



Conflicts of interest in the NHS: a short practical guide

Updated April 2018



Foreword

The Healthcare Financial Management Association (the HFMA) last tackled this subject in October 2015, with a briefing aimed at supporting clinical commissioning groups (CCGs) manage conflicts of interest.

Since then, we have seen a move to greater system working and commissioning of new care models, bringing with it increased risks around conflicts of interest. NHS England produced the following two new pieces of guidance on managing conflicts of interest, which took effect from June 2017:

- NHS wide conflicts of interest guidance – *Managing conflicts of interest in the NHS: guidance for staff and NHS organisations*¹
- Statutory guidance for CCGs – *Managing conflicts of interest: revised statutory guidance for CCGs 2017*².

It is therefore timely to revisit the subject. This briefing reflects the latest guidance across all parts of the NHS.

¹ NHS England, *Managing conflicts of interest in the NHS: guidance for staff and organisations*, February 2017

² NHS England, *Managing conflicts of interest: revised statutory guidance for CCGs*, June 2017

Introduction

Conflicts of interest exist in all walks of life and throughout the public and private sectors - they are not new phenomena. However, there exists a particular focus and importance for public sector organisations as they operate with an underlying principle of needing to demonstrate that all decisions and actions about resources are taken in the public's best interest. This principle can easily be compromised by both actual and perceived conflicts of interest.

Perception plays a critical role and has the potential to significantly damage the reputations of both organisation and individuals - not only is a genuine conflict of interest a concern, but also the appearance of one. In some cases, failure to manage conflicts of interest could result in legal challenge or criminal action.

'A conflict of interest is defined as a set of circumstances by which a reasonable person would consider that an individual's ability to apply judgement or act, in the context of delivering, commissioning, or assuring taxpayer funded health and care services is, or could be, impaired or influenced by another interest they hold.' NHS England¹

Conflicts of interest already exist in the NHS - their presence indicates the involvement of many different organisations, professions and professionals in local health economies. With the emergence of new place-based service delivery models, such as sustainability and transformation partnerships, integrated care systems, joint commissioning and joint accountable officers, the opportunity for conflicts of interest increases. As an unavoidable part of decision-making, it is important to 'manage' both actual and potential conflicts and have systems and processes in place to ensure that they are recognised and dealt with appropriately. Public sector officers need to be able to demonstrate accountability for, and transparency of, decision-making while guarding against any suspicion of wrongdoing.

What are conflicts of interest?

Conflicts of interest arise when a person or organisation has, or recently had, a relationship or involvement in something elsewhere that may, actually or potentially, influence their decision-making.

In the public sector, the existence of a conflict of interest may influence how a decision is made or how taxpayers' money is spent. The stakeholders of an NHS body – those with an interest in the organisation and its actions – need to be sure that their interests are safeguarded, that the organisation is well managed and that stated objectives will be met.

Successfully managing conflicts of interest is one aspect of this and is so important that the Health and Social Care Act 2012 places a legal duty on CCGs to manage conflicts of interest.² NHS trusts and NHS foundation trusts are held accountable for conflicts of interest through the NHS Standard Contract general condition 27.³

In the UK, a principles-based approach is applied to conflicts of interest. NHS organisations have a statutory duty to manage conflicts of interest, but how they do this is a matter for local governing bodies. In February 2017, NHS England issued new guidance, *Managing conflicts of interest in the NHS*¹, aiming to improve clarity, consistency and support to NHS organisations.

³ NHS England, *NHS Standard Contract 2017/18 and 2018/19 General Conditions*, January 2018

Consider conflicts of interest in terms of:

- a direct financial interest, where an individual or organisation receives a direct financial benefit from the decision made
- an indirect interest, where a relative or other key person receives a benefit from the decision made
- non-financial personal interest, where someone benefits, other than financially or professionally, from the decision they are involved in
- non-financial professional interest, where an individual may obtain a non-financial professional benefit from the decision made such as increased professional reputation or promoting their professional career.

The guidance came into force on 1 June 2017 and applies to CCGs, NHS trusts, NHS foundation trusts and NHS England. Although it does not apply to the independent and private sector, general practitioners (GP), community pharmacies, dental and optical providers it is encouraged that they also consider it. The guidance also includes a model policy, template forms for consistent declarations and publishing of interests and case studies.⁴

When examining the potential for conflicts of interest to arise, it is helpful to consider if anyone benefits directly or is likely to benefit from the decision made or if there is a perception that this could be the case.

All types of conflicts of interest need to be recognised for what they are and given equal status. If a benefit is identified, the extent of the conflict and how material it is will then need to be established. This can influence the action taken: from being required to make a declaration of the conflict's existence to being excluded completely from a decision-making process.

The perception that a conflict may exist can be as damaging as where a conflict actually does exist, with an equally damaging impact to reputation.

⁴ NHS England, [Managing conflicts of interest in the NHS web page](#)

Examples of conflicts of interest

Potential and actual conflict can include:

Directorships, including non-executive directorships, held in private companies or PLCs

Roles and responsibilities held within member practices

Shareholdings (more than 5%) of companies in the field of health and social care

A position of authority in an organisation (e.g. charity or voluntary organisation) in the field of health and social care

Any connection with a voluntary or other organisation (public or private) contracting for NHS services

Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the CCG and/ or with NHS England

Research funding/ grants that may be received by the individual or any organisation in which they have an interest or role

Any other role or relationship that the public could perceive would impair or otherwise influence the individual's judgment or actions in their role within the CCG

*With thanks to NHS
Sunderland CCG*

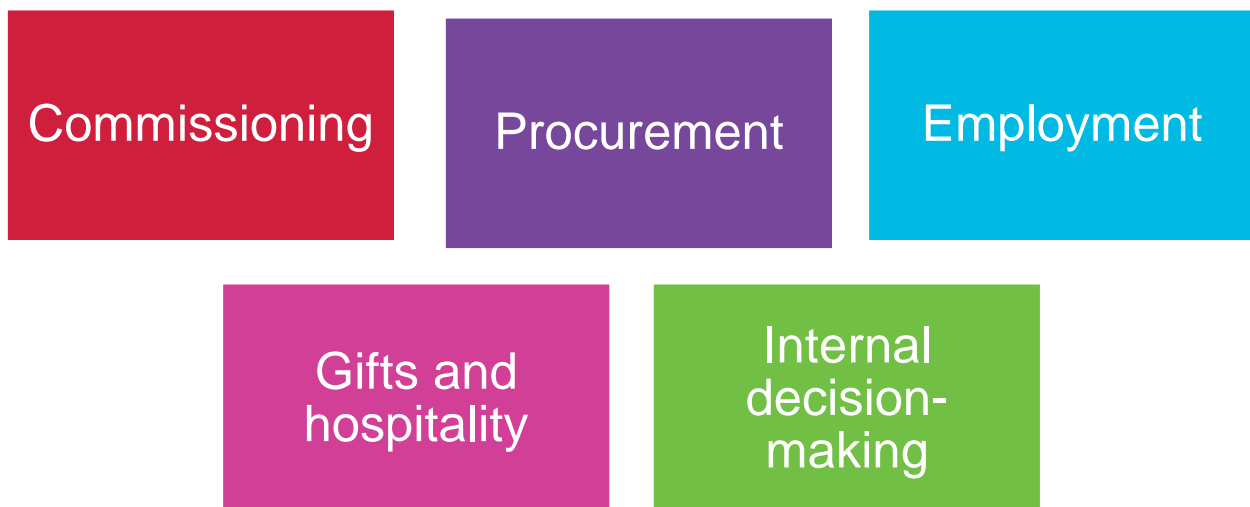
Where are conflicts of interest found?

The NHS England guidance¹ identifies a number of common situations which can give rise to the risk of conflicts of interest:

- Gifts
- Hospitality
- Outside employment
- Shareholdings and other ownership interests
- Patents
- Loyalty interests
- Donations
- Sponsored events
- Sponsored research
- Sponsored posts
- Clinical private practice.

It sets out what the issues are in each of these areas, principles and rules and what should be declared.

There are a number of areas of day-to-day operations where there is the potential for conflicts of interest to arise. These include:



Identifying potential conflicts and where they may influence decision-making can help to shape the organisation's response to them. It is important to assume that people intend to comply with the necessary requirements while considering how the organisation can both judge and grade the conflicts of interest with which it is faced.

Commissioning

There are two central issues here:



Individual decisions

When a patient is referred by the GP for further care, diagnosis or treatment, an individual commissioning decision is made. GPs need to be aware of the potential for a conflict of interest to arise. It is important to promote the choices open to patients, particularly if the GP is also a service provider. For example, the GP may have recently been the owner of a nursing home or be part of a consortium which operates a private clinic to which patients could be referred. It would be appropriate for a patient to be made aware of these facts so that they can take this into consideration when making a decision about their treatment or care.

CCG decisions

On a larger scale, there is the potential for conflicts of interest to arise in commissioning decisions taken by the CCG, for example in relation to service reconfiguration. In March 2012, NHS Peterborough was found to have inappropriately managed a potential conflict of interest when redesigning primary and urgent care services. The ruling by the Co-operation and Competition Panel (CCP) at the time found that '...NHS Peterborough had failed to manage a potential conflict of interest resulting from the involvement in its consultation process of two lead clinicians who were partners in GP practices that would be directly affected' by the proposed changes.

Reviews of such examples recognised that further support was required for complex contracts. In August 2017, NHS England and NHS Improvement published *The integrated support and assurance process (ISAP): guidance on assuring novel and complex contracts*.⁵ It recognises the importance of managing conflicts of interest in contract management, stating that 'The evaluation method clearly identifies how conflicts of interest will be identified, prevented and remedied.'⁶

⁵ NHS England and NHS Improvement, *The Integrated Support and Assurance Process (ISAP): guidance on assuring novel and complex contracts Part A: Introduction*, August 2017

⁶ NHS England and NHS Improvement, *The Integrated Support and Assurance Process (ISAP): guidance on assuring novel and complex contracts Part B: Key Lines of Enquiry*, August 2017

Procurement

Linked with commissioning, procurement situations are a common area where there is the potential for conflicts of interest to arise. Good procurement practices are fundamental to the success of an organisation both in relation to contracts for healthcare services and support services where these are not provided 'in house'. There is the potential for conflicts to arise when:

There may be a competitive advantage

- A GP whose practice belongs to a CCG is also a board member of a business that is tendering for a contract with his/ her own CCG
- The CCG is commissioning a service and one or more GP practices are amongst the potential providers

Talking to providers

- When the procurement is underway for example, by including or excluding specific potential providers
- Engaging potential/ incumbent providers to develop service specifications on which they may later bid

Links to companies exist

- Links already exist to companies with a vested interest in the organisation for example, through having trialled equipment or drugs

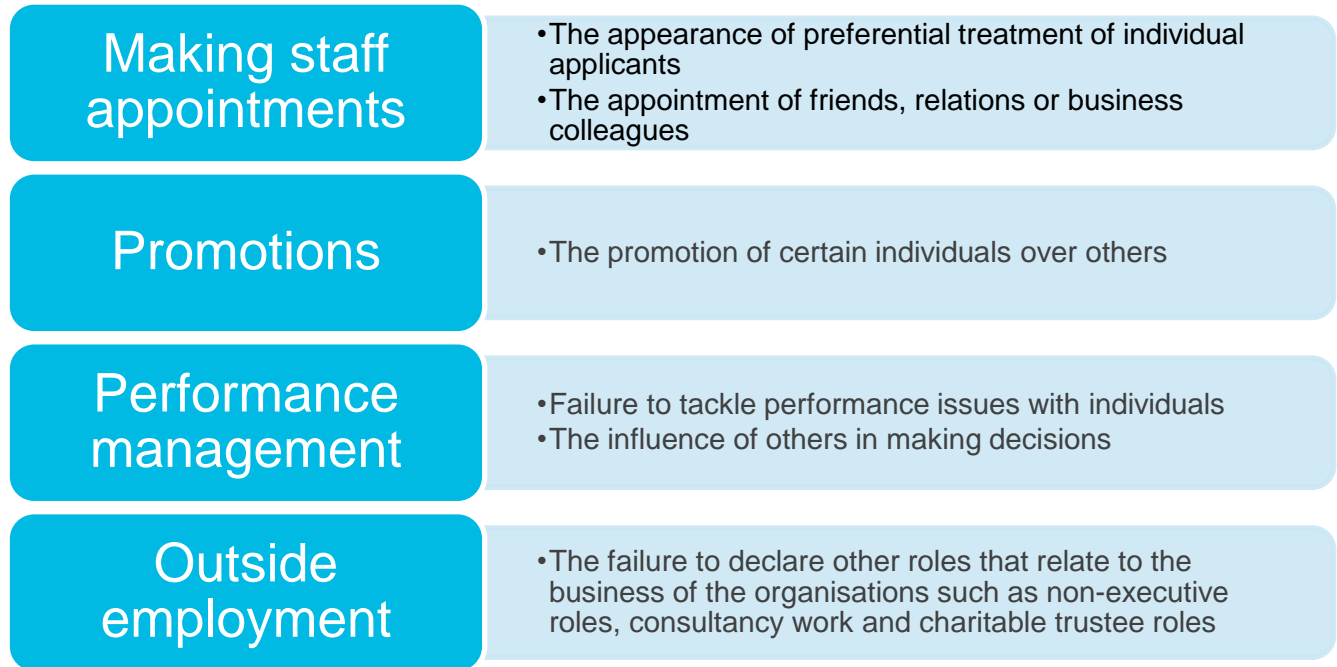
Involving patients

- Where patients are consulted as part of a procurement panel

It may be that the perception or possibility of wrong doing is enough for a provider to 'cry foul' and complain that they have been unfairly disadvantaged by the procurement process.

Employment

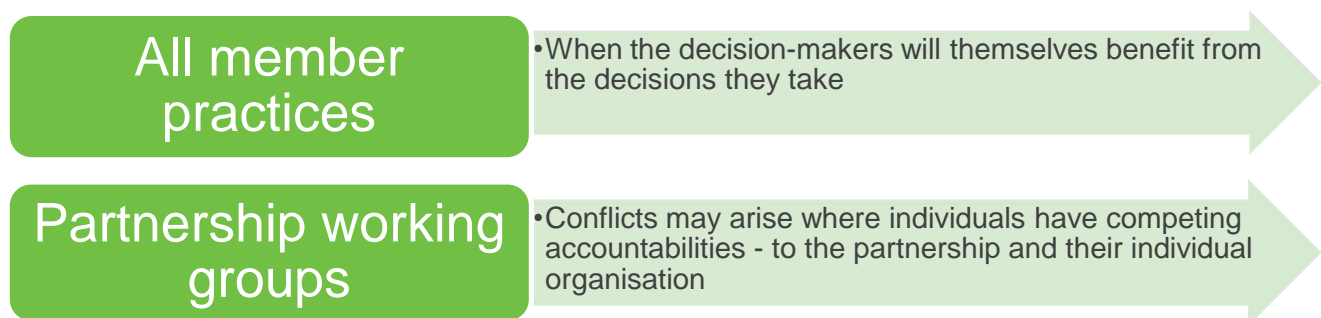
It is possible for conflicts of interest to arise in the course of employment, particularly in terms of the following:



Transparency of recruitment processes is fundamental to avoiding real or perceived favouritism of friends, spouses or acquaintances.

Internal decision-making

There will be decisions taken by the organisation or partnership that affect others outside the individual organisation. These include:



One example may be a practice incentive scheme or the allocation of quality payments.

Here money from the CCG's commissioning allocation is put into a 'pot'. It is the CCG itself which is required to divide up the available money based on individual practice or locality performance whereby all GPs are likely to benefit. The key point here is to recognise that the decision-makers will themselves be able to benefit from the decisions they take and therefore a conflict of interest is inherently present. The situation must be appropriately managed as it cannot be avoided, for example by enabling the non-GP members of the governing body to make the decision.

Gifts and hospitality

It is an offence to accept gifts or hospitality as an inducement or reward for doing something in a public role. NHS staff should not accept gifts that may affect, or be seen to affect, their professional judgement. This overarching principle should apply in all circumstances. Potential conflicts of interest for gifts and hospitalities include:

Gifts

- Particularly if offered high value items
- Declare all gifts over an agreed value
- Is the gift for you or the wider department?
- Does the offer compromise your judgement?

Hospitality

- To give access to key individuals
- Involving existing suppliers/ contractors

NHS staff may be offered expressions of gratitude for their work. Any personal gift of cash must always be declined and declared. Modest gifts from patients or families under a value of £50 may be accepted and do not need to be declared. If the gift value is over £50 it should be treated with caution, only be accepted on behalf of the organisation and declared. In all cases, the individual should be mindful of the perception of impropriety.

All gifts from supplier or contractors that are doing business, or may do business, with the organisations should be declined and declared.

There are occasions where hospitality or the payment of travel and accommodation costs are appropriate. However, these must only be accepted when there is an appropriate business reason and they are proportionate. Whether accepted or not, these should be declared. In all cases, the individual should be mindful of the perception of impropriety.

The key point here is that governing body, committee members and staff must be open about any gifts they are offered or have received. Declarations of interest should be made in all these cases (except for modest gifts under the value of £50), held on the register of declarations and regularly confirmed or updated. They should be made as soon as reasonably practicable, and within 28 days after the interest arises. Further details of requirements are provided in the NHS England guidance^{1,2}, including an example template declaration of interest form and template register of interests.

For payments and benefits in kind made by the pharmaceutical industry to healthcare professionals and organisations in the UK, disclosure must also be made in the disclosure UK database, aiming to improve transparency⁷.

⁷ The Association of British Pharmaceutical Industry, *Disclosure UK database*

Practical action

Good practice and pitfalls

As set out by the National Audit Office at the November 2017 HFMA Chairs, Non-Executive Directors and Lay Members event⁸, NHS organisations have made a number of improvements to managing conflicts of interest. These include publishing conflicts of interest registers and procurement decisions on-line, publication of GPs earnings and extra emphasis on recording discussions at meetings through minutes. However, common issues can include a lack of registers or failure to complete registers, lack of mapping of conflicts of interest from the conflicts register to the contracts register, variations in the publications on-line and inconsistency regarding assessment of the perception of risk. They recognise that it is good practice for all public sector organisations to:

- ensure their staff understand conflicts of interest and know how to identify and report them
- be transparent, including having arrangements to declare and register gifts and other benefits
- get all staff and contractors to declare routinely all private, personal and financial interests relevant to decision-making, management of contracts and giving policy advice
- have proportionate oversight and detection mechanisms, which may include external arrangements, such as external audit and regulator checks; and reporting systems, such as whistleblowing arrangements
- have proportionate, enforceable sanctions for non-compliance, including personal consequences (such as disciplinary action, dismissal or prosecution) and management actions (for example, retroactive cancellation of a decision or contract).⁹

NHS England has developed a series of CCG case studies¹⁰ to raise awareness of potential conflict of interest scenarios and support the management of them.

⁸ HFMA CNL faculty, NAO workshop - *managing conflicts of interest and keeping public trust*, November 2017

⁹ NAO, *Conflicts of interest*, January 2015

¹⁰ NHS England, *Managing conflicts of interest: CCG case studies*, June 2016

Areas for organisational focus

The governing body

Chair and/ or accountable officer conflicted? Bring in a lay member

Lay members can act as a 'sounding board' where a potential conflict of interest is identified

The audit committee

Look for sources of assurance including internal and external audit

Provide assurance to the governing body that the appropriate systems and controls are in place and working

Business rules

Constitution - detailing the expected level of conduct

Prime financial policies/ standing financial instructions with detailed financial procedures

Scheme of delegation* - ensures that decisions are made at the right level within an organisation

Behaviours

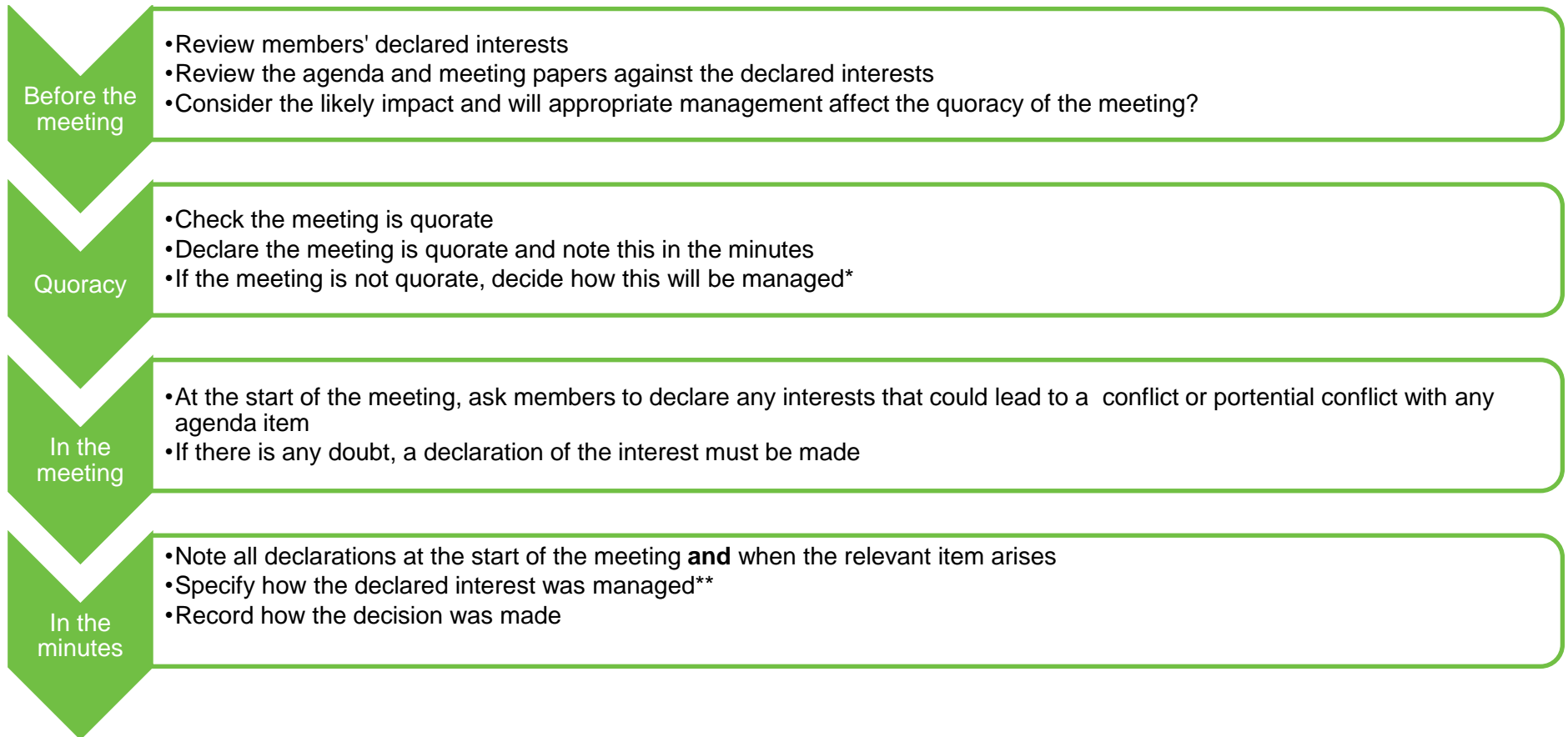
A policy of full disclosure of all conflicting relationships

Encourage all staff to declare potential conflicts

If a conflict arises, 'come clean' quickly, explain fully and review the circumstances in which it arose

* Issues may arise that require discussion at the governing body irrespective of the level of resources involved

A checklist for meeting chairs



*Would it be appropriate to defer the meeting or item until such times as quoracy can be achieved or refer any decisions made for particular item(s) to another committee for consideration and formal ratification - check the Constitution for details

**Was the member requested to leave the room during the discussion for the relevant item or, did the chair decide that the member could participate in the discussion but not the decision-making?

With thanks to NHS Sunderland CCG

The rules and requirements

Supporting guidance

NHS England have produced NHS wide guidance - *Managing conflicts of interest in the NHS: guidance for staff and organisations*

The Nolan Principles of Public Life

Selflessness – holders of public office should act solely in terms of the public interest

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 they take

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

Supporting guidance

NHS England have produced NHS wide guidance - *Managing conflicts of interest in the NHS: guidance for staff and organisations*

NHS England have also produced guidance to support commissioners – *Managing conflicts of interest: statutory guidance for CCGs*

To further support CCGs to manage conflicts of interest, NHS England have launched **on-line training**

Guidance has been produced to support commissioners to implement the regulations – *Substantive guidance on the procurement, patient choice and competition regulations*

Requirements

1. NHS organisations should:
2. Maintain, and review annually, appropriate registers of interests and a register of decisions
3. Make arrangements requiring the prompt declaration of interests by the persons specified (members and employees) and ensure that these interests are entered into the relevant register
4. Publish or make arrangements for the public to access those registers
5. Make arrangements for managing conflicts and potential conflicts of interest
6. Have regard to guidance published by NHS England and NHS Improvement in relation to conflicts of interest.

Breaches

A breach can occur when interests have not been identified, declared or managed, either accidentally or deliberately. Even if an organisation has gone through the right procedures and management processes to ensure that there is no conflict of interest, it may still look as if one exists to someone outside of the organisation.

Sanctions for breaches may include:

- informal action – such as reprimand or signposting to training and/or guidance
- formal action – such as formal warning, the requirement for additional training, re-arrangement of duties, re-deployment, demotion or dismissal
- referring incidents to regulators
- contractual action against organisations or staff. [Error! Bookmark not defined.2](#)

If someone thinks that a contract has been awarded where the decision has been influenced by an interest in the successful provider civil sanctions can arise. Criminal sanctions can also arise applying the Fraud Act or the Bribery Act.

The Fraud Act 2006 defines three ways of committing fraud as:

- By representation
- By failing to disclose information
- By abuse of position
- To further support CCGs to manage conflicts of interest, NHS England have launched [on-line training](#).

The Bribery Act 2010

Organisations must have adequate procedures in place to prevent bribery taking place. Lavish hospitality or expenditure beyond what may be considered reasonable can generate an inference that it is intended to encourage or reward improper performance or reward an individual.