this distinction, the group acknowledges that its engagement with clinicians or representatives from member practices, hospitals or other providers, who have an interest in providing services to the group, is likely to differ depending on which stage of the procurement process that the group is at. For example, the group has determined that it is appropriate in a clinically led membership organisation to engage clinicians with interests in providing services to the group [subject to the provisions set out in this procedure] when deciding what to procure but that it would not be appropriate to engage providers with interests during procurement.

6. In managing conflicts or potential conflicts of interests, the group will distinguish between those individuals or organisations that have an interest and those that are deemed to have a material interest. The group’s definition of material is set out at Annex 1.

PRE-PROCUREMENT ACTIVITIES

7. The pre-procurement phase of the group’s commissioning activities comprise:

   i) generating ideas and options;

   ii) solution exploration;

   iii) service review;

   iv) specification.
8. Whilst the procedures set out in this document should be applied consistently, the effort that the group invests to manage conflicts of interest will be proportionate to the value, complexity and risks of the services contracted, i.e. greater effort will be made where a combination of higher benefits, costs, savings and quality can be gained.

IDEAS AND SOLUTION EXPLORATION PHASE

9. The group will engage with clinicians or other representatives of providers to help generate ideas or options, or to explore solutions which either improve access to services, provide care closer to home, provide additional choices for patients or users or which offer a different model of care to the group’s existing arrangements.

10. In engaging clinicians or representatives during the ‘ideas’ and ‘solution exploration’ phase, the group will take steps to ensure that:

   i) providers do not have preferential access to information that would give them a competitive edge in their bid to provide that service;

   ii) a provider with a ‘material’ interest is not appointed to a position of influence, including, for example, chairing meetings or conducting research on behalf of the group;

   iii) providers who currently provide the services under consideration are invited to contribute to the group’s work.

11. In order to mitigate against providers, or the perception of providers being given preferential access to information, the group will, as soon as practical, actively encourage a range of providers to contribute ideas and solutions to its work. This will include promoting this work on the group’s website.

12. All clinicians contributing to the review should declare any interests both current and future and these will be recorded in a log and cross referenced in the minutes of meetings.

13. The recommendations arising from the review will be recorded in the minutes of meetings and will be available on request [or via the group’s website].

SERVICE REVIEW

14. Where the group is undertaking a major service review, involving consideration of for example, where and how an existing service may be procured in the future, or where existing contracts are due to expire or to be terminated, which, for example involve a public consultation exercise or involve a service that has a significant value, benefit or potential savings, the group will:
i) appoint a clinical representative to co-ordinate the service review from a provider which does not provide nor normally intend to bid to provide that service in the future;

ii) seek to engage a range of providers in the service review. This will include representatives from the current provider of that service along with other providers who are expected to bid for the service in the future.

15. The group will promote a level playing field among providers by advertising the review via its website and inviting providers to participate in the review. This may include active participation in the review via for example an advisory group or the opportunity for providers to make a written contribution or to attend engagement events.

16. Clinicians or representatives contributing to the review should declare any interests both current and future and these will be recorded in a log and where appropriate in the minutes of meetings.

17. The recommendations arising from the review will be recorded in the minutes of meetings and will be available on request [or via the group’s website].

SPECIFICATION PHASE

18. In drafting specifications the group:

   i) may obtain assistance from [clinicians or representatives from] member practices with an interest;

   ii) may not obtain assistance from [clinicians or representatives from] member practices with a material interest;

   iii) may not obtain assistance from clinicians from other organisations which have an interest and from whom the group may commission services.

General

19. The group will endeavour to ensure that an individual provider is not afforded preferential treatment or given access to information that could not be made available to other providers, either on their request or via the group’s website.

20. Where a single provider or one individual is the only likely bidder for a service, and where there are other known providers of that service, they will not be involved in the review of that service or the development of a specification for that service.

21. Where an individual provider is likely to be advantaged by their representative’s involvement in the pre-procurement phases of the group’s commissioning activities and the group cannot provide equality of treatment to other potential providers the group will exclude that provider from its pre-procurement work.
22. Providers of services who are interested in bidding for services may contribute to discussions concerning proposals for that service but they will not be able to vote on the proposal.

23. Where the governing body, or a committee of the governing body, considers it helpful, it may invite clinicians from providers, with an interest or with a material interest in bidding for services, to participate in discussions concerning the recommendations under consideration, however, where those meetings are held in private, such providers will be excluded from the meeting when the decision is taken concerning the outcome of the review or if they are a member of the governing body or a committee of the governing body, they will not be allowed to vote on the proposal.

24. In the circumstances set out in paragraph 11 and 12, the minutes of the meeting will record the reasons for inviting the provider[s] to inform discussions.

DURING PROCUREMENT

25. Clinicians from providers who are competing for services will not be involved in the group’s processes for awarding a service following the decision to procure a service.

26. The group will endeavour to avoid a situation where a provider has to be excluded from bidding to provide a service due to their or their representatives involvement in the decisions to procure that particular service or their participation in the group’s commissioning activities, e.g. as a provider of commissioning or consultancy services. The arrangements for managing conflicts of interests by creating a level playing field for all providers, or by excluding sole providers of services, during the pre-procurement phase should help to mitigate against this.

POST PROCUREMENT

27. Where a provider of services commissioned by the group also refers patients to services that it provides under a contract with the group [including companies in which the provider has an interest], a condition of that contract will be that the provider informs patients of its interests and promotes the patient’s right to choose an alternative provider. The provider can do this by displaying information on the contracts that it holds with the group in a prominent place where patients can see and read it and on its website.

January 2017
ANNEX 1

WEST CHESHIRE CLINICAL COMMISSIONING GROUP

MANAGING CONFLICTS OF INTERESTS:
COMMISSIONING ACTIVITIES DEFINITION OF ‘MATERIAL’

Individuals whom the group considers to have material Interests are:

- individuals with a financial ownership interest of 5% or more in an organisation, that provides, or that could provide services to the group.

- clinicians working for a provider organisations that is likely to bid for services and who derives 10% or more of their income from that provider.

- individuals holding a position as a proprietor, director, non-executive director, majority shareholder, managing partner or key employee [other than in a GP practice], in an organisation that provides or that could provide services to the group.

- clinicians from a member practice who derive more than 10% of their income from a provider who provides, or who could provide services to the group. The material interest relates to the service that employs the member clinician and not to the totality of services offered by that provider.