

**Policy Title: Standards of Business Conduct Policy**

**Policy Number: SWLCCG/CG04**

	Name	Role and Organisation	Date
<b>Author</b>	Leigh Whitbread	Program Lead – MFT	10/12/2019
<b>Reviewers</b>	Ben Luscombe	Chief of Staff	01/02/2020
<b>Authoriser</b>	Sarah Blow	Accountable Officer	31/03/2020

<b>Approved By</b>	Senior Management Team
<b>Applies To</b>	South West London CCG (The CCG), Governing Body Members, Committee Members and all staff working for, or on behalf of the CCG.

<b>Effective Date</b>	01/04/2020
<b>Review Date</b>	01/11/2021

### Controlled Document

The current version of this document is always available electronically via SharePoint or the intranet. All other electronic or paper versions of this document sourced from any network drive, email or other sources are uncontrolled and should be checked against the current SharePoint or intranet version prior to use.

<b>Target Audience</b>	Governing Body Members, Committee Members and all staff working for, or on behalf of, NHS South West London CCG.
<b>Brief Description</b>	This Policy sets out the principles by which we will ensure exemplary standards of business conduct are adhered to.
<b>Action Required</b>	Ensure that the contents of this Policy are shared at all Team Meetings.

## Contents

1.	Introduction.....	3
2.	Guidance and Legal Framework.....	3
3.	Application of Public Service Values and Principles to the NHS.....	4
4.	Responsibilities.....	4
5.	The Guidance in Practice.....	5
6.	Recording of Hospitality, Gifts and Sponsorship .....	9
7.	Declaration of Interests.....	9
8.	Confidentiality .....	9
9.	Use of Resources .....	10
10.	Fraud/Theft.....	10
11.	Monitoring.....	10
12.	Equality Impact Assessment.....	10
13.	Change History.....	11
14.	Non-Compliance with Policy .....	11
15.	Linked Policies/Guidance.....	14
16.	Further Information .....	14
17.	Appendix 1 The Nolan Principles on Standards in Public Life .....	14
18.	Appendix 2 Equality Impact Assessment .....	16

## 1. Introduction

- 1.1 The purpose of this policy is to ensure exemplary standards of business conduct are adhered to, as custodians of public money, by NHS South West London Clinical Commissioning Group (hereby known as the CCG) Governing Board members, committee and sub-committee members, and employees of the CCG (as well as individuals contracted to work on behalf of the group or otherwise providing services or facilities to the group such as those within commissioning support services). Through this policy individuals will be aware of their own responsibilities as well as the CCG's responsibilities as a corporate body.
- 1.2 Importantly, the policy draws attention to the consequences of non-compliance with the requirements which may include disciplinary action and/or legal action.
- 1.3 The production of this policy draws on the wide range of guidance issued over the years for NHS bodies in relation to this important matter and to guidance published specifically for CCGs.

## 2. Guidance and Legal Framework

- 2.1 The NHS Management Executive published guidance, "Standards of business conduct for NHS staff", (HSG (93) 5), which remains extant and which provides specific guidance on:
  1. the standards of conduct expected of all NHS staff where their private interests may conflict with their public duties; and
  2. the next steps which NHS employers should take to safeguard themselves and the NHS against Conflicts of Interest. (*See Conflicts of Interest Policy*).

Specifically, it makes it clear that it is the responsibility of staff to ensure that they are not placed in a position which risks, or appears to risk, conflict between their private interests and their NHS duties.

For specific information relating to Conflict of Interests, please refer to the Managing Conflicts of Interest Policy.

- 2.2 The Department of Health's document, "Code of Conduct for NHS Managers", (October 2002), provides guidance on core standards of conduct expected of NHS Managers to act in the best interests of the public and patients/clients to ensure that decisions are not improperly influenced by gifts or inducements. Professional Codes of Conduct governing health care professionals are also pertinent. Similarly, the General Medical Council's guidance, "Leadership and management for all doctors" (March 2012), details the standards and expectations required of clinicians in leadership and management positions.
- 2.3 Other important guidance on conduct is to be found in "The Code of Conduct: Code of Accountability in the NHS" (Appointments Commission/DOH – 2<sup>nd</sup> Rev: 2004) and the Department of Health's guidance on "Commercial Sponsorship – Ethical Standards for the NHS" (Department of Health, November 2000).
- 2.4 The underpinning legal framework is provided by the Bribery Act 2010 – for further information please refer to the Anti-Bribery Policy.

- 2.5 Section 25 of the Health and Social Care Act 2012 imposes duties on CCGs in relation to maintaining registers of interest and managing conflicts of interest. Further guidance was published in December 2014 to reflect the opportunity for CCGs to take an increased responsibility for the commissioning of primary care. This guidance is embodied in the Managing Conflicts of Interest Policy. (See *Conflicts of Interest Policy*).
- 2.6 This policy has been produced taking into account all of the current guidance and legal framework.

### 3. Application of Public Service Values and Principles to the NHS

- 3.1 Public service values must be at the heart of the NHS. High standards of corporate and personal conduct, based on recognition that patients come first, have been a requirement throughout the NHS since its inception. Moreover, since the NHS is publicly funded, it is accountable to Parliament for the services it provides and for the effective and economic use of taxpayers' money.
- 3.2 The Code of Conduct: Code of Accountability in the NHS (Appointments Commission/DOH – 2<sup>nd</sup> Rev: 2004) defines three crucial public service values which must underpin the work of the health service:
1. **Accountability**- everything done by those who work in the NHS must be able to stand the test of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.
  2. **Probity**- there should be an absolute standard of honesty in dealing with the assets of the NHS: integrity should be the hallmark of all personal conduct in decisions affecting patients, staff and suppliers, and in the use of information acquired in the course of NHS duties.
  3. **Openness** – there should be sufficient transparency about NHS activities to promote confidence between the NHS body and its staff, patients and the public.
- 3.3 Following the findings of the Nolan Committee in 1994, a set of recommendations was published by the government setting out 'Seven Principles of Public Life' which apply to all in the public service and which are embodied within the CCG's Constitution. These are attached at Appendix 1.

### 4. Responsibilities

4.1 The CCG is responsible for ensuring that the requirements of this policy and supporting documents are brought to the attention of all staff and that machinery is put in place for ensuring that the guidelines are effectively implemented. These responsibilities are particularly important given the corporate responsibility set out in the Bribery Act for organisations to ensure that their anti-bribery procedures are robust.

Such awareness will be promoted in:

1. A clause statement written in Job Descriptions.
2. Publication of this policy on the CCG's intranet site for staff.

4.2 All staff must apply the following principles in the conduct of their employment:

1. They must not accept gifts, hospitality or benefits of any kind from a third party which might be perceived as compromising their personal judgement or integrity. (*See Hospitality and Gifts Policy*)
2. They must not make use of their official position to further their private interests or those of others. (*See Conflicts of Interest Policy*).
3. They must declare any private interests which are relevant and material relating to the position they hold in the NHS. (*See Conflicts of Interest Policy*).
4. They must base all purchasing decisions and negotiations of contracts solely on achieving best value for money for the taxpayer.
5. They must refer to their line manager when faced with a situation for which the guidance available requires further interpretation.
6. If in any doubt, they must seek advice from the Chief of Staff.

It is the responsibility of all staff to raise any concerns regarding staff business conduct.

All staff should ensure that they are not placed in a position that risks, or appears to risk, conflict between their private interests and their NHS duties.

## 5. The Guidance in Practice

### 5.1 Overriding Principle

As a public body, the CCG has a duty to ensure fairness and honesty in its relationships with suppliers, contractors, service providers and service users or any other person or organisation with whom the CCG has or might have business connections.

- 5.2 All employees and others acting on behalf of the CCG must uphold the highest standards of business conduct within such relationships. This is important to ensure that no employee, especially those responsible for making decisions in relation to purchases and procurement, acts in any way that is inconsistent with the organisation's objectives or compromises the integrity of the business by accepting a gift in circumstances where it could influence, or be perceived to influence, that employee's business actions or decisions.

- 5.3 Employees of the CCG, individuals of Member Practices, Governing Board and committee members and individuals acting on behalf of the CCG, must not accept any fee or reward for work done whilst on CCG duty other than that agreed under their terms and conditions of employment. As a general rule, employees should not accept gifts or hospitality arising from their employment or appointment with the CCG, except where these are of a token nature only, in which case employees should inform their manager. (*See Gifts and Hospitality Policy*).

### 5.4 Commercial sponsorship

- 5.4.1 In recognition that NHS bodies work together, and in collaboration with other agencies, to improve health services for the populations they serve, the Department of Health published guidance "Commercial Sponsorship: Ethical Standards for the NHS" (November 2000);

- 5.4.2 The guidance acknowledges that collaborative partnerships with industry can have a number of benefits. It advises that it is important to have a transparent approach about any proposed sponsorship which would benefit the CCG and for the CCG to consider fully the implications of a proposed sponsorship deal before entering into any arrangement. If any such partnership is to work, there must be

trust and reasonable contact between the sponsoring company and the NHS;

5.4.3 For the purpose of this policy, commercial sponsorship is defined as:

*“NHS funding from an external source, including of all, or part of, the costs of a member of staff, NHS research, staff training, pharmaceuticals, equipment, meeting rooms, costs associated with meetings, meals, gifts, hospitality, hotel and transport costs (including trips abroad), provision of free services (speakers), buildings or premises”.*

Department of Health’s guidance (November 2000) - Commercial Sponsorship – Ethical Standards for the NHS. (See *Hospitality and Gifts Policy – Section 4*).

## 5.5 Placing of orders and contracts

5.5.1 Fair and open competition between prospective contractors or suppliers for CCG contracts (including where the CCG is commissioning a service through Any Qualified Provider) is a requirement of NHS Standing Orders and of Public Contracts Regulations. This means that:

- No private, public or voluntary organisation or company which may bid for CCG business should be given any advantage over its competitors, such as advance notice of CCG requirements. This applies to all potential contractors, whether or not there is a relationship between them and the CCG, such as a long-running series of previous contracts.
- Each new contract should be awarded solely on merit, taking into account the requirements of the CCG and the ability of the contractors to fulfil them.
- No special favour is to be shown to current or former employees or their close relatives or associates in awarding contracts to private or other businesses run by them or employing them in any capacity. Contracts may be awarded to such businesses when they are won in fair competition against other tenders, but scrupulous care must be taken to ensure that the selection process is conducted impartially, and that staff who are known to have a relevant interest play no part in the selection.

5.5.2 All staff, Governing Board, Committee members and individuals acting on behalf of the CCG, in contact with suppliers and contractors (including external consultants), and in particular those who are authorised to sign orders or place contracts for goods, materials or services, are expected to adhere to professional standards of a kind set out in the ethical code of the Institute of Purchasing and Supply (attached at Appendix 2). They are also required to declare any interest if they are participating in a specific procurement and tendering processes.

## 5.6 Private Transactions

5.6.1 Individual staff, Governing Board and Committee members, and individuals acting on behalf of the CCG, must not seek or accept preferential rates or benefits in kind for private transactions carried out with companies with which they have had, or may have, official dealings on behalf of the CCG. (This does not apply to concessionary agreements, negotiated with companies by NHS management, or by recognised staff interests, on behalf of all staff – for example, NHS staff benefits schemes).

## 5.7 Employees’ outside employment

---

5.7.1 The standard contract used across the CCG sets out terms concerning outside employment: 'You shall not be employed by any other person, firm or company, without the express permission of the CCG. If you have employment other than your employment with the CCG, you must write to your Manager giving details of the hours and days worked and duties carried out, seeking agreement that this work will not be detrimental to your employment within the CCG.'

5.7.2 Any employee who may be considering outside employment should discuss this in the first instance with their line manager or director before undertaking the employment.

5.7.3 If staff wish to take on additional paid work, such as panel membership, speaking at conferences, undertaking peer review, which is directly related to their role in the NHS, the following process will apply:

- All requests to participate in additional activities to be submitted in writing to their director;
- If agreed the assumption will be made that in these cases staff will be released for additional activities during work time with any remuneration to be paid directly to the CCG;
- Any participation in additional activities must be explicitly agreed with the relevant director and recorded;
- In all cases staff must declare any additional paid work as part of the Declaration of Interests process.

5.7.4 Employees must not engage in outside employment during any periods of sickness absence from the CCG. To do so may lead to a referral being made to the Local Counter Fraud Specialist for investigation which may lead to criminal and/or disciplinary action in accordance with the CCG's Policy in Relation to Fraud and Fraud Response Plan.

## 5.8 Donations in relation to the organisation

5.8.1 Employees must check with their line manager or director before making any requests for donations (e.g. to Charitable Funds) to clarify appropriateness and/or financial or contractual consequences of acquisition. Requests for equipment or services should not be made without the express permission of a senior manager.

5.8.2 Donations/Gifts from individuals, charities, companies (as long as they are not associated with known health-damaging products) – often related to individual pieces of equipment or items – provide additional benefits to patients but may have resource implications for the CCG. Further guidance regarding Charitable Funds and gifts and donations can be requested from the Chief Finance Officer.

5.8.3 Any gifts to the organisation should be receipted and a letter of acknowledgement should be sent with thanks. (See Gifts and Hospitality Policy for detail of gifts that must not be accepted).

## 5.9 Intellectual Property Rights (IPR)

5.9.1 The CCG will identify potential intellectual property rights (IPR), as and when they arise, so that it can protect and exploit them properly, and thereby ensure that it receives any rewards or benefits (such as royalties), in respect of work commissioned from third parties, or work carried out by individuals in the course of their NHS duties. Most IPR are protected by statute; e.g. patents are protected under the Patents Act 1977

and copyright (which includes software programmes) under the Copyright Designs and Patents Act 1988. To achieve this, NHS organisations and employers should build appropriate specifications and provisions into the contractual arrangements which they enter into before the work is commissioned or begins. They should also seek legal advice if any doubt, in specific cases.

5.9.2 With regard to patents and inventions, in certain defined circumstances the Patents Act gives employees or individuals in the course of their duties a right to obtain some reward for their efforts.

5.9.3 Where the undertaking of external work gaining patent or copyright or the involvement in innovative work benefits or enhances the CCG's reputation or results in financial gain for the CCG, consideration will be given to rewarding employees subject to any relevant guidance for the management of Intellectual Property in the NHS issued by the Department of Health.

## 5.11 Candidates for appointment

5.11.1 Candidates for any appointment with the CCG must disclose in writing if they are related to, or in a significant relationship with (e.g. spouse or partner), any Governing Body member or employee of the CCG. The NHS Jobs application form requests this information and therefore must be disclosed before submission.

5.11.2 A member of an appointment panel which is to consider the employment of a person to whom he/she is related must declare the relationship before an interview is held.

5.11.3 Candidates for any appointment with the CCG shall, when applying, also disclose cases where they or their close relatives or associates have a controlling and/or significant financial interest in a business (including a private company, public sector organisation, other NHS employer and/or voluntary organisation), or in any other activity or pursuit, which may compete for an NHS contract to supply either goods or services to the CCG.

## 5.12 Canvassing for appointments

It is acknowledged that informal discussions concerning an advertised post can be part of the recruitment process. However, canvassing or lobbying of CCG employees, Governing Body member or any members of an appointments committee, either directly or indirectly, shall disqualify a candidate. This shall not preclude a member from giving a written reference or testimonial of a candidate's ability, experience or character for submission to an appointments panel. Jobs will be awarded on the merit of the individual candidate.

Elected posts – There are a number of elected clinical leadership posts within the CCG for which candidates are able to canvass votes from the Membership body. Any canvassing must be conducted in a manner that is ethical and transparent.

## 5.13 Trade or discount cards

Trade or discount cards, by which personal benefit is obtained from the CCG's purchase of goods or services at a reduced price gives rise to the potential for real or perceived conflicts of interest. If offered or received, such cards are classified as gifts and should be politely declined and/or returned to the sender. The exceptions to this are benefits negotiated by the CCG on behalf of its staff.

## 5.14 Awards or prizes

Staff should consult their line manager or Chief Finance Officer if they are offered an award or prize in connection with their official duties. They will normally be allowed to receive it, provided:

- there is no risk of public criticism;
- it is offered strictly in accordance with personal achievement;
- it is not in the nature of a gift nor can be construed as a gift, inducement of payment for publication or invention to which other rules apply.

## 6 Recording of Hospitality, Gifts and Sponsorship (See Hospitality and Gifts Policy)

6.1 All offers of gifts and hospitality must be declared and recorded in accordance with the Gifts and Hospitality Policy including where the policy requires that such offers are declined. No gifts from suppliers above a value of £6 can be accepted and no gifts with a value in excess of £50 per item, either individually or cumulatively (from the same or closely related source in a 12-month period).

6.2 Gifts, hospitality and sponsorship will be recorded in accordance with the Conflicts of Interest Policy. The form provided within the policy should be completed and returned to the Board Secretary within two weeks so that the details can be recorded on the central Register. Failure by a member of CCG staff or officer to give timely notification to the CCG of a gift, hospitality or sponsorship may lead to disciplinary action.

6.3 It is acknowledged that there may be circumstances where hospitality may be offered by an organisation, as an integral element of a strategic partnership relationship. Acceptance of such hospitality and associated funding agreement will be authorised by the Accountable Officer and recorded in the Register of Hospitality, Gifts and Sponsorship.

## 7. Declaration of Interests

Where an individual, i.e. an employee, group member, member of the Governing Board, or its committees has an interest, or becomes aware of an interest which could lead to a conflict of interest in the event of the CCG 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 the CCG's Managing Conflicts of Interest Policy. (*See Conflict of Interest Policy*)

## 8. Confidentiality (Refer to Whistleblowing and Freedom to Speak Up Policies)

8.1 Employees, group members, member of the Governing Board, or a member of a committee or sub-committee of the CCG or its Governing Board should be particularly careful using or making public, internal information of a confidential nature, particularly regarding details covered under the Data Protection Act 1998 or other legislation whether or not disclosure is prompted by the expectation of personal gain.

8.2 Disclosure of information which counts as "commercial in confidence" and which might prejudice the principle of a purchasing system based on fair competition may be subject to scrutiny and disciplinary or criminal action, or both.

- 8.3 This does not affect the CCG's grievance or complaints procedures in terms of freedom of expression and is not intended to restrict any of the freedoms protected under Article 10 of the Human Rights Act 1998. It is designed to complement professional and ethical rules, guidelines and codes of conduct on an individual's freedom of expression.
- 8.4 An employee or individual who has exhausted all the locally established procedures, including reference to the Whistleblowing Policy, and who has taken account of advice which may have been given, may wish to consult their MP or the Secretary of State for Health in confidence.
- 8.5 Section 43B (1) of the Public Interest Disclosure Act 1998 provides protection for disclosure of information where the worker making the disclosure has a reasonable belief that the disclosure is in the public interest, and tends to show that:
- a) a criminal offence has been committed, is being committed or is likely to be committed,
  - b) a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
  - c) a miscarriage of justice has occurred, is occurring or is likely to occur,
  - d) the health or safety of any individual has been, is being or is likely to be endangered,
  - e) the environment has been, is being or is likely to be damaged, or
  - f) information tending to show any matter falling within points a) to e) has been, is being or is likely to be deliberately concealed.
- 8.6 Disclosure must be made to either the employer or to a prescribed third party, such as the Health & Safety Executive or HM Revenue & Customs. Wider disclosure, for instance to the media, is only protected if the worker believes the information is substantially true, is in the public interest, and not for their own personal gain.

## 9. Use of Resources

Under the Code of Conduct for NHS Managers, all managers are required to use the resources available to them in an effective, efficient and timely manner having proper regard to the best interests of the public and patients.

## 10. Fraud/Theft

Staff should not be afraid of raising concerns and will not experience any blame or recrimination as a result of making any reasonably held suspicion known. Further information is available in the Policy in Relation to Fraud and Fraud Response Plan. (*See Fraud and Anti Bribery Policy*).

## 11. Monitoring

If you have any suggestions for the improvement of this Policy, please contact the CCG, the HCP or the Board Secretary with your suggestions, for consideration. The Audit Committee is responsible for reviewing this policy and ensuring its implementation.

## 12. Equality Impact Assessment

An Equality Impact Assessment must be carried out as part of the development of each policy. All public authorities have a legal responsibility to assess their activities, and to set out how

they will monitor any possible negative impact upon equality in terms of the protected characteristics of age, disability, gender, gender identity, marriage or civil partnership, pregnancy and maternity or paternity, race, religion or belief, and sexual orientation. If a negative impact is identified, you will need to take action to reduce that impact.

### 13. Change History

Policy Number	Effective Date	Significant Changes
CG4	01/04/2020	Combine SWL CCG policy superseding the previous individual CCG policies in place.

### 14. Non-Compliance with Policy

Failure to notify the CCG of an appropriate conflict of interest, additional employment or business may lead to disciplinary action against the individual and/or criminal action (including prosecution) under the relevant legislation.

Failure to Disclose or Declare

14.1 There will be situations when interests, and offers of gifts, hospitality and sponsorship will not be identified, declared or managed appropriately and effectively. This may happen innocently, accidentally, or because of the deliberate actions of staff or other organisations. For the purposes of the Policy these situations are referred to as 'breaches'.

14.2 Failing to respond to a request for information in relation to the Policy, including a request to submit a declaration form, will also be considered a breach of the Policy.

14.3 The CCG takes the failure to comply with this and other policies seriously. If an individual fails to declare an interest or the full details of an interest, and/or offers of gifts, hospitality and sponsorship, or otherwise breach the Policy this may result in disciplinary action being undertaken. Please see the CCG's Disciplinary Policy for more information.

14.4 It is an offence under the Fraud Act 2006 for personnel to fail to disclose information to the CCG in order to make a gain for themselves or another, or to cause a loss or expose the organisation to a loss. Therefore, if an individual becomes aware of any financial or other irregularities or impropriety which involve evidence or suspicion of fraud, bribery or corruption they should contact the Local Counter Fraud Specialist in accordance with the Counter Fraud, Bribery and Corruption Policy with a view to an appropriate investigation being conducted and potential prosecution being sought.

14.5 Breaches of this policy addressed internally may result in a Governing Body member being removed from office in line with the CCG's Constitution. A contractor may be prevented from obtaining further work with the CCG or an employee may face disciplinary action and dismissal. Breaches which amount to criminal offences may result in criminal prosecution and civil recovery action.

Identifying and Reporting Breaches

14.6 Staff who are aware of actual breaches of the Policy, or who are concerned that there has been, or may be, a breach, should report these concerns to the Governance Team.

14.7 To ensure that interests are effectively managed staff are encouraged to discuss actual or perceived breaches. Every individual has a responsibility to do this.

14.8 The CCG will investigate each reported breach according to its own specific facts and merits and give relevant parties the opportunity to explain and clarify any relevant circumstances. For further information about how concerns should be raised please see the Whistleblowing policy.

14.9 Following investigation, the CCG will:

- Decide if there has been or is potential for a breach and if so what the severity of the breach is.
- Assess whether further action is required in response – this is likely to involve any staff member involved and their line manager, as a minimum.
- Consider who else inside (and outside, e.g. the CQC, GMC, NMC, etc) the CCG should be made aware.
- Take appropriate action.

#### Taking Action in Response to Breaches

14.10 Action taken in response to breaches of the Policy will be in accordance with the disciplinary procedures of the CCG and could involve organisational leads for staff support (e.g. Human Resources), fraud (e.g. Local Counter Fraud Specialists), members of the management or executive teams and the CCG's auditors.

14.11 Breaches could require action in one or more of the following ways:

- Clarification or strengthening of existing Policy, process and procedures.
- Consideration as to whether HR/employment law/contractual action should be taken against staff or others.
- Consideration being given to escalation to external parties. This might include referral of matters to external auditors, the NHS Counter Fraud Authority, the Police, statutory health bodies (such as NHS England, NHS Improvement or the CQC), and/or health professional regulatory bodies.

14.12 Sanctions should not be considered until the circumstances surrounding breaches have been properly investigated. However, if such investigations establish wrongdoing or fault then the CCG can and will consider the range of possible sanctions that are available, in a manner which is proportionate to the breach. This includes:

- Employment law action against staff, which might include:
- Informal action (such as reprimand or signposting to training and/or guidance).
- Formal disciplinary action (such as formal warning, the requirement for additional training, re-arrangement of duties, re-deployment, demotion, or dismissal).
- Reporting incidents to the external parties described above for them to consider what further investigations or sanctions might be.
- Contractual action, such as exercise of remedies or sanctions against the body or staff which caused the breach.
- Legal action, such as investigation and prosecution under fraud, bribery and corruption legislation.

#### Learning and Transparency Concerning Breaches.

14.13 Reports on any breaches, the impact of these, and action taken will be considered by the Audit Committee.

## Criminal Implications

14.14 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 the CCG and any linked organisations, and the individuals who are engaged by them.

### Fraud Act 2006

14.15 The Fraud Act 2006 defines a number of offences including:

- Fraud by false representation;
- B). Fraud by failing to disclose information and;
- C. Fraud by abuse of position.

14.16 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.

### Bribery Act 2010

14.17 Office holders, officers, Staff, members, committee and sub-committee members of the CCG and members of the Governing Body (and its committees) should be aware that in committing an act of bribery they may be subject to a penalty of up to ten years' imprisonment, a fine, or both. They may also expose the organisation to a conviction punishable with an unlimited fine.

14.18 They should also be aware that a breach of this Act, or of this guidance, renders them liable to disciplinary action by the CCG whether or not the breach leads to prosecution. Where a material breach of this guidance is found to have occurred, the likely sanction will be dismissal.

14.19 In short, the offences cover the offering, promising or giving of a financial or other advantage and the requesting, agreeing to receive or accepting of a financial or other advantage where the overall intention of such an action is to bring about an improper performance or a relevant function or activity.

14.20 The organisation may be liable where a person associated with it commits an act of bribery. An associated person is defined by the Act as a person who 'performs services' for or on behalf of the organisation. This person can be an individual or an incorporated or unincorporated body, and the capacity in which a person performs services for or on behalf of the organisation does not matter.

14.21 The CCG will have a defence to the corporate offence if it can show that, despite a particular case of bribery, it nevertheless had 'adequate procedures' in place to prevent persons associated with it from committing bribery offences in line with the Ministry of Justice guidance<sup>6</sup>. The adequate procedures should be informed by the following six principles: a. Proportionate procedures; b. Top-level commitment; c. Risk assessment; d. Due diligence; e. Communication (including training); f. Monitoring and review.

14.22 Full compliance with the requirements of this policy is expected of office holders, officers, staff, members, committee and sub-committee members of the CCG and members of the Governing Body (and its committees) in order to demonstrate the CCG's commitment to openness and transparency, in the spirit of the Act.

## 15. Linked Policies/Guidance

### Policies:

- CCG Constitution
- Gifts and Hospitality
- Prime Financial Policies, Scheme of Reservation and Delegation
- Managing Conflict of Interest Policy
- Anti-Bribery Policy
- Policy in Relation to Fraud and Fraud Response Plan
- Whistle Blowing

### Guidance:

- Standards for members of NHS boards and Clinical Commissioning Group governing bodies in England - <http://www.professionalstandards.org.uk/docs/psa-library/november-2012---standards-for-board-members.pdf?sfvrsn=0>
- Standards of Business Conduct for NHS Staff (HSG (93) 5) – available on the Department of Health website - <http://www.england.nhs.uk/wp-content/uploads/2012/11/stand-bus-cond.pdf>
- Code of Conduct for NHS Managers – [http://www.nhsemployers.org/~media/Employers/Documents/Recruit/Code\\_of\\_conduct\\_for\\_NHS\\_managers\\_2002.pdf](http://www.nhsemployers.org/~media/Employers/Documents/Recruit/Code_of_conduct_for_NHS_managers_2002.pdf)
- Principles of Public Life drawn up by the Nolan Committee – Appendix 1
- Department of Health’s guidance (November 2000) - Commercial Sponsorship – Ethical Standards for the NHS

## 16. Further Information

Any queries on the content of this policy should be directed to the Chief of Staff. [Appendix 1 The Nolan Principles on Standards in Public Life](#)

The Nolan Committee was set up in 1994 to examine concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in arrangements which might be required to ensure the highest standards of propriety in public life. The committee published “*Seven principles of Public Life*”, which it believes should apply to all those operating in the public sector. These principles should be adopted by CCG staff and are as follows:

### **Selflessness**

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

### **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

### **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership**

Holders of public office should promote and support these principles by leadership and example.

All staff will be expected to adopt these principles when conducting official business for and on behalf of the CCG so that appropriate ethical standards can be demonstrated at all times.

## 17. Appendix 2 Equality Impact Assessment

	Mandatory Questions	Yes/No/NA	Comments
1.	Does the Policy affect any group less or more favourably than another on the basis of:		
	Age?	No	
	Disability?	No	
	Gender?	No	
	Gender identity?	No	
	Marriage or civil partnership?	No	
	Pregnancy and maternity or paternity?	No	
	Race?	No	
	Religion or belief?	No	
	Sexual orientation?	No	
2.	Is there any evidence that any groups are affected differently by the Policy and if so, what is the evidence?	No	
3.	Is any impact of the Policy likely to be negative?	No	
4.	If any impact of the Policy is likely to be negative, can the impact be avoided and if so, how?	NA	
5.	If a negative impact can't be avoided, what, if any, are the reasons the Policy should continue in its current form?	NA	
6.	Where relevant, does the Policy support the FREDA principles: Fairness, Respect, Equality, Dignity and Autonomy?	Yes	

If you have identified a potential discriminatory impact of this Policy, please contact Chief of Staff.