NHS Clinical Commissioners response: Managing Conflicts of Interest in the NHS – a Consultation

28 October 2016

I. NHS Clinical Commissioners
NHS Clinical Commissioners (NHSCC) is the membership body of Clinical Commissioning Groups (CCGs). Established in 2012, we now have over 91% of CCGs in membership. We therefore offer a strong national voice for our members on a number of policy issues and support them to be the best they can in order to commission effectively for their local populations.

We welcome the opportunity to provide a response to Managing Conflicts of Interest in the NHS: a Consultation. To develop this response we engaged with our Lay Members Network, the only national representative group for all CCG Lay Members regardless of responsibility, as well as the NHSCC Board.

II. Overall Comments
Overall we welcome the importance NHS England, through the work of Sir Malcolm Grant, is placing upon the effective management of actual, potential and perceived conflicts of interests in all parts of the health system.

NHS Clinical Commissioners has recently worked closely with NHS England and our membership in the development of the statutory guidance for Clinical Commissioning Groups (CCGs) on conflicts of interest that was introduced in Managing Conflicts of Interest: Revised Statutory Guidance for CCGs. As part of this, we emphasised the importance of proportionality and clarity, and the CCG guidance is now being implemented across all CCGs.

In the light of this recent work, we ask NHS England to recognise the progress they have already made on effective approaches to managing potential conflicts of interested within local clinical commissioning. We also ask that in the interests of clarity, consistency and avoidance of unnecessary duplication or rendering valuable aspects of their recent work redundant, that to the extent possible the existing CCG guidance is incorporated into any system-wide conflicts of interest guidance.

A. Clinical Input in local commissioning
The need to ensure clinical input into commissioning was the primary motivation behind the creation of CCGs. While it is essential to ensure that potential conflicts of interest are appropriately managed, unnecessarily burdensome or prescriptive standards will impact on the ability of clinicians to meaningfully engage and inform commissioning decision-making.
For example, sections 63 and 65 of the consultation can be interpreted to preclude individuals with any conflict from chairing advisory committees, and as a consequence may prevent expert advisers from being able to effectively contribute to discussions or support decision-making. This could have a significant impact on many core CCG functions, particularly Area Prescribing Committees and the commissioning of primary care if clinical experts are unable to fully participate in discussions and inform clinical strategy. It is important that the guidance recognises that not all relationships with industry are directly and materially related to decisions about the use of resources and can yield important insights to the health sector and patient care. We are concerned how these standards may impact the future recruitment of governing body members and how it will be handled if individuals are retrospectively determined to be too conflicted to participate in boards and advisory committees.

NHSCC believes that the guidance for managing conflicts of interest must carefully balance achieving public transparency with maximising the input and contributions that experienced healthcare leaders make within the NHS. The guidance must provide assurance that conflicts of interest can be effectively managed while not unnecessarily and, disproportionately to the risk, exclude the available expertise and participation needed to assure that the best possible decisions are made.

B. Increased administrative and financial burden
Overall our view is that the draft guidance is likely to introduce additional resource burdens on CCGs at a time when they are facing considerable financial and administrative challenge and are working to deliver STPs and transformation.

Any standards for managing conflicts of interest should be proportionate to the risk and enforceable, and we therefore feel that it would be disproportionate for all staff roles and grades to be required to declare interests in certain categories, including gifts, hospitality, sponsored events, sponsored research, and sponsored posts. We believe it would be more proportionate to expect that only senior staff and those materially involved in decisions that affect local care decisions to register and declare interests. It is important that the standards for managing conflicts of interest are informed by evidence of improper use of public funds and the recognised level of risk. The 2015 National Audit Office investigation into potential conflicts of interest in CCG decision-making found only one instance where Monitor had to formally investigate a concern related to a potential CCG conflicts of interest and later found that the CCG’s decisions had not been affected.¹

C. Engagement with CCGs and harmonisation with existing standards
As indicated above, NHS Clinical Commissioners and our members were actively involved in shaping and testing the standards established in the recently enacted revised statutory guidance for CCGs on managing conflicts of interest. Since then, CCGs have been actively amending their constitutions, recruiting and training staff to implement this revised guidance, and making other investments to build the capability within CCGs to manage this important issue. In that light we are concerned that revising the standards less than a year since their introduction may undermine the progress that has already been made, create confusion

around how to effectively manage conflicts, waste limited CCG resources, and frustrate the commissioning workforce with unclear benefit.

This consultation recognises the importance of CCGs in managing conflicts of interest and how the results of this work will impact existing CCG guidance. The public engagement exercise for the revised statutory guidance for CCGs published in June proactively involved clinical commissioners and set a level of engagement that helped ensure the inclusion of valuable experience and expertise from CCGs into the final product. NHS Clinical Commissioners is disappointed that our members have had less opportunity to engage directly throughout this process which would have enabled maximum contribution from local clinical commissioners.

The consultation states that the revised statutory guidance for CCGs will be refreshed to be aligned with the new standards, but it is imperative that support and resources are made available to CCGs in the interim to help reconcile any differences and clarify for CCGs expectations around managing conflicts of interest throughout the commissioning cycle.

D. Implementation support
The success of this guidance will depend on how it is implemented across the sector. We feel that this consultation can be strengthened in sections 87 – 89 to be clearer about how sanctions will be handled nationally and help clarify the expectation for CCGs and other organisations to report sanctions.

It is also imperative that any guidance be accompanied by a clear strategy for how to support adoption and uptake of the principles in practice. The principles contained in this consultation are written at a very high level from what is experienced on the ground, and it is important that the implementation strategy for this consultation recognises what exists already and what has been working effectively within organisations to manage conflicts of interest. The consultation should support a minimum standard set of definitions and principles across the NHS for managing conflicts of interest whilst enabling local adaption and avoiding a ‘one size fits all’ approach to implementation that fails to account for organisational differences.

From our experience working with NHS England on the CCG Conflicts of Interest Statutory Guidance earlier in 2016 we have found that templates and case study examples have been helpful in supporting CCGs to effectively manage potential conflicts of interests. We believe that any system-wide guidance should be accompanied with relevant templates, tools, resources, and robust training that builds understanding of the definitions of conflicts of interest and helps embed the principles for their effective management into standard practice. It is also important that the training, resources, and standards are actively evaluated to understand the impact they are making and refined and improved to meet the needs of different stakeholders within the NHS.

III. Specific Comments

A. Definitions and scope of conflicts of interest
Our members agree that a clear definition for conflicts of interest that is applied consistently across the health system is important to support effective management of potential, actual and
perceived conflicts of interest. We are concerned, however, that the definition and subclassifications mapped out in the consultation are inconsistent with the standards set in the revised statutory guidance for CCGs earlier this year. The definitions are similar but have different interpretations. The revised statutory guidance for CCGs contains four domains whereas Managing Conflicts of Interest in the NHS has three. It is unclear whether or not the categories in section 38 are inclusive of all the categories in the CCG guidance, which explicitly distinguishes between non-financial professional and personal interests. We are supportive of a simplified definition for conflicts of interest that sets clear minimum standards but feel that this consultation should go as far as possible to draw on existing guidance and avoid unnecessary confusion.

B. Senior Staff
This consultation creates some ambiguity around who must declare interests and to which organisations. The existing CCG standards require that all CCG employees, governing body and committee members, and GP partners and other individuals directly involved in CCG decision-making from member practices declare their interests. It is unclear in this draft consultation who the category of ‘medical staff’ comprises, and specifically whether or not GP partners from member practices will be expected to declare interests to both the CCG and their employer organisation. This has significant implications for the capacity of CCGs to effectively monitor and record interests, given the expansion of the guidance into new categories, such as patents, private practice, and research. The proposed definitions of senior staff also use language that differs from terminology commonly understood by the commissioning sector. For example, it would be helpful for the list to make explicit reference to governing body members and CCG lay members to avoid any uncertainty.

C. Gifts and hospitality
The principles and rules regarding gifts and hospitality differ significantly between sections 45-47 of the draft consultation and the recently revised guidance for CCGs. It is unclear from the current consultation whether CCGs will have to declare when gifts are offered but declined from suppliers or contractors linked to CCG business, as currently understood, and whether or not promotional gifts from actual or potential suppliers can be accepted by CCGs. If separate thresholds or standards are to be applied to the commissioning sector, that should be made explicit in this consultation. In addition, the £50 threshold in the consultation is significantly more than the £10 threshold currently set out in the CCG guidance. While we support the higher threshold we reiterate the need for very clear advice to CCGs on which thresholds to follow. We would also request a fuller justification for the differing financial values to avoid any confusion or ambiguity.

D. Boards, subcommittees, and advisory committees
The proposals for managing conflicts of interest set out at paragraph 63 could be interpreted to remove clinicians from discussions where their specific expertise would be most useful and where they could have the most impact in improving the delivery of services to patients. The existing CCG guidance is clear that GPs should and can be members of the Primary Care Commissioning Committee (PCCC) while taking measures to minimise the risk of conflicts of interest. We believe the draft consultation on managing conflicts of interest in the NHS leaves less flexibility for chairs of the PCCC to determine the most appropriate response to conflicts of interest as they arise. Equal weight needs to be given to the dangers of undue influence as to the dangers of commissioning decisions that are not fully informed by clinical expertise.
For more information

If you would like any further detail on our response please do not hesitate to contact our Head of Policy and Delivery, Claire Herbert at c.herbert@nhsc.org or Network and Project Manager, Sarah Reed at s.reed@nhsc.org.