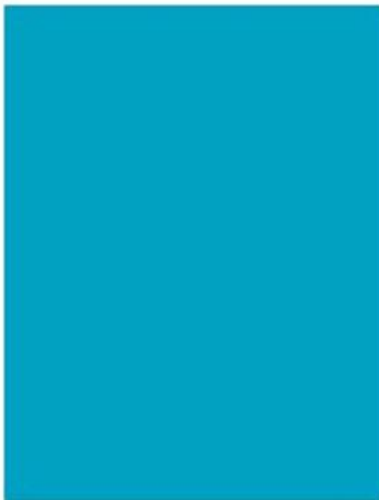


East of England Clinical Senate

Managing Conflicts of Interest & Standards of Business Conduct



NHS England

East of England Clinical Senate: Standards of Business and Managing

Conflicts of Interest

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STANDARDS OF BUSINESS CONDUCT AND MANAGING CONFLICTS OF INTEREST

1. Introduction:

Managing potential conflicts of interest appropriately is needed to protect the integrity of NHS England and the members of the Clinical Senate Council and Assembly from any perceptions of wrong-doing.

This 'Code of Conduct' includes extracts from the "*Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG-commissioned services*"¹. The rationale behind the incorporation of the code of conduct for CCG-commissioned services into this document is that advice will be requested from the Clinical Senate which will impact on the commissioning of services.

GPs are providers of primary care services and members of Clinical Commissioning Groups so the latter organisations have to demonstrate that they are acting in the public interest where the preferred provider for services might be a GP practice.

In a similar way, tertiary, secondary, community and mental health providers are members of the Clinical Senate and they have to demonstrate that the advice that they give:

- clearly meets local health needs and have been considered appropriately;
- goes beyond the scope of a single provider or organisation; and
- is in the public and patient interest.

Members of the Clinical Senate will already be subject to other codes of conduct, for example, all commissioners will be subject to legislative and procurement requirements set out in Section 75 of the Health and Social Care Act and Public Contracts Regulations supported by guidance from NHS England.

*"Towards establishment: Creating responsive and accountable CCGs"*² and its supporting appendix on managing conflicts of interest sets out general safeguards that CCGs should have in place to manage conflicts of interest, including:

- arrangements for declaring interests;
- maintaining a register of interests;
- excluding individuals from decision-making where a conflict arises; and
- engagement with a range of potential providers on service design.

¹ NHS Commissioning Board October 2012

² NHS Commissioning Board October 2012

This document sets out general safeguards that the Clinical Senate will have in place to manage conflicts of interest, along similar lines to the CCG guidance.

2. Standards of Business Conduct

Members of the NHS England East of England (EoE) Clinical Senate Council and Assembly should act in good faith and in the interests of EoE Clinical Senate. In conducting business, members should follow the seven principles of public life (Nolan Principles)³, namely:

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 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

Members of the Senate Council and Assembly may at some point find they have a conflict of interest. In such instances, members must comply with the following statements on managing conflicts of interest.

Individuals appointed or nominated to work on behalf of the EoE Clinical Senate will be made aware of their obligation with regard to declaring conflicts or potential conflicts of interest. This requirement will be written into their accountability and role descriptions.

Members of the Clinical Senate Council are either nominated or appointed, depending on whether there is a constituent organisation in the area for the

³ First Report of the Committee on Standards in Public 1995)

member to feed back to or ask for advice. All Clinical Senate Council Members are obliged to declare a conflict of interest if there is an issue under review that may have a direct influence on their ability to make an objective decision.

This code of conduct supplement does not over-ride the code of conduct of the individual's employing organisation. If there is a conflict here – the onus is on the individual to declare it.

3. Conflicts of Interest

The EoE Clinical Senate will make arrangements to manage conflicts and potential conflicts of interest to ensure that decisions made by the Council and Assembly will be taken and seen to be taken without any possibility of the influence of external or private interest.

A conflict of interest will include:

- a) A direct pecuniary interest: where an individual may financially benefit from the consequences of a commissioning decision (for example, as a provider of services);
- b) An indirect pecuniary interest: for example, where an individual is a partner, member or shareholder in an organisation that will benefit financially from the consequences of a commissioning decision;
- c) A direct non-pecuniary interest: where an individual holds a non-remunerative or not-for profit interest in an organisation that will benefit from the consequences of a commissioning decision (for example, where an individual is a trustee of a voluntary provider that is bidding for a contract);
- d) An indirect non-pecuniary interest: where an individual is closely related to, or in a relationship, including friendship, with an individual in categories a-f.
- e) A direct non-pecuniary benefit: where an individual may enjoy a qualitative benefit from the consequence of a commissioning decision which cannot be given a monetary value (for example, a reconfiguration of hospital services which might result in the closure of a busy clinic next door to an individual's house);
- f) An indirect non-pecuniary benefit: where an individual may enjoy a qualitative benefit from the consequence of a commissioning decision which cannot be given a monetary value but is a benefit to peers or colleagues (for example, a recommendation which results in an increase in revenue or status to their employing organisation or results in their organisation becoming the preferred provider).
- g) An indirect non-pecuniary conflict: where the evidence of the Senate may bring a member into direct or indirect conflict with their contracting or employing organisation, to the extent that it may impair the member's ability to contribute in a free, fair and impartial manner to the

deliberations of the Senate Council, in accordance with the needs of patients and populations.

If in doubt, the individual concerned should assume that a potential conflict of interest exists.

4. Factors to address when recommending changes in services which should be commissioned from GP practices or any qualified provider

The attached template is for declaration of interest and sets out the factors for assurance. Clinical Senate Council members are advised to address the factors set out in the template when drawing up proposals which recommend changes in commissioning a service for which its members may be potential providers. This will provide appropriate assurance to:

- Health and Wellbeing Boards and to local communities that the proposed service meets local needs and priorities; and
- Commissioners to use as part of their decision making process to demonstrate that a robust process has been followed in deciding to commission the service, in selecting the appropriate procurement route, and in addressing potential conflicts. It should be noted that a CCG cannot lawfully sub-delegate commissioning decisions to an external agency.

Commissioners are advised to set these factors out when fulfilling their duty in relation to public involvement. The factors include involving Health and Wellbeing Board(s), in accordance with duties on CCGs.

Addressing these factors in a consistent and transparent way as part of the deliberation process will enable the Clinical Senate Council to seek and encourage scrutiny and enable local communities and Health and Wellbeing Boards and any qualified provider to raise questions if they have concerns about the approach being taken.

The Strategic Clinical Network and Senate support team will be expected to make completed templates, or their equivalent, publicly available.

5. Preserving integrity of decision making process when all or most members of the Clinical Senate have an interest in a decision

Where certain members of a decision-making body (be it the governing body, its committees or sub-committees, or a committee or sub-committee of the CCG) have a pecuniary/non-pecuniary interest or benefit, they should either be excluded from relevant parts of meetings, or join in the discussion but not participate in the decision-making itself (i.e. not have a vote). It is unlikely that the Clinical Senate will resort to voting on an issue and will seek a consensus agreement amongst members.

6. Transparency - publication of contracts

The Clinical Senate should ensure that details of all decisions, including an estimation of the impact of the decision in terms of benefits and outcomes are published on the website as soon as agreed.

7. Declaring and Registering Interests

The EoE Clinical Senate management team will maintain a register of the interests of the:

- members of the Senate Council;
- members of the Senate Assembly;
- Clinical Senate management support team.

Senate Assembly members will declare any interest that they have, in relation to a decision/recommendation by the Senate Assembly in writing to the Senate Council.

Senate Council members will declare any interest that they have in relation to a decision/recommendation by the Senate Council in writing to the (host) NHS England area team Medical Director responsible for the Senate area.

All declarations of interest should be made as soon as they become apparent and in any event no later than 28 days after becoming aware.

Where an individual is unable to provide a declaration in writing, for example if a conflict becomes apparent in the course of a meeting, they will make an oral declaration before witnesses and provide a written declaration as soon as possible thereafter.

The EoE Clinical Senate Manager, who is accountable to the EoE SCN/ Senate Associate Director will ensure that the register of interest is reviewed regularly, and updated as necessary.

8. Managing Conflicts of Interest: general

Individual members of the Senate Assembly and Council will comply with the arrangements determined by the EoE Clinical Senate Council for managing conflicts or potential conflicts of interest.

The EoE Clinical Senate Manager will ensure that for every interest declared, either in writing or by oral declaration, arrangements are in place to manage the conflict of interests or potential conflict of interests, to ensure the integrity of the group's decision making/recommendation processes. The NHS England East Anglia area team Medical Director and Senate Chair are responsible for overseeing management of conflicts of interest on behalf of EoE Clinical Senate.

Arrangements for the management of conflicts of interest will include the requirement to put in writing to the relevant individual arrangements for managing the conflict of interest or potential conflicts of interest, within a week of declaration. The arrangements will confirm the following:

- when an individual should withdraw from a specified activity, on a temporary or permanent basis;
- monitoring of the specified activity undertaken by the individual, by a designated individual.
- where an interest has been declared, either in writing or by oral declaration, the declarer will ensure that before participating in any activity connected with the Senate's functions, they have received confirmation of the arrangements to manage the conflict of interest or potential conflict of interest from the Senate Chair.

Where an individual member of the Senate Council and Assembly is aware of an interest which

- has not been declared, either in the register or orally, they will declare this at the start of the meeting;
- has previously been declared, in relation to the scheduled or likely business of the meeting.

The individual concerned will bring this to the attention of the chair of the meeting, together with details of arrangements which have been confirmed for the management of the conflict of interests or potential conflict of interests.

The Senate Chair will then determine how this should be managed and inform the member of their decision. Where no arrangements have been confirmed, the Senate Chair may require the individual to withdraw from the meeting or part of it. The individual will then comply with these arrangements, which must be recorded in the minutes of the meeting.

Where the Chair of the Clinical Senate Council or Assembly has a personal interest, previously declared or otherwise, in relation to the scheduled or likely business of the meeting, they must make a declaration and a deputy chair will act as chair for the relevant part of the meeting. Where arrangements have been confirmed for the management of the conflict of interests or potential conflicts of interests in relation to the chair, the meeting must ensure these are followed. Where no arrangements have been confirmed, the deputy chair may require the chair to withdraw from the meeting or part of it. Where there is no deputy chair, the members of the meeting will select one.

Any declarations of interests, and arrangements agreed in any meeting of the Clinical Senate Council or Assembly, will be recorded in the minutes.

Where more than 50% of the members of a meeting are required to withdraw from a meeting or part of it, owing to the arrangements agreed for the management of conflicts of interests or potential conflicts of interests, the chair (or deputy) will determine whether or not the discussion can proceed.

In making this decision the chair will consider whether the meeting is quorate. Where the meeting is not quorate, owing to the absence of certain members, the discussion will be deferred until such time as a quorum can be convened.

Where a quorum cannot be convened from the membership of the meeting, owing to the arrangements for managing conflicts of interest or potential conflicts of interests, the chair of the meeting shall consult with the Area Team Medical Director on the action to be taken.

These arrangements must be recorded in the minutes of the Council and the Assembly.

1. Type of Interest – Please supply details of where there is conflict in accordance with the following list

- a) A direct pecuniary interest: where an individual may financially benefit from the consequences of a commissioning decision (for example, as a provider of services);
- b) An indirect pecuniary interest: for example, where an individual is a partner, member or shareholder in an organisation that will benefit financially from the consequences of a commissioning decision;
- c) A direct non-pecuniary interest: where an individual holds a non-remunerative or not-for profit interest in an organisation, that will benefit from the consequences of a commissioning decision (for example, where an individual is a trustee of a voluntary provider that is bidding for a contract);
- d) An indirect non-pecuniary interest: where an individual is closely related to, or in a relationship, including friendship, with an individual in categories a-f.
- e) A direct non-pecuniary benefit: where an individual may enjoy a qualitative benefit from the consequence of a commissioning decision which cannot be given a monetary value (for example, a reconfiguration of hospital services which might result in the closure of a busy clinic next door to an individual's house);
- f) An indirect non-pecuniary benefit: where an individual may enjoy a qualitative benefit from the consequence of a commissioning decision which cannot be given a monetary value but is a benefit to peers or colleagues (for example, a recommendation which results in an increase in revenue or status to their employing organisation or results in their organisation becoming the preferred provider).
- g) An indirect non-pecuniary conflict: where the evidence of the Senate may bring a member into direct or indirect conflict with their contracting or employing organisation, to the extent that it may impair the member's ability to contribute in a free, fair and impartial manner to the deliberations of the Senate Council, in accordance with the needs of patients and populations.
- h) Other – please specify

Name	
Type of Interest	
Details	
Action Taken	
Action Taken By	

Date of Declaration	
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