



Managing conflicts of interest in clinical commissioning groups

Executive summary

Key points

- Clinical commissioning groups (CCGs) will need clear and robust mechanisms for managing real and perceived conflicts of interest.
- If they are not managed effectively, confidence in the probity of commissioning decisions and the integrity of the clinicians involved could be seriously undermined, but with good planning and governance CCGs should be able to avoid these risks.
- This paper highlights existing standards and policies that describe how conflicts of interest should be managed, sets out draft principles CCGs might adopt when developing local policies, and identifies some outstanding policy questions requiring further debate.

The Government plans to reform health service commissioning in England and to replace primary care trusts (PCTs) with clinical commissioning groups (CCGs) in April 2013.

One of the issues that CCGs will need to get to grips with as they become statutory bodies and take on financial and contractual responsibilities is how they will manage real and perceived conflicts of interest facing the individuals involved in their governance and decision making.

There has been growing concern about this issue among healthcare professionals, and it has become increasingly prominent in public debate of the Government's proposals for health reform.

The NHS Confederation, the Royal College of General Practitioners (RCGP) and Capsticks have been working together to explore these concerns, and to identify ways in which they can be addressed both by clinical commissioners themselves and by policy makers.

This paper summarises the key points that have emerged from our conversations so far with commissioners, providers, regulators and professional bodies. It also sets out some draft principles that CCGs might adopt when developing local policies for managing conflicts of interest, and some outstanding policy questions that we feel require further consideration and debate.

We would welcome your feedback on these principles and questions to feed into a more detailed document that we will be publishing shortly.

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What are conflicts of interest and do they matter?

A conflict of interest can occur when an individual's ability to exercise judgement in one role is impaired by their obligation in another by the existence of competing interests.

For a clinical commissioner, a conflict of interest would exist when their judgment as a commissioner could be, or be perceived to be, influenced and impaired by their own concerns and obligations as a healthcare provider, as an owner, director or shareholder in an organisation doing business with the NHS, or as a member of a particular peer, professional or special interest group, or by those of a close family member.

Such concerns may be financial, but could also relate to personal commitments (obligations to friends, colleagues or peers), special interests (for example, in a particular condition or treatment due to an individual's own experience or that of a family member), other non-financial objectives (status or kudos), or professional loyalties and duties.

There is nothing inherently wrong in having conflicts of interest, and seeking to avoid or eliminate them entirely is unlikely to be possible or desirable for CCGs.

But if they are not managed effectively, and GPs and their colleagues are seen or perceived to be abusing their new commissioning powers, the consequences will be serious. It could undermine providers' and regulators' confidence in the probity and fairness of commissioners' decisions, damage patients' confidence in the independence of healthcare professionals and ultimately destabilise public confidence in the system as a whole.

However, the issue is not entirely new or unique, and with good planning and governance, commissioners should be able to avoid these risks.

Existing standards, policies and guidance

The General Medical Council's *Good medical practice* guidance already requires medical practitioners to be mindful of, and where necessary to declare, conflicts of interest. "If in doubt, disclose" is likely to be a good rule of thumb for healthcare professionals as they exercise their new commissioning responsibilities.

However, CCGs should not simply rely on individual professional judgement, and must ensure that policies and processes for identifying, managing and reviewing conflicts of interest are embedded in their structures from the outset.

CCGs will be able to draw on existing policies and procedures used to manage conflicts of interest in other parts of the NHS, wider public sector and other

industries, as well as the recent experience of PCTs and practice-based commissioning groups.

CCGs are likely to apply the same basic policies, procedures and standards used by NHS trusts and other public bodies to manage conflicts of interest, which include:

- having a clear statement of the conduct expected of those involved in its governance (potentially based on the Nolan principles, and reflecting any requirements that are set out in the CCG's authorisation process)
- ensuring that all individuals involved in decision making are required to declare their interests when joining the governing body
- maintaining a register of these interests, which is updated regularly
- ensuring that specific conflicts relevant to the agenda of a particular meeting are disclosed again at the beginning of that meeting and recorded, and that decisions are taken transparently and according to a clear policy as to whether conditional participation, partial exclusion or total exclusion from the decision making is required
- ensuring their procurement and contracting procedures comply with the law and good practice.

However, they may also have to develop specific policies for dealing with scenarios less common in other organisations, for example the possibility that there would be insufficient decision makers available to take a decision after exclusion of all those with relevant interests.

Principles for managing conflicts of interest

Further guidance on the constitution and governance of commissioning consortia is expected from the Department of Health shortly, but commissioners will still need to understand, interpret and apply any guidelines to their particular local circumstances.

At a recent workshop involving representatives from a number of professional bodies, commissioners and provider organisations, the following principles emerged that might be used to help CCGs think about their approach to managing conflicts of interest.

Conflicts can be avoided and managed by:

- **Doing business properly**
If CCGs get their needs assessments, consultation mechanisms, commissioning strategies and procurement procedures right from the outset, then conflicts of interest become much easier to identify, avoid or deal with, because the rationale for all decision making will be transparent and clear and should withstand scrutiny.
- **Being proactive not reactive**
Substantial conflicts of interest can be avoided by being clear on what is acceptable before individuals are even elected or selected to join the CCG; by inducting members properly and ensuring they understand their obligations to declare conflicts of interest; and by agreeing in advance how a

range of different situations and scenarios will be handled, rather than waiting until they arise.

- **Assuming that individuals will seek to act ethically and professionally, but may not always be sensitive to all conflicts of interest**

Most individuals involved in commissioning will seek to do the right thing for the right reasons, but they may not always do it the right way due to lack of awareness of rules and procedures, insufficient information about a particular situation, or lack of insight into the nature of a conflict. Rules should assume people will volunteer information about conflicts and will exclude themselves from decision making where they exist, but there should also be prompts and checks to reinforce this.

- **Being balanced and proportionate**
Rules should be clear and robust but not overly prescriptive or restrictive. Their intention should be to identify and manage conflicts of interest not eliminate them, and their effect should be to protect and empower people by ensuring decision making is efficient as well as transparent and fair, not to constrain people by making it overly complex or slow.

Outstanding policy questions

While the primary responsibility for ensuring conflicts of interest are identified and managed appropriately will lie with CCGs

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themselves, we believe policy makers and professional bodies also need to address some outstanding questions to give commissioners a clear framework in which to do this. These questions are:

- Who will monitor, assure and assess CCGs on how they are managing conflicts of interest, and how?
- How will members of the governing body of a CCG, including the nurse and specialist doctor, be selected?
- What will the rules be on issuing commissioning rewards and incentives to CCGs and to general practices?
- Ultimately, should healthcare professionals be required to make more explicit choices between pursuing commissioner or provider roles?
- When and how will the policy of Any Qualified Provider (which will impact on clinical commissioners' procurement activities and referral options, and therefore on the extent of their conflicts of interest) be implemented?

Conclusions

The fact that clinicians running CCGs will sometimes have conflicts of interest does not in itself mean that they will take inappropriate

decisions or undermine the credibility and independence of the governing body.

Conflicts of interest are almost inevitable, but in most cases it is possible to handle them with integrity and probity by ensuring they are identified, declared and managed in an open and transparent way.

Concerns about this issue are understandable, however, and the risks of getting it wrong are great, for individual healthcare professionals and CCGs, and for the new model of commissioning as a whole.

This paper is intended to prompt further debate of this issue, to encourage colleagues to respond with their ideas and suggestions on how conflicts of interest can best be managed by CCGs, and to highlight to policy makers some of the outstanding questions that still need to be answered.

To share your views or get involved in this work, please contact:

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The NHS Confederation

The NHS Confederation is the only body to bring together the full range of organisations that make up the modern NHS to help improve the health of patients and the public. We are an independent membership organisation that represents all types of providers and commissioners of NHS services.

We focus on:

- **influencing** healthcare policy and providing a strong voice for healthcare leaders on the issues that matter to all those involved in healthcare
- helping our members to **make sense** of the whole health and social care system
- **bringing people together** from across health and social care to tackle the issues that matter most to our members, patients and the public.

The RCGP Centre for Commissioning

The Royal College of General Practitioners (RCGP) launched the RCGP Centre for Commissioning in response to the government's revolutionary healthcare reforms.

Set up in partnership with the NHS Institute for Innovation and Improvement (NHS Institute), the Centre aims to equip GPs and GP practices with the skills, competencies and expertise required to deliver effective healthcare commissioning which ensures patient-focused and high quality healthcare, leading to improved health outcomes.

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