

# CONFLICTS OF INTEREST POLICY (Including Gifts & Hospitality)

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<b>CONSULTATION SCHEDULE</b>	
<b>Title of Individual</b>	<b>Groups consulted</b>
Chief Financial Officer	
Chief Operating Officer	
Director of Corporate Governance	
Director of Quality	

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4.3	Updated by Internal Audit, MIAA	January 2026	MIAA

*Please also see the Anti-Fraud and Bribery Policy, Disciplinary Policy, Standard Business of Conduct and Commercial Sponsorship Policy.*

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## 1.0 Introduction

- 1.1 Effective handling of conflicts of interest is crucial to give confidence to patients, taxpayers, healthcare providers and Parliament that ICB commissioning decisions are robust, fair, transparent and offer value for money. ICBs are also required under the NHS Act 2006 (as amended by the Health and Social Care Act 2022) to manage conflicts of interest robustly and appropriately.
- 1.2 It is more important than ever that ICBs have robust processes in place for the ongoing management of conflicts of interest as the new arrangements mean that providers and commissioners will have a joint role in decision-making around the provision of local services. While it should not be assumed that individuals have a conflict of interest based on their capacity within any organisation, the possibility of actual or perceived conflicts remains and these should be managed appropriately, including appropriate record-keeping and ongoing oversight.

## 2.0 Purpose

- 2.1 The purpose of this policy is to ensure that all staff understand their responsibilities in relation to business conduct and the management of conflicts of interest within the ICB. Everyone in the ICB has a responsibility to appropriately manage conflicts of interest.
- 2.2 The ICB is committed to upholding the principles of openness, transparency, fairness and integrity in its role as a commissioner. This will ensure that high standards of corporate governance and personal conduct are displayed by all staff and demonstrate that the principles of good governance as described in the Nolan principles are adhered to.
- 2.3 The ICB recognises that a potential conflict of interest between the roles of commissioner and provider is a key risk that requires careful management whether this is an indirect conflict, pecuniary or otherwise. These issues need to be overcome to ensure that the ICB is able to commission a range of community-based services to improve quality and outcomes for patients. The provider of services may be a GP practice. The ICB will need to demonstrate that these services:-
  - Clearly meet local health needs and have been planned appropriately.
  - Go beyond the scope of the GP contract.
  - Are appropriately procured in line with legislation.
- 2.4 In addition to complying with the statutory guidance, ICBs also need to adhere to relevant guidance issued by professional bodies on conflicts of interest, including the British Medical Association (BMA)<sup>1</sup>, the Royal College of General Practitioners<sup>2</sup> and the General Medical Council (GMC)<sup>3</sup>, and to procurement rules including The Public Contract Regulations 2015<sup>4</sup> and the National Health Service (procurement, patient choice and competition) (no.2) regulations 2013<sup>5</sup>, as well as the Bribery Act 2010<sup>6</sup> and also the Health and Care Act 2022.
- 2.5 This policy also needs to be read in conjunction with the ICB's Constitution and the *Standards of Business Conduct and Managing Conflicts of Interest Policy*, along with the Anti-Fraud and Bribery Corruption Policy.

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<sup>1</sup> BMA guidance on conflicts of interest for GPs in their role as commissioners and providers <http://www.bma.org.uk/support-at-work/commissioning/ensuring-transparency-and-probity>

<sup>2</sup> Managing conflicts of interest in clinical commissioning groups: [http://www.rcgp.org.uk/~media/Files/CIRC/Managing\\_conflicts\\_of\\_interest.ashx](http://www.rcgp.org.uk/~media/Files/CIRC/Managing_conflicts_of_interest.ashx)

<sup>3</sup> GMC | Good medical practice (2013) [http://www.gmc-uk.org/guidance/good\\_medical\\_practice.asp](http://www.gmc-uk.org/guidance/good_medical_practice.asp) and [http://www.gmcuk.org/guidance/ethical\\_guidance/21161.asp](http://www.gmcuk.org/guidance/ethical_guidance/21161.asp)

<sup>4</sup> The Public Contract Regulations 2015 <http://www.legislation.gov.uk/uksi/2015/102/regulation/57/made>

<sup>5</sup> The NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 <http://www.legislation.gov.uk/uksi/2013/500/contents/made>

<sup>6</sup> The Bribery Act 2010 <http://www.legislation.gov.uk/ukpga/2010/23/contents>

- 2.6 The aim of this policy is to:
- Avoid potential conflicts of interests.
  - Manage conflicts of interests where unavoidable.
  - Set out the arrangements for managing potential financial conflicts of interest.
  - Ensure equity.
  - Support openness and transparency.
  - Adopt appropriate and proportionate safeguards.
  - Build on existing guidance on procurement and competition.
  - Ensure that assurance can be given to NHS England when services are commissioned from GP practices that the appropriate processes have been put in place to ensure fairness.
- 2.7 All staff should familiarise themselves with this policy and should regularly consider what interests you have and declare these as they arise, if in doubt, declare.

### **3.0 Scope of the Policy**

- 3.1 As per the Health and Care Act 2022, each ICB is required to set out its own conflicts of interest policy and register of interests which staff and board/committee members are required to comply with, this includes co-opted members and /or appointed deputies who may only be involved in committees for a limited time.

Those who are members of ICB sub-/joint-/committees of the ICB board (or individual given delegated decision-making authority by the ICB board) must comply with the ICB's conflicts of interest policy, including the registration of interests – this may include those employed by other organisations/contractors such as Midlands and Lancashire Commissioning Support Unit. Agency staff are also required to declare conflicts. Where this is the case, the individuals should take into account both the ICB's and their employing organisation's policies on conflicts of interest and declare requirements accordingly.

### **3.2 Decision-making Staff**

Some officers are more likely than others to have a decision-making role or influence on the use of public money because of the requirements of their role. In the context of this policy, the officers listed below are referred to as Decision-Making Staff:

- All Board members.
- Executive and Non-Executive Directors (or equivalent roles) who have decision making roles which involves the spending of taxpayers' money.
- Those at Agenda for Change band 8d and above.
- Members of advisory groups which contribute to direct of delegated decision making on the commissioning or provision of taxpayer funded services as working people groups involved in service redesign or stakeholder engagement that will affect future provision of services.
- Members of other committees of the ICB e.g. audit committee, remuneration committee, planning and commissioning committee etc.
- Members of new care models joint provider/commissioner groups/ committees.
- Management, administration and clinical staff who have the power to enter into contracts on behalf of the ICB.
- Management, administrative and clinical staff involved in decision making concerning the commissioning of services, purchasing of goods, medicines, medical devices or equipment and formulary decisions.

- As per the ICB's Scheme of reservation and delegation.

### 3.3 Strategic decision-making groups

3.3.1 Our organisation uses the Board, or committees and sub-committees of the Board, advisory groups and procurement panels to make key strategic decisions or recommendations about things such as:

- entering into (or renewing) large scale contracts
- awarding contracts
- making procurement decisions
- selection of medicines, equipment and devices

3.3.2 These are referred to as '**strategic decision-making groups**'. It is important that the interests of those who are involved in these groups are documented and understood.

3.3.3 The list below of the ICB's Strategic decision-making groups is non-exhaustive:

- Portfolio Boards
- Programme Boards
- Collaborative Board
- Consultative Committees
- Place Committees
- Sub-committees and groups of ICB Finance and Performance Committee

3.3.4 The ICB must ensure that those groups operate in compliance with the current policy and in a manner consistent with the following principles, which reflect wider standards of good governance:

- chairs should consider any known interests of members in advance and begin each meeting with a standing agenda item asking for declarations of relevant interests.
- members should take personal responsibility for declaring material interests at the beginning of each meeting and as they arise.
- any new interests identified should be added to the organisation's register.
- the vice-chair (or other non-conflicted member) should chair all or part of the meeting if the chair has an interest that may prejudice their judgement.
- terms of reference for such groups should refer to the organisation's policy and procedures for managing conflicts of interest and should set out any specific requirements which apply to the group.

3.3.5 All declarations made by such staff will be published in accordance with paragraph 7.8.4. All declarations must be reviewed and managed in accordance with paragraphs 7.8.4.

3.4 This policy applies to all ICB employees, including:

- All full and part time staff.
- Any staff on sessional or short term contracts; i.e. Locality Leads, Clinical Associates.
- Co-opted Board members.
- Any students and trainees (including apprentices).
- Agency staff; and
- Seconded staff.

3.4.1 In addition, any self-employed consultants or other individuals working for the ICB under a contract for services should make a declaration of interest in accordance with this policy, as if they were ICB employees. This includes **any** Commissioning Support Unit staff.

- 3.4.2 The policy also applies to Members of the ICB Board, all members of the ICB's committees, sub-committees / sub-groups, including:
- Co-opted members.
  - Appointed deputies; and
  - Any members of committees / groups from other organisations.

3.4.3 Where the ICB is participating in a joint committee alongside other ICBs, any interests which are declared by the committee members should be recorded on the register(s) of interest of each participating ICB.

#### 4.0 Definitions

4.1 **Conflict of Interest:** "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 being hold".

4.1.1 A conflict of interest may be:

Actual	Potential
There is a material conflict between one or more interests	There is the possibility of a material conflict between one or more interests in the future.

#### 4.2 Loyalty Interests

As part of their jobs, staff need to build strong relationships with colleagues across the NHS and in other sectors. These relationships can be hard to define as they may often fall in the category of indirect interests. They are unlikely to be directed by any formal process or managed via any contractual means – it can be as simple as having informal access to people in senior positions. However, loyalty interests can influence decision making.

4.2.1 Conflicts of interest can arise when decision making is influenced subjectively through association with colleagues or organisations out of loyalty to the relationship they have, rather than through an objective process. The scope of loyalty interests is potentially huge, so judgement is required for making declarations.

4.2.2 Any loyalty interests should be declared by staff involved in decision making for example (but not limited to holding a position of authority in another NHS organisation or commercial, charity, voluntary, professional, statutory or other body which could be seen to influence decisions they take in their NHS role. Sitting on advisory groups or other paid or unpaid decision-making forums that can influence how an organisation spends taxpayers' money.

#### 4.3 Overarching principles

- Where a position of authority in another NHS organisation or commercial, charity, voluntary, professional, statutory or other body which could be seen to influence decisions they take in their NHS role
- Sits on advisory groups or other paid or unpaid decision-making forums that can influence how their organisation spends taxpayers' money
- Could be involved in the recruitment or management of close family members and relatives, close friends and associates and business partners
- Where holding loyalty interest gives rise to a conflict of interest then the general management actions outlined in this policy should be considered and applied

- 4.3.1 Staff may hold interest for which they cannot see potential conflict. However, caution is always advisable because others may see it differently. It will be important to exercise judgement and to declare such interests where there is otherwise a risk of imputation of improper conduct. The perception of an interest can be as damaging as an actual conflict of interest.
- 4.3.2 Conflicts of interest can arise in many situations, environments and forms of commissioning, with an increased risk in primary care commissioning, out of hours commissioning and involvement with integrated care organisations, as clinical commissioners may here find themselves in a position of being at once commissioner and provider of services. Conflicts of interest can arise throughout the whole commissioning cycle from needs assessment to procurement exercises, to contract monitoring.
- 4.3.3 Interests can arise in a number of different contexts. A material interest is one which a reasonable person would take into account when making a decision regarding the use of taxpayers' money because the interest has relevance to that decision.
- 4.3.4 A benefit may arise from the making of a gain or the avoidance of a loss.
- 4.4 **Financial interests:** This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could, for example, include being:
- A director, including a non-executive director, or senior employee in a private company or public limited company or other organisation which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations. This includes involvement with a potential provider of a new care model;
  - A shareholder (or similar ownership interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations;
  - A management consultant for a provider; or
  - A provider of clinical private practice.
- This could also include an individual being:
- In employment outside of the ICB.
  - In receipt of secondary income.
  - In receipt of a grant from a provider.
  - In receipt of any payments (for example honoraria, one-off payments, day allowances or travel or subsistence) from a provider.
  - In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role; and
  - Having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider).
- 4.5 **Non-financial professional interests:** This is where an individual may obtain a non-financial professional benefit from the consequences of a commissioning decision, such as increasing their professional reputation or status or promoting their professional career. This may, for example, include situations where the individual is:
- An advocate for a particular group of patients.
  - A GP with special interests e.g., in dermatology, acupuncture etc.
  - An active member of a particular specialist professional body (although routine GP membership of the Royal College of General Practitioners (RCGP), British Medical

Association (BMA) or a medical defence organisation would not usually by itself amount to an interest which needed to be declared).

- An advisor for the Care Quality Commission (CQC) or the National Institute for Health and Care Excellence (NICE).
- Engaged in a research role.
- The development and holding of patents and other intellectual property rights which allow staff to protect something that they create, preventing unauthorised use of products or the copying of protected ideas; or.
- GPs and practice managers, who are members of the Governing Body or committees of the CCGs, should declare details of their roles and responsibilities held within their GP practices.

4.6 **Non-financial personal interests:** This is where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include, for example, where the individual is:

- A voluntary sector champion for a provider.
- A volunteer for a provider.
- A member of a voluntary sector board or has any other position of authority in or connection with a voluntary sector organisation.
- Suffering from a particular condition requiring individually funded treatment.
- A member of a lobby or pressure group with an interest in health and care.

4.7 **Indirect interests:** This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision (as those categories are described above) for example, a:

- Spouse / partner.
- Close family member or relative e.g., parent, grandparent, child, grandchild or sibling.
- Close friend or associate.
- Business partner.

4.7.1 The above categories and examples are not exhaustive, and a common-sense approach will be adopted. The ICB will exercise discretion on a case-by-case basis, including in relation to new model care arrangements, having regard to the principles set out in the next section of this policy, in deciding whether any other role, relationship or interest which would impair or otherwise influence the individual's judgement or actions in their role within the ICB. If so, this should be declared and appropriately managed.

All staff must understand that undisclosed or improperly handled conflicts can create conditions that increase the risk of fraud or bribery. The organisation itself may be prosecuted for a Failure to Prevent Fraud offence as set out in the Economic Crime and Transparency Act 2023 should an employee or associated person commit fraud which directly or indirectly benefits the organisation. All staff should familiarise themselves with the ICB's Anti-Fraud and Bribery policy.

## 5.0 Duties and Responsibilities

5.1 **Accountable Officer:** The Accountable Officer has overall accountability for the ICB's management of conflicts of interest.

5.2 **ICB Board:** All those responsibilities set out in section 5 apply to all members of the Board as well as the following:

- Ensure that the ICB's policies and procedures accurately reflect national guidance and instructions particularly in relation to the procurement of services.
- Ensure that arrangements for audit and audit reporting are open, robust and effective.
- Create and support an environment in which all individuals involved directly or indirectly with the ICB feel able, encouraged and obliged to be open, honest and upfront about actual or potential conflicts.

5.3 **All employees of the ICBs:** It is the responsibility of each employee of the ICB to -

- Ensure that they read and understand the ICB's prime financial policies, constitution and how they apply to them.
- Ensure that they do not place themselves in a position where private interests and NHS duties might conflict.
- Avoid undertaking duties, remunerated or otherwise, outside of their employment with the ICBs if there is any actual or potential conflict with, or prejudice of, the standards set out in this document.
- Refuse to accept any casual gifts or inducement by declining politely. Articles of low intrinsic value such as diaries or calendars, or small tokens of gratitude to the value not exceeding **£10** from patients or their relatives, need not necessarily be refused. If in doubt, the line manager should be consulted. If small gifts are accepted a record of this should be made in the gifts and hospitality register which is maintained by the Governance Team. Gifts and hospitality declaration forms are also available from the Governance Team.
- Refuse offers of hospitality or entertainment, although modest working lunches such as would be offered by the ICBs would be acceptable.
- Offer any modest hospitality such as a working lunch in the course of working visits. Alcoholic beverages must not be provided.
- Maintain appropriate confidentiality at all times in respect of information to which they have access in the course of their duties. In particular, they will observe the strict rules relating to patient confidentiality and will not misuse official 'commercial in confidence' information, nor will they make it available to other people without consulting the line manager.
- Ensure that they always conduct themselves and provides services in such a way as to up-hold the good name of the NHS and the ICB.
- Adhere to the ICB's disciplinary rules as set out in its disciplinary policy and procedure.
- Be aware and comply with the provisions of the Bribery Act 2010, as amended from time to time.
- Understand that failure to follow this policy may damage the ICB and its hard work and so may be viewed as a disciplinary matter, to be dealt with under normal disciplinary procedures, and the penalty could include dismissal.

Individuals must not:

- Use a present or past official position to obtain preferential rates for private deals.
- Attempt to influence the awarding of contracts by any factors other than those set out in standing orders and prime financial policies or otherwise designed to ensure that value for money is obtained.

5.4 **Director of Corporate Governance:** On behalf of the Accountable Officer the Director of Corporate Governance will have responsibility for-

- The day-to day management of conflicts of interest matters and queries.

- Maintaining the ICB register(s) of interest and the other registers referred to in this policy.
- Supporting the Conflicts of Interest Guardian to enable them to carry out the role effectively.
- Providing advice, support, and guidance on how conflicts of interest should be managed.
- Ensure that appropriate administrative processes are put in place.
- Oversee the arrangements for the management of conflicts of interest and will advise the Board as required.
- Review this policy on an annual basis and make recommendations to the Audit Committee and the Board for any required changes.
- Ensure that the register(s) of interest is reviewed regularly and updated as necessary.
- Ensure that for every interest declared, either in writing or by oral declaration, arrangements are in place to manage the conflicts of interest or potential conflicts of interest, to ensure the integrity of the group's decision-making process.
- Ensure the gifts and hospitality register is maintained and report to the Audit Committee at least annually on the register.
- Ensure the declarations of interest are published on the ICB website.

#### 5.5 **Conflicts of Interest Guardian:**

- To strengthen the scrutiny and transparency of the ICB's decision-making processes the ICB has nominated the Audit Committee Chair as the Conflict-of-Interest Guardian.
- In collaboration with the Governance Lead, the Conflicts of Interest guardian will:
  - Be a safe point of contact of employees or workers of the ICB to raise any concerns in relation to this policy.
  - Support the rigorous application of conflict-of-interest principles and policies.
  - Provide independent advice and judgement where there is any doubt about how to apply conflicts of interest policies and principles in an individual situation.
  - Provide advice on minimising the risks of conflicts of interest.

Whilst the Conflicts-of-Interest Guardian has an important role within the management of conflicts of interest, executive members of the ICB's Board have an on-going responsibility for ensuring the robust management of conflicts of interest, and all ICB employees, Board and committee members will continue to have individual responsibility in playing their part on an ongoing and daily basis.

### 6.0 **Appointing Board or Committee Members and Senior Employees**

- 6.1 On appointing Board, committee or sub-committee members and senior staff, the ICB will need to consider whether conflicts of interest should exclude individuals from being appointed to the relevant role. This will need to be considered on a case-by-case basis, but the ICB's Constitution should reflect the ICB's general principles.
- 6.2 The ICB will need to assess the materiality of the interest, in particular whether the individual (or any person with whom they have a close association could benefit whether financially or otherwise) from any decision the ICB might make. This will be particularly relevant for Board, committee and sub-committee appointments, but should also be considered for all employees and especially those operating at senior level.
- 6.3 The ICB will also need to determine the extent of the interest and the nature of the appointee's proposed role within the ICB. If the interest is related to an area of business

significant enough that the individual would be unable to operate effectively and make a full and proper contribution in the proposed role, then that individual shall not be appointed to the role.

6.4 Any individual who has a material interest in an organisation which provides, or is likely to provide, substantial services to either ICB (whether as a provider of healthcare, including 'new care model' providers, or healthcare commissioning support services, or otherwise) should recognise the inherent conflict of interest risk that may arise and should not be a member of the Board or of a committee or sub-committee of the ICB, in particular if the nature and extent of their interest and the nature of their proposed role is such that they are likely to need to exclude themselves from decision-making on so regular a basis that it significantly limits their ability to effectively perform that role. Specific considerations in relation to delegated or joint commissioning of primary care are set out below.

6.5 The ICB has set out in its constitution a statement on the conduct expected of individuals involved in the ICB, e.g. members of the Board, members of committees, and employee, which reflects the expectations set out in the Standards for NHS Board members<sup>7</sup>. Non-Executive Members play a critical role in ICBs, providing scrutiny, challenge and an independent voice in support of robust and transparent decision-making and management of conflicts of interest. They chair a number of ICB Board Assurance Committees, are appointed by recruitment and selection processes and need to fulfil the eligibility criteria set out in the ICB Constitution.

## 7.0 Principles

7.1 This section sets a series of principles for those who are serving as members of ICB Boards, ICB committees or take decisions where they are acting on behalf of the public or spending public money.

All staff should observe the principles of good governance in the way they do business.

These include:

- The Nolan Principles (See Appendix C).
- The Good Governance Standards for Public Services (2004), Office for Public Management (OPM) and Chartered Institute of Public Finance and Accountancy (CIPFA).
- [The seven key principles of the NHS Constitution](#).
- The Equality Act 2010.
- The UK Corporate Governance Code.
- New Standards for members of NHS Boards and ICB Boards in England.
- NHS Leadership competency framework (LCF)

In addition, to support the management of conflict of interests, the ICB will ensure they:

- **Do business appropriately:** Conflicts of interest become much easier to identify, avoid and/or manage when the processes for needs assessments, consultation mechanisms, commissioning strategies and procurement procedures are right from the outset, because the rationale for all decision-making will be clear and transparent and should withstand scrutiny.
- **Be proactive, not reactive:** Commissioners should seek to identify and minimise the risk of conflicts of interest at the earliest possible opportunity.
- **Be balanced and proportionate:** Rules should be clear and robust but not overly prescriptive or restrictive. They should ensure that decision-making is transparent and fair whilst not being overly constraining, complex or cumbersome.

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<sup>7</sup> [NHS England » NHS leaders](#)

- **Be transparent:** Document clearly the approach and decisions taken at every stage in the commissioning cycle so that a clear audit trail is evident.
- Create an **environment and culture** where individuals feel supported and confident in declaring relevant information and raising any concerns.

In addition to the above, the ICB needs to bear in mind:

- A perception of wrongdoing, impaired judgement or undue influence can be as detrimental as any of them actually occurring.
- If in doubt, it is better to assume the existence of a conflict of interest and manage it appropriately rather than ignore it.
- For a conflict of interest to exist, financial gain is not necessary.

## 7.2 Gifts and Hospitality

7.2.1 All staff should ensure that they are not placed in a position that risks or appears to risk compromising their role of the ICB's public and statutory duties or reputation. Staff must not, or be perceived to, secure valuable gifts and hospitality by virtue of their role. All staff should be aware that gifts and hospitality can be used as a subterfuge for bribery and, if this is suspected it should be reported immediately to the Local Counter Fraud Specialist.

7.2.2 The Bribery Act 2010 makes it a criminal offence to give/offer a bribe, or to request, offer to receive or accept a bribe. The Act reformed the criminal law of bribery, making it easier to tackle this proactively in both the public and private sectors. It introduced a corporate offence which means that commercial organisations, including NHS Bodies, will be exposed to criminal liability, punishable by an unlimited fine, for failing to prevent bribery.

## 7.3 Gifts

7.3.1 Staff in the NHS offer support during significant events in people's lives. For this work they may sometimes receive gifts as a legitimate expression or gratitude. We should be proud that our services are so valued, but situations where the acceptance of gifts could give rise to conflicts of interest should be avoided. ICB staff and members should be mindful that even gifts of a small value may give rise to perception of impropriety and might influence behaviour if not handled in an appropriate way.

7.3.2 A 'gift' is defined as any item of cash or goods, or any service, which is provided for personal benefit, free of charge or at less than its commercial value.

### 7.3.3 Overarching principles

- ICB staff should not accept gifts that may affect, or be seen to affect, their professional judgement. This overarching principle should apply in all circumstances.
- Any personal gift of cash or cash equivalents (e.g. vouchers, tokens, offers of remuneration to attend meetings whilst in a capacity working for or representing the ICB) must always be declined, whatever their value and whatever their source, and the offer which has been declined must be declared to the governance team who maintains the register of gifts and hospitality and recorded on the register.

### 7.3.4 Gifts from suppliers or contractors:

- Gifts from suppliers or contractors doing business (or likely to do business) with the ICB should be declined, whatever their value.
- Subject to this, low cost branded promotional aids may be accepted and not declared where they are under the value of a common industry standard of £6. The £6 value has been selected with reference to the Association of the British Pharmaceutical Industry's (ABPI) [Code of practice for the pharmaceutical industry 2021](#). The person

to whom the gifts were offered should also declare the offer to the governance team so the offer which has been declined can be recorded on the register.

- Donations made by suppliers or bodies seeking to do business with the organisation should be treated with caution and not routinely accepted. In exceptional circumstances they may be accepted but should always be declared. A clear reason why it was deemed acceptable to accept should also be provided along with the actual or estimated value for recording on the register.

#### 7.3.5 **Gifts from other sources** (e.g. patients, families, service users):

- Gifts of cash and vouchers should always be declined
- ICB staff should not ask for any gifts.
- Gifts valued at over £50 should be treated with caution and only be accepted on behalf of the ICB and not in a personal capacity. These should be declared by staff and the following options are suggested:
  - ✓ Share the gift with all staff.
  - ✓ Raffle the gift for charity.
  - ✓ Donate the gift to charity or,
  - ✓ Make a donation to charity and keep the gift.
- A common-sense approach should be applied to the valuing of gifts (using an actual amount if known, or an estimate that a reasonable person would make as to its value).
- Multiple gifts from the same source over a 12-month period should be treated in the same way as single gifts over £50 where the cumulative value exceeds £50.

7.3.6 If there is any doubt about the appropriateness of accepting a gift, staff should either politely decline or consult their line manager for the Governance team.

#### 7.3.7 **What should be declared**

- staff name and their role with the organisation
- a description of the nature and value of the gift
- date of receipt
- any other relevant information (eg circumstances surrounding the gift, action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy)

### 7.4 **Hospitality**

Delivery of services across the NHS depend on working with a wide range of partners (including industry and academia) in different places and, sometimes outside of traditional working hours. As a result, ICB staff will sometimes, appropriately, receive hospitality. Staff receiving hospitality should always be prepared to justify why it has been accepted and be mindful that even hospitality of a small value may give rise to perceptions of impropriety and might influence behaviour.

Hospitality means offers of meals, refreshments, travel, accommodation and other expenses in relation to attendance at meetings, conferences, education and training events etc.

#### 7.4.1 **Overarching principles**

- ICB staff should not ask for or accept hospitality that may allow or be seen to affect, their professional judgement.
- Hospitality must only be accepted when there is a legitimate business reason and it is proportionate to the nature and purpose of the event.

- Particular caution should be exercised when hospitality is offered by actual or potential suppliers or contractors, these can be accepted if modest and reasonable, but individuals should always obtain senior approval and declare these.

#### 7.4.2 **Meals and Refreshments**

- Under a value of £25 may be accepted and need not be declared.
- Of a value between £25 and £75 may be accepted and must be declared.
- Over a value of £75 should be refused unless (in exceptional circumstances) senior approval is given. A clear reason should be recorded on the ICB's registers(s) of interest as to why it was permissible to accept.
- A common-sense approach should be applied to the valuing of meals and refreshments (using an actual amount, if known, or an estimate that a reasonable person would make as to its value).

#### 7.4.3 **Travel and accommodation**

- Modest offers to pay some or all of the travel and accommodation costs related to attendance at events may be accepted and must be declared.
- Offers which go beyond modest or are of a type that the ICB itself might not usually offer, need approval by senior staff (e.g. the ICB governance lead or equivalent), should only be accepted in exceptional circumstances, and must be declared. A clear reason should be recorded on the ICB's registers (s) of interest as to why it was permissible to accept travel and accommodation of this type.
- A non-exhaustive list of examples includes:
  - Offers of business class or first-class travel and accommodation (including domestic travel); and
  - Offers of foreign travel and accommodation.

#### 7.4.4 **What should be declared**

- staff name and their role with the organisation
- a description of the nature and value of the hospitality including the circumstances
- date of receipt
- any other relevant information (eg action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy)

### 7.5 **Sponsored Events**

Sponsorship of NHS events by external parties is valued. Offers to meet some or part of the costs of running an event secures their ability to take place, benefitting NHS staff and patients. Without this funding there may be fewer opportunities for learning, development and partnership working. However, there is potential for conflicts of interest between the organiser and the sponsor, particularly regarding the ability to market commercial products or services. As a result, there should be proper safeguards in place to prevent conflicts occurring.

#### 7.5.1 **Overarching principles**

When sponsorships are offered, the following principles must be adhered to:

- Sponsorship of ICB events by appropriate external bodies should only be approved if a reasonable person would conclude that the events will result in clear benefit for the ICB and the NHS.
- During dealings with sponsors there must be no breach of patient or individual confidentiality or data protection rules and legislation;

- No information should be supplied to the sponsor from which they could gain a commercial advantage, and information which is not in the public domain should not normally be supplied.
- At the ICB's discretion, sponsors or their representatives may attend or take part in the event, but they should not have a dominant influence over the content of the main purpose of the event.
- The involvement of a sponsor in an event should always be clearly identified in the interest of transparency.
- The ICB will make it clear that sponsorship does not equate to endorsement of a company or its products and this should be made visibly clear on any promotional or other materials relating to the event.
- Staff should declare involvement with arranging sponsored events to the ICB.

#### 7.5.2 What should be declared?

The ICB will maintain records regarding sponsored events in line with the above principles and rules.

### 7.6 Other forms of sponsorship

7.6.1 Organisations external to the ICB or NHS may also sponsor posts or research. However, there is potential for conflicts of interest to occur, particularly when research funding by external bodies does or could lead to a real or perceived commercial advantage, or if sponsored posts cause a conflict of interest between the aims of the sponsor and the aims of the organisation, particularly in relation to procurement and competition. There needs to be transparency, and any conflicts of interest should be well managed.

7.6.2 Further information is available [Managing conflicts of interest in the NHS: Guidance for staff and organisations](#).

### 7.7 Declaring interests and gifts of hospitality

#### Statutory requirements

ICBs must make arrangements to ensure individuals declare any conflict or potential conflict in relation to a decision(s) to be made by the Group as soon as they become aware of it and in any event within 28 days. The ICB must record the interest in the register(s) as soon as they become aware of it<sup>8</sup>.

Individuals should record any declaration(s) on the declaration of interests form for ICB members and employees (Appendix A).

Declarations of interest and gifts and hospitality should be made by the following:

#### All ICB employees, including:

- All full and part time staff.
- Any staff on sessional or short term contracts; i.e. Locality Leads, Clinical Associates.
- Any students and trainees (including apprentices).
- Agency staff; and
- Seconded staff.

In addition, any self-employed consultants or other individuals working for the ICB under a contract for services should make a declaration of interest in accordance

<sup>8</sup> National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) Section 140 (3)

with this policy, as if they were ICB employees. This includes **any** Commissioning Support Unit staff.

**Members of the ICB Board:**

All members of the ICB's committees, sub-committees / sub-groups, including:

- Co-opted members.
- Appointed deputies; and
- Any members of committees / groups from other organisations.

GPs who undertake work on behalf of the ICB and are employed by the ICB are required to declare offers/receipts of gifts and hospitality to the ICB.

All persons referred to in paragraph 7.7 below must declare any interests. Declarations of interest must be made available as soon as reasonably practicable and by law within 28 days after the interest arises (this could include an interest an individual is pursuing).

Further opportunities to make declarations include:

**On appointment:** Applicants for any appointment to the ICB or its Board or any committees will be asked to declare any relevant interests. When an appointment is made, a formal declaration of interests will again be made and recorded.

**When prompted by their organisation:** Because of their role in spending taxpayers' money, ICBs should ensure that, at least annually, staff are prompted to update either declarations of interest, or make a nil return where there are no interests or changes to declare.

**On changing role, responsibility or circumstances:** Whenever an individual's role, responsibility or circumstances change in a way that affects the individual's interests (e.g., where an individual takes on a new role outside the ICB or enters into a new business or relationship, starts a new project/piece of work or may be affected by a procurement decision e.g. their role may transfer to a proposed new provider)), a further declaration should be made to reflect the change in circumstances as soon as possible, and in any event **within 28 days**. This could involve a conflict of interest ceasing to exist or a new one materialising.

If any individual's circumstances change, it is the individual's responsibility to make a further declaration as soon as possible and in any event **within 28 days**, rather than waiting to be asked.

Individuals must formally notify the Corporate Governance Team by completing and submitting an updated declaration of interest form.

**7.8 Register(s) of interests and gifts and hospitality**

- 7.8.1 It is a statutory requirement for ICBs to maintain one or more registers of interest of the members of the group, members of its Board, members of its committees or sub-committees of its Board and its employees. All Board members and senior managers are to declare conflicts of interest on appointment, quarterly, at meetings and on changing role, responsibility or circumstances.
- 7.8.2 The ICB must publish and make arrangements to ensure that members of the public have access to these registers on request.
- 7.8.3 Register(s) of interest will be maintained for all those individuals who fall within the scope of this policy, as detailed at 7.7.

7.8.4 All interests declared will be promptly transferred to the relevant ICB register(s) by the governance lead who has designated responsibility for maintaining registers of interest.

The register of interests will record the following:

- Name of the person declaring the interest.
- Position within, or relationship with, the ICB (or NHS England in the event of joint committees).
- Type of interest e.g., financial interests, non-financial professional interests.
- Description of interest, including for indirect interests details of the relationship with the person who has the interest.
- The dates from which the interest relates; and
- The actions to be taken to mitigate risk - these should be agreed with the individual's line manager or a senior manager within the ICB.

The ICB will maintain a register for the individuals listed in paragraph 7.7, the register will record the following:

- Recipient's name.
- Current positions(s) held by the individual (within the ICB)
- Date of offer and/or receipt.
- Details of the gift or hospitality.
- The estimated value of the hospitality;
- Details of the supplier/offenor (e.g. their name and the nature of their business).
- Details of previous gifts and hospitality offered or accepted by this offeror/supplier.
- Action taken to mitigate against a conflict, details of any approvals given and details of the officers reviewing. Approving the declaration made and date.
- Whether the offer was accepted or not; and
- Reasons for accepting or declining the offer.

7.8.5 **Publication of registers:** All staff should declare interests and offers/receipts of gifts and hospitality and the ICB will publish the interests of decision-making staff at least annually in a prominent place on the ICB website.

7.8.6 In exceptional circumstances, where the public disclosure of information could give rise to a real risk of harm or is prohibited by law, an individual's name and/or other information may be redacted from the publicly available registers (s). Where an individual believes that substantial damage or distress may be caused to him/herself or somebody else by the publication of information about them, they are entitled to request that the information is not published. Such requests must be in writing. Decisions not to publish must be made by the Conflict-of-Interest Guardian for the ICB, who should seek appropriate legal advice where required and the ICB will retain a confidential un-redacted version of the registers(s).

7.8.7 The ICB will ensure all decision-making staff are aware in advance of publication that the register(s) will kept, how the information on the registers(s) may be used or shared and the register (s) will be published.

- 7.8.8 Staff who are not decision-making staff but are still required to make a declaration of interest(s) or a declaration of gifts or hospitality will be made aware that the register(s) will be kept and how the information on the register(s) may be used or shared.
- 7.8.9 The ICB will ensure all staff are aware of its fair processing notice and the contact details of the data protection officer.
- 7.8.10 An interest (including offers of gifts and hospitality) of decision-making staff shall remain on the public register for a minimum of **six** months after the interest has expired.
- 7.8.11 The ICB is required to retain a private record of historic interests for a minimum of six years after the date on which it expired.
- 7.8.12 The ICB's published register of interests will state that historic interests are retained by the ICB for the specified timeframe; a request for this information should be made to the Governance lead.
- 7.8.13 The register of interest and gifts and hospitality must be published as part of the ICB's annual report and annual governance statement. A web link to the ICB's registers is acceptable.

## **7.9 Outside employment**

- 7.9.1 Outside employment means employment and other engagements, outside of formal employment arrangements, (for more information please refer to the ICB's Secondary Employment Policy). The ICB will take all reasonable steps to ensure that employees, committee members, contractors and others engaged under contract with them are aware of the requirement to inform the ICB if they are employed or engaged in, or wish to be employed or engage in, any employment or consultancy work in addition to their work with the ICB (for example in relation to new care model arrangements). The purpose of this is to ensure that the ICB is aware of any potential conflict of interest. Examples of work which might conflict with the business of the ICB, including part-time, temporary and fixed term contract work, include:
- Employment with another NHS body.
  - Employment with another organisation which might be in a position to supply goods/services to the ICB including paid advisory positions and paid honorariums which relate to bodies likely to do business with the ICB.
  - Directorships e.g. of a GP federation or non-executive roles.
  - Self-employment, including private practice, charitable trustee roles, political roles and consultancy work in a capacity which might conflict with the work of the ICB or which might be in a position to supply goods/services to the ICB. Staff should not actively solicit charitable donations unless this is a prescribed or expected part of their duties for the organisation, or is being pursued on behalf of the organisation's own registered charity or other charitable body and is not for their own personal gain. Staff should also obtain permission from the organisation if in their professional role, they intend to undertake fundraising activities on behalf of a pre-approved charitable campaign for a charity other than the organisation's own.
- 7.9.2 The following principles and rules will be adhered to:
- The ICB will require individuals to obtain prior permission to engage in outside employment and reserve the right to refuse permission where it believes a conflict will arise which cannot be effectively managed.
  - Staff must declare any existing outside employment on appointment, and any new outside employment when it arises.

- ICBs should ensure that they have clear and robust organisational policies in place to manage issues arising from secondary employment. In particular, it is unacceptable for pharmacy advisers or other advisers, employees or consultants to the ICB on matters of procurement to themselves be in receipt of payments from the pharmaceutical or devices sector.

### 7.9.3 What should be declared?

- staff name and their role with the organisation
- a description of the nature of the shareholding/other ownership interest
- relevant dates

any other relevant information (eg action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this guidance)

## 7.10 Managing conflicts of interest at meetings

**Statutory requirements:** ICBs must make arrangements for managing conflicts of interest, and potential conflicts of interest, in such a way as to ensure that they do not, and do not appear to, affect the integrity of the group's decision-making.

7.10.1 The ICBs have reviewed their governance structures and policies for managing conflicts of interest to ensure that they reflect NHSE guidance and are appropriate. The ICB have considered the following:-

- The **make-up of their Board and committee structures** and processes for decision-making.
- Whether there are sufficient management and internal controls to detect **breaches** of the ICBs conflicts of interest policy, including appropriate external oversight and adequate provision for **raising concerns under this policy**.
- How **non-compliance** with policies and procedures relating to conflicts of interest will be managed (including how this will be addressed when it relates to contracts already entered into); and
- Identifying and implementing **training** or other programmes to assist with compliance, including participation in the training offered by NHS England.
- All attendees are required to declare their interests as a standing agenda item for every Board, committee, sub-committee or working group meeting, before the item is discussed. Even if an interest has been recorded in the register of interests, it should still be declared in meetings where matters relating to that interest are discussed. Declarations of interest should be recorded in minutes of meetings (see 18 for further advice on record keeping).

### 7.10.2 Chairing arrangements and decision-making processes

The chair of a meeting of the ICBs Board or any of its committees, sub-committees or groups has ultimate responsibility for deciding whether there is a conflict of interest and for taking the appropriate course of action in order to manage the conflict of interest.

7.10.3 In the event that the chair of a meeting has a conflict of interest, the vice chair is responsible for deciding the appropriate course of action in order to manage the conflict of interest. If the vice chair is also conflicted, then the remaining non-conflicted voting members of the meeting should agree between themselves how to manage the conflict(s).

7.10.4 In making such decisions, the chair (or vice chair or remaining non-conflicted members as above) may wish to consult with the Conflicts of Interest Guardian or another member of the Board.

- 7.10.5 It is good practice for the chair, with support of the ICB's Associate Director of Corporate Governance or equivalent and if required, the Conflicts of Interest Guardian, to proactively consider ahead of meetings what conflicts are likely to arise and how they should be managed, including taking steps to ensure that supporting papers for particular agenda items of private sessions/meetings are not sent to conflicted individuals in advance of the meeting where relevant.
- 7.10.6 To support chairs in their role, they will have access to a declaration of interest checklist prior to meetings, which will include details of any declarations of conflicts which have already been made by members of the group.
- 7.10.7 The chair will ask at the beginning of each meeting if anyone has any conflicts of interest to declare in relation to the business to be transacted at the meeting. Each member of the group must declare any interests which are relevant to the business of the meeting whether or not those interests have previously been declared. Any new interests which are declared at a meeting must be included on the ICB's relevant register of interests to ensure it is up to date.
- 7.10.8 Similarly, any new offers of gifts or hospitality (whether accepted or not) which are declared at a meeting must be included on the ICB's register of gifts and hospitality to ensure it is up to date.
- 7.10.9 It is the responsibility of each individual member of the meeting to declare any relevant interests which they may have. However, should the chair or any other member of the meeting be aware of facts or circumstances which may give rise to a conflict of interest, but which has not been declared then they should bring this to the attention of the chair who will decide whether there is a conflict of interest and the appropriate course of action to take in order to manage the conflict of interest.
- 7.10.10 When a member of the meeting (including the chair or vice chair) has a conflict of interest in relation to one or more items of business to be transacted at the meeting, the chair (or vice chair or remaining non-conflicted members where relevant as described above) must decide how to manage the conflict. The appropriate course of action will depend on the particular circumstances, but could include one or more of the following:
- Where the chair has a conflict of interest, deciding that the vice chair (or another non-conflicted member of the meeting if the vice chair is also conflicted) should chair all or part of the meeting.
  - Requiring the individual who has a conflict of interest (including the chair or vice chair if necessary) not to attend the meeting.
  - Ensuring that the individual concerned does not receive the supporting papers or minutes of the meeting which relate to the matter(s) which give rise to the conflict.
  - Requiring the individual to leave the discussion when the relevant matter(s) are being discussed and when any decisions are being taken in relation to those matter(s). In private meetings, this could include requiring the individual to leave the room and in public meetings to either leave the room or join the audience in the public gallery.
  - Allowing the individual to participate in some or all of the discussion when the relevant matter(s) are being discussed but requiring them to leave the meeting when any decisions are being taken in relation to those matter(s). This may be appropriate where, for example, the conflicted individual has important relevant knowledge and experience of the matter(s) under discussion, which it would be of benefit for the meeting to hear, but this will depend on the nature and extent of the interest which has been declared.

- Noting the interest and ensuring that all attendees are aware of the nature and extent of the interest but allowing the individual to remain and participate in both the discussion and in any decisions. This is only likely to be the appropriate course of action where it is decided that the interest which has been declared is either immaterial or not relevant to the matter(s) under discussion.
- Where the conflict of interest relates to outside employment and an individual continues to participate in meetings pursuant to the preceding two bullet points, he or she should ensure that the capacity in which they continue to participate in the discussions is made clear and correctly recorded in the meeting minutes. Where it is appropriate for them to participate in decisions they must do so if they are acting in their ICB role.

## **7.11 Joint Working Arrangement/Delegation**

7.11.1 As ICBs establish ways of working, through new joint working arrangements or delegation to other statutory bodies, managing real or perceived conflicts of interest will continue to be an important aspect of ensuring robust governance arrangements following commencement of the [Health and Care Act 2022 \(the '2022 Act'\)](#).

7.11.2 The guiding principle for NHS organisations in dealing with these conflicts will be that decisions must be made in the public interest, avoiding any undue influence from other interests. The significant NHS provider involvement within each ICB's membership will require any conflicts of interest to be assessed on a case-by-case basis, in line with the principles set out in this policy.

7.11.3 Under s65Z5, delegation and joint exercise of function arrangements can only be made between relevant bodies, NHS, local authorities and/or combined authorities. NHS organisations convening joint committees will be able to determine the membership of committees – which organisations are represented and on what basis. Committees could include individuals who are not employees of the 'convening organisations'. For example, the joint committee could include a clinician who has expertise relevant to matters delegated to the committee but who is not an employee of any of the bodies participating in the joint committee. As with any internal committees of an ICB, a joint committee should ensure the appropriate management of conflicts of interest relating to any of its members.

7.11.4 For example, an individual from a social enterprise that provides mental health services may give a reasoned and evidence-based opinion that a certain type of online therapy is better for supporting people who experience anxiety – but it might also be that the social enterprise is currently the only provider of that service in the ICS footprint. This should not mean that individual's contribution is discounted – but their conflicting interest should be recognised and taken into account when considering the final decision.

## **7.12 Principles for ICBs managing conflicts of interest**

7.12.1 Decision-making must be geared towards meeting the statutory duties of the ICBs at all times, including the triple aim.<sup>9</sup> Any individual involved in decisions relating to ICB functions must be acting clearly in the interest of the ICB and of the public, rather than furthering direct or indirect financial, personal, professional or organisational interest.

7.12.2 ICBs have been created to give trust/foundation trust, local authority and primary medical services (general practice) provider nominees a role in decision-making. These

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<sup>9</sup> The triple aim is a common duty for NHS bodies that plan and commission services (NHS England and ICBs) and that provide services, (trusts and foundation trusts). It will oblige these bodies to consider the effects of the decisions on: the health and wellbeing of the people of England; the quality of services provided or arranged by both themselves and other relevant bodies; the sustainable and efficient use of resources by both themselves and other relevant bodies.

individuals will be expected to act in accordance with the first principle and while it should not be assumed that they are personally or professionally conflicted, just by virtue of being an employee, director, partner or otherwise holding a position with one of these organisations, the possibility of actual and perceived conflicts of interest arising will remain. For all decision, ICBs will need to carefully consider whether an individual's role in another organisation could result in actual or perceived conflicts of interest and whether or not these outweigh the value of the knowledge they bring to the process.

- 7.12.3 The personal and professional interests of all ICB board members, ICB committee members and ICB staff who are involved in decision-taking need to be declared, recorded and managed appropriately. Declarations must be made as soon as practicable after the person becomes aware of the conflict or potential conflict and in any event, within 28 days of them becoming aware. This is already standard practice in existing NHS organisations. This includes being clear and specific about the nature of any interest and about the nature of any conflict that may arise regarding a particular decision.
- 7.12.4 If an interest is declared but there is no risk a conflict arising, then no further action need be taken, although the interest will still need to be recorded. However, if a material interest is declared, then it should be considered to what extent it affects the balance of the discussion and decision-making process. In doing so the ICB should ensure conflicts of interest (and **potential** conflicts) do not and do not **appear** to, affect the integrity of the ICB's decision-making processes.
- 7.12.5 ICBs should consider the composition of decision-making forums and clearly distinguish between those individuals who should be involved in formal decision-taking and those whose input informs decisions. In particular, ICBs should consider the perspective the individual brings and the value they add to both discussions around particular decisions and in actually taking part in the decision, including the ability to shape the ICB's understanding of how best to meet patients' needs and deliver care for their populations. The way conflicts of interest are managed should reflect this distinction. For example, where independent providers (including the VCSE sector) hold contracts for services, it would be appropriate and reasonable for the ICB to involve them in discussions, eg about pathway design and service delivery, particularly at place level. However, this would be clearly distinct from any considerations around contracting and commissioning, from which they would be excluded.
- 7.12.6 Actions to mitigate conflicts of interest should be proportionate and should seek to preserve the spirit of collective decision-making wherever possible. Mitigation should take account of a range of factors including the perception of any conflicts and how a decision may be received if an individual with a perceived conflict is involved in that decision, and the risks and benefits of having a particular individual involved in making the decision. Potential options in relation to mitigation could include:
- Including a conflicted person in the discussion but not in decision-making.
  - Excluding a conflicted person from both the discussion and the decision-making.
  - Including a conflicted person in the discussion and decision where there is a clear benefit to them being included in both – however, including the conflicted person in the actual decision should be done after careful consideration of the risk and with proper mitigation in place. The rationale for inclusion should also be properly documented and included in minutes.
  - excluding the conflicted individual and securing technical or local expertise from an alternative, unconflicted source.
- 7.12.7 The way conflicts of interest are declared and managed should contribute to a culture of transparency about how decisions are made. In particular, when adopting a specific approach to mitigate any conflicts of interest (including perceived conflicts), ICBs should ensure that the reason for the chosen action is documented in minutes or records.

7.12.8 These factors should be read in conjunction with other relevant NHS England statutory guidance, including guidance on joint working and delegation arrangements and when published on the provider selection regime and guidance. In relation to the provider selection regime, as is already established practice in the NHS, where decisions are being taken as part of a formal competitive procurement of services, any individual who is associated with an organisation that has a vested interest in the procurement should recuse themselves from the process.

### 7.13 Minute-taking

It is imperative that the ICB ensures complete transparency in their decision-making processes through robust record-keeping.

If any conflicts of interest are declared or otherwise arise in a meeting, the chair must ensure the following information is recorded in the minutes:

- **Who has the interest.**
- **The nature of the interest and why it gives rise to a conflict**, including the magnitude of any interest.
- **The items on the agenda to which the interest relates.**
- **how the conflict was agreed to be managed**; and
- **evidence that the conflict was managed as intended** (for example recording the points during the meeting when particular individuals left or returned to the meeting).

### 7.14 Managing conflicts of interest throughout the commissioning cycle

7.14.1 Conflicts of interest need to be managed appropriately throughout the whole commissioning cycle. At the outset of a commissioning process, the relevant interests of all individuals involved should be identified and clear arrangements put in place to manage any conflicts of interest. This includes consideration as to which stages of the process a conflicted individual should not participate in, and, in some circumstances, whether that individual should be involved in the process at all.

7.14.2 The ICB must also identify as soon as possible where staff might transfer to a provider (or their role may materially change) following the award of a contract. This should be treated as a relevant interest and the ICB must ensure they manage the potential conflict.

### 7.15 Designing service requirements

7.15.1 The way in which services are designed can either increase or decrease the extent of perceived or actual conflicts of interest. Particular attention should be given to public and patient involvement in service development.

7.15.2 Public involvement supports transparent and credible commissioning decisions. It should happen at every stage of the commissioning cycle from needs assessment, planning and prioritisation to service design, procurement and monitoring. ICBs have legal duties under the Act to properly involve patients and the public in their respective commissioning processes and decisions.

### 7.16 Provider engagement

7.16.1 It is good practice to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient needs. This may include providers from the acute, primary, community and mental health sectors and may include NHS, third sector and private sector providers. Such engagement, done transparently and fairly, is entirely legal. However, conflicts of interest, as well as challenges to the fairness of the procurement process, can arise if a commissioner engages selectively with only

certain providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid. The ICB needs to be particularly mindful of these issues when engaging with existing/potential providers in relation to the development of new care models.

- 7.16.2 Provider engagement should follow the three main principles of procurement law, namely equal treatment, non-discrimination and transparency. This includes ensuring that the same information is given to all at the same time and procedures are transparent. This mitigates the risk of potential legal challenge.
- 7.16.3 As the service design develops, it is good practice to engage with a range of providers on an on-going basis to seek comments on the proposed design e.g., via the commissioner’s website and/or via workshops with interested parties (ensuring a record is kept of all interaction).
- 7.16.4 Engagement should help to shape the requirement to meet patient need, but it is important not to gear the requirement in favour of any particular provider(s). If appropriate, the advice of an independent clinical adviser on the design of the service should be secured.
- 7.16.5 The ICB needs to ensure they meet any obligation to document their decisions including but not limited to, any obligations they have under the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 and the Public contract s Regulations 2015.

**7.17 Specifications**

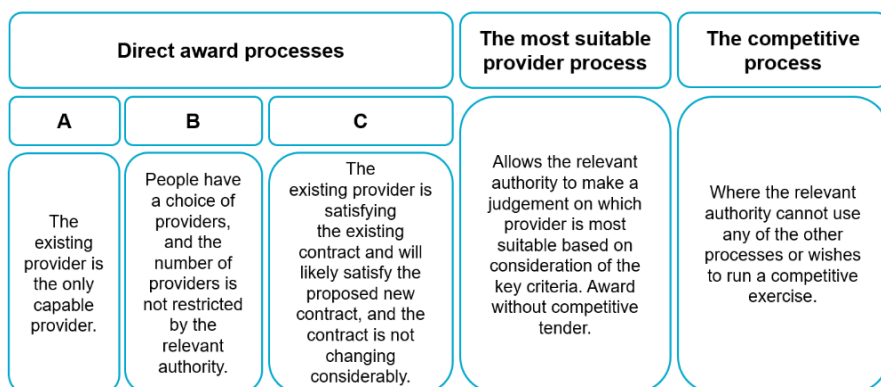
- 7.17.1 Commissioners should seek, as far as possible, to specify the outcomes that they wish to see delivered through a new service, rather than the process by which these outcomes are to be achieved. As well as supporting innovation, this helps prevent bias towards particular providers in the specification of services. However, they also need to ensure careful consideration is given to the appropriate degree of financial risk transfer in any new contractual model.
- 7.17.2 Specifications should be clear and transparent, reflecting the depth of engagement, and set out the basis on which any contract will be awarded.

**8.0 Procurement**

8.1 The Health Care Services (Provider Selection Regime) Regulations 2023 (PSR Regulations) came into force on 1 January 2024 as part of regulations made under the Health and Care Act 2022. This statutory guidance is a set of rules for procuring all healthcare services in England by relevant authorities (ICBs, NHS Trusts and Foundation Trusts, Local Authorities and Combined Authorities).

**8.2 Procurement Processes**

The PSR provides five distinct routes to market for procuring healthcare services, but only one which provides for competition as we know it under the current Regulations (for more information see [NHS England » The Provider Selection Regime: statutory guidance](#)).



### 8.34 **Transparency and Record Keeping**

The PSR provides for greater flexibility and allows relevant authorities to award contracts without using a competitive process, where appropriate. This means that other checks and balances need to be in place to ensure that the PSR is complied with and that the flexibilities are used appropriately and in the best interest of service users. The Provider Selection Regime requires that the Transparency Notices and record keeping of decisions around the procurement route are maintained by ICBs.

## 9.0 **Declarations of interests for bidders / contractors – Contract Monitoring**

9.1 As part of a procurement process, the ICB must take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement processes under the PSR Regulations.

- The concept of conflicts of interest includes any situation where an individual has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement process, and
- In particular, any such individual is required to recuse themselves from the decision-making process of that procurement process

9.2 Commissioners must retain an internal audit trail of how a conflict or perceived conflict was dealt with to allow them to provide information at a later date if required. Commissioners are required to make and retain records of contract award decisions and key decisions that are made during the procurement process (there is no obligation to publish them). Such records must include “communications with economic operators and internal deliberations” which should include decisions made in relation to actual or perceived conflicts of interest declared by bidders. These records must be retained for a period of at least three years from the date of award of the contract.

9.3 The management of conflicts of interest applies to all aspects of the commissioning cycle, including contract management.

9.4 Any contract monitoring meeting needs to consider conflicts of interest as part of the process i.e., the chair of a contract management meeting should invite declarations of interests; record any declared interests in the minutes of the meeting; and manage any conflicts appropriately and in line with this guidance. This equally applies where a contract is held jointly with another organisation such as the Local Authority or with other ICBs under lead commissioner arrangements.

9.5 The individuals involved in the monitoring of a contract should not have any direct or indirect financial, professional or personal interest in the incumbent provider or in any other provider that could prevent them, or be perceived to prevent them, from carrying out their role in an impartial, fair and transparent manner.

9.6 Officers must be mindful of any potential conflicts of interest when they disseminate any contract or performance information/reports on providers and manage the risks appropriately.

## 10.0 **Internal Audit**

10.1 The ICB is required to undertake an audit of conflicts of interest management as part of their internal audit on an annual basis. The ICB also undertakes an audit of its Counter Fraud arrangements.

10.2 The results of the audit will be reflected in the ICB’s annual governance statement and will be discussed in the end of year governance meeting with NHS regional teams.

## **11.0 Raising Concerns and Breaches**

- 11.1 It is the duty of every ICB employee, Board member, committee or sub-committee member to speak up about genuine concerns in relation to the administration of the ICB's policy on conflicts of interest management, and to report these concerns. These individuals should not ignore their suspicions or investigate themselves, but rather speak to the designated ICB point of contact for these matters; this is:
- Conflict-of-Interest Guardian – [governance@staffsstoke.icb.nhs.uk](mailto:governance@staffsstoke.icb.nhs.uk)
  - Head of Governance – [governance@staffsstoke.icb.nhs.uk](mailto:governance@staffsstoke.icb.nhs.uk)
  - Fraud Champion – [governance@staffsstoke.icb.nhs.uk](mailto:governance@staffsstoke.icb.nhs.uk)
  - Concerns can also be raised with your Anti-Fraud Specialist Paul Bell, [paul.bell@miaa.nhs.uk](mailto:paul.bell@miaa.nhs.uk) Further details are available within the Fraud, Bribery and Corruption Policy.
- 11.2 Any non-compliance with the ICB'S Conflicts of Interest Policy should be reported in accordance with the terms of that policy, and ICB's Freedom to Speak Up whistleblowing policy (where the breach is being reported by an employee or worker of the ICB) or with the whistleblowing policy of the relevant employer organisation (where the breach is being reported by an employee or worker of another organisation).
- 11.3 Effective management of conflicts of interest requires an environment and culture where individuals feel supported and confident in declaring relevant information, including notifying any actual or suspected breaches of the rules. In particular, the team or individual designated by the ICB to provide advice, support, and guidance on how conflicts of interest should be managed, should ensure that organisational policies are clear about the support available for individuals who wish to come forward to notify an actual or suspected breach of the rules, and of the sanctions and consequences for any failure to declare an interest or to notify an actual or suspected breach at the earliest possible opportunity.
- 11.4 All reports of concerns and breaches will be investigated in accordance with the Staffordshire and Stoke-on-Trent ICB's Raising Concerns at Work Policy.
- 11.5 Anonymised details of breaches will be published on the ICB's website for the purpose of learning and development.

## **12.0 Reporting Breaches**

- 12.1 If any employees, Board members, committee or sub-committee members suspect or are aware of any known breaches of the ICB's Conflicts of Interest Policy, they should contact the ICB's designated Conflicts of Interest Guardian, or Freedom to Speak Up Guardian in the first instance to raise any concerns.

Any contact with the Conflicts of Interest Guardian or Freedom to Speak Up Guardian, is on a strictly confidential basis.

- 12.2 Anyone who wishes to report a suspected or known breach of the policy, who is not an employee or worker of the ICB, should be aware of their own organisation's whistleblowing policy, since most such policies should provide protection against detriment or dismissal.
- 12.3 All such notifications will be treated with appropriate confidentiality at all times in accordance with the ICB's policies and applicable laws, and the person making such disclosures can expect an appropriate explanation of any decisions taken as a result of any investigation.

12.4 Furthermore, providers, patients and other third parties can make a complaint to NHSE in relation to a commissioner's conduct under the PSR Regulations. The regulations are designed as an accessible and effective alternative to challenging decisions in the courts.

### **13.0 Fraud or Bribery**

13.1 Any suspicions or concerns of acts of fraud or bribery can be reported to the ICB's Local Counter Fraud Specialist or online via [Report NHS fraud | Help fight fraud within the NHS | Report your fraud concerns and suspicions using a confidential online form \(cfa.nhs.uk\)](#) / or via the NHS Fraud and Corruption Reporting Line on 0800 0284060 (available 24/7).

13.2 This provides an easily accessible and confidential route for the reporting of genuine suspicions of fraud within or affecting the NHS. All calls are dealt with by experienced trained staff and any caller who wishes to remain anonymous may do so.

### **14.0 Impact of non-compliance**

Failure to comply with the ICB's policies on conflicts of interest management, pursuant to this statutory guidance, can have serious implications for the ICB and any individuals concerned.

#### **14.1 Disciplinary Implications**

14.1.1 The ICB will ensure that individuals who fail to disclose any relevant interests or who otherwise breach the ICB's rules and policies relating to the management of conflicts of interest are subject to investigation and where appropriate, to disciplinary action. This 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, rearrangement of duties, redeployment, demotion or dismissal.
- Referring incidents to regulators.
- Contractual action against organisations or staff.

#### **14.2 Professional Regulatory Implications**

14.2.1 Statutorily regulated healthcare professionals who work for or are engaged by ICBs are under professional duties imposed by their relevant regulator to act appropriately with regard to conflicts of interest). ICBs should report statutorily regulated healthcare professionals to their regulator if they believe that they have acted improperly, so that these concerns can be investigated. These healthcare professionals should be made aware that the consequences for inappropriate action could include fitness to practise proceedings being brought against them, and that they could, if appropriate, be struck off by their professional regulator as a result.

#### **14.3 Civil Sanctions**

14.3.1 If conflicts of interest are not effectively managed, the ICB could face civil challenges to decisions they make. For instance, if interests were not disclosed that were relevant to the bidding for, or performance of contracts. In extreme cases, staff and other individuals could face personal civil liability, for example a claim for misfeasance in public office.

#### **14.4 Criminal sanctions**

14.4.1 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 ICBs and linked organisations, and the individuals who are engaged by them.

14.4.2 The Fraud Act 2006 created a criminal offence of fraud and defines three ways of committing it:

- Fraud by false representation.

- Fraud by failing to disclose information; and,
- Fraud by abuse of position.

14.4.3 In these cases an 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 ten years imprisonment and / or a fine and can be committed by a body corporate.

14.4.4 Under the Bribery Act 2010 it is an offence to:

- Promise, offer or give a bribe.
- Request, agree to receive or accept a bribe.
- Bribe a Foreign Official.

14.4.5 The offences of bribing another person or being bribed carries a maximum sentence of ten years imprisonment and / or a fine Court. In relation to a body corporate the penalty for these offences is a fine

14.4.6 Under the Economic Crime and Corporate Transparency Act 2023, an organisation may be criminally liable if an employee, agent, subsidiary or other 'associated person' commits fraud intending to benefit the organisation, and the organisation did not have reasonable procedures in place. This can result in the organisation receiving an unlimited fine.

## 15.0 Conflicts of Interest Training

15.1 The ICB will provide training to all employees, Board members and members of ICB committees and sub-committees on the management of conflicts of interest. This is to ensure staff and others within the ICB understands what conflicts are and how to manage them effectively.

15.2 All such individuals will have training on the following:

- What is a conflict of interest.
- Why is conflict of interest management important.
- What are the responsibilities of the organisation you work for in relation to conflicts of interest.
- What should you do if you have a conflict of interest relating to your role, the work you do or the organisation you work for (who to tell, where it should be recorded, what actions you may need to take and what implications it may have for your role).
- How conflicts of interest can be managed.
- What to do if you have concerns that a conflict of interest is not being declared or managed appropriately.
- What are the potential implications of a breach of the ICB's rules and policies for managing conflicts of interest?

15.3 NHS England has developed an online training package for ICB staff, Board and committee members. This will be rolled out 1<sup>st</sup> March 2024 and will be available via ESR. This needs to be completed on an annual basis to raise awareness of the risks of conflicts of interest and to support staff in managing conflicts of interest. The annual training is **mandatory**.

## **16.0 Review, Ratification and Archiving**

- 16.1 The policy will be reviewed every 3 years, or earlier if national policy or guidance, organisational changes are required to be considered. The review will then be subject to review and re-ratification.
- 16.2 The Corporate Governance Team is responsible for ensuring that archive copies of superseded working documents are retained. All policies which have been superseded will be archived.
- 16.3 Please note the authors' responsibilities regarding archiving superseded copies. The author will ensure that a review of the document is carried out in the event of a change in circumstances or immediately prior to the expiry date.

## **17.0 Equality Impact Assessment**

- 17.1 The ICB is committed to ensure that it treats all employers fairly, equitably and reasonably and that it does not discriminate against individuals or groups on the basis of their ethnic origin, physical or mental abilities, gender, age, religious beliefs or sexual orientation. An equality impact assessment has been completed to go with this policy.
- 17.2 This policy will be monitored for effectiveness by the number of declarations submitted in line with the policy it will also be monitored in relation to how many gifts and hospitality are declared and accepted etc. Registers for conflicts of interest and gifts and hospitality can be found on the ICB's website; [Our publications and policies - Staffordshire and Stoke-on-Trent \(icb.nhs.uk\)](#) and also on IAN; under "Resource Centre" "Conflicts of Interest".

## NHS STAFFORDSHIRE AND STOKE-ON-TRENT INTEGRATED CARE BOARD (ICB) DECLARATION OF INTEREST FORM ~ FINANCIAL YEAR 20XX/XX

<b>FULL NAME:</b>		<b>BAND:</b>	
<b>JOB TITLE:</b>			
<b>ORGANISATION:</b>			
<b>ICB Meetings attending (please list all)</b>			
<b>If you have a “nil” return please tick the adjacent box:</b>			<input type="checkbox"/>

<i>Please detail all interests held, please include the actual date the interest began.</i>		
Type of Interest <i>e.g. Financial Non-Financial Professional Non-Financial Personal Indirect</i>	Description of Interest	Actual Date interest started – to

**Please ensure your form is signed by your line manager prior to sending it to the governance team, thank you.**

*This form is required to be completed in accordance with the ICB’s Constitution, Section 14O of the NHS Act 2006 and the Health Services Provider Selection Regime (PSR) Regulations 2023 introduced in 2024. Submitted information will be held by the ICB for personnel or other reasons specified on this form and to comply with ICB policies. Information may be held in both manual and electronic form in accordance with the Data Protection Act 1998; and may be disclosed to third parties in accordance with the Freedom of Information Act 2000 and published in ICB registers.*

*If you are unsure of what you should declare, please refer to the notes page 3 of this document or contact the governance team for further advice. Please be aware that any declared conflict will remain on the ICB’s registers for six months after the conflict ceases.*

*I confirm that the information provided above is complete and correct. I acknowledge that any changes in these declarations must be notified to the ICB, as soon as is practicable and no later than 28 days after the interest arises. I am aware that if I do not make full, accurate and timely declarations then civil, criminal, or internal disciplinary action may result.*

<i>I do / do not (delete as applicable) give my consent for this information to be published on registers that the ICB holds. If consent is <b>NOT</b> given, please give reasons why:</i>

<b>Signed</b>		<b>Date:</b>	
<b>Signed/Position</b> <i>(Line Manager or Senior ICB Manager)</i>	<i>Please print Line Manager’s Name when signing the form</i>	<b>Date:</b>	

**Governance Use Only:**

Type of Interest	Actions to be taken to mitigate the risk
Financial	
Non-Financial Professional	
Non-Financial Personal	
Indirect	

**NOTES FOR COMPLETING THE DECLARATION OF INTEREST FORM**

The types of interests that must be declared (whether such interests are those of the individual themselves or of a family member, close friend or other acquaintance of the individual) include:

Type of Interest	Description
<b>Financial Interests</b>	<p>Where an individual may get direct benefit from the consequences of a commissioning decision, e.g. being:</p> <ul style="list-style-type: none"> <li>a) A Director / Non-Exec Director or senior employee in a private company or public limited company or other organisation, which is doing, or is likely / possibly seeking to do business with the ICB</li> <li>b) A shareholder (or similar owner interest), or partner / owner of a private or not-for-profit company, business, partnership, or consultancy which is doing, or is likely / possibly seeking to do business with the ICB</li> <li>c) A management consultant for a provider</li> <li>d) In secondary employment (including on a part-time, temporary, fixed-term contract basis) with another NHS body, an organisation supplying or likely to supply goods / services to the ICB: including self-employment / private practice, Directorship of a GP Federation</li> <li>e) In receipt of secondary income / a grant / any payments (e.g. honoraria, one-off payments, day allowances, travel or subsistence payments) from a provider</li> <li>f) In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role</li> <li>g) Having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider)</li> </ul>
<b>Non-Financial Professional Interest</b>	<p>Where an individual may obtain non-financial professional benefit from the consequences of a commissioning decision: e.g. increasing their professional reputation / status or promoting their professional career, and where the individual is:</p> <ul style="list-style-type: none"> <li>a) An advocate for a particular group of patients</li> <li>b) A GP with Special Interests: e.g. in dermatology, acupuncture etc</li> <li>c) A member of a particular specialist professional body (routine GP membership of the RCGP, BMA or a Medical Defence Organisation would not usually by itself amount to an interest needing to be declared)</li> <li>d) An advisor for the CQC or NICE</li> <li>e) A medical researcher</li> </ul>
<b>Non-Financial Personal Interests</b>	<p>Where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit, e.g. where the individual is:</p> <ul style="list-style-type: none"> <li>a) A Voluntary Sector champion or volunteer for a provider</li> <li>b) A member of a Voluntary Sector Board or has any other position of authority in or connection with a Voluntary Sector organisation</li> <li>c) Suffering from a particular condition requiring individually funded treatment</li> <li>d) A member of a lobby or pressure group with an interest in health</li> </ul>
<b>Indirect Interests</b>	<p>Where an individual has a close association with an individual with a financial, non-financial professional interest or non-financial personal interest in a commissioning decision (as the categories above), e.g. being:</p> <ul style="list-style-type: none"> <li>a) A spouse / partner</li> <li>b) A close relative: e.g. parent, grandparent, child, grandchild or sibling</li> <li>c) A close friend</li> <li>d) A business partner</li> </ul>

For further assistance in completing this form, please contact the Governance Team:

The completed form should be sent by email, signed **and** counter-signed by your Line Manager to:

Generic Governance Inbox; [governance@staffsstoke.icb.nhs.uk](mailto:governance@staffsstoke.icb.nhs.uk)

Thank you.

**APPENDIX B ~ Gifts and Hospitality Declaration Form**  
**Declaration of Offers and Receipt of Gifts & Hospitality Form**

*Return completed form to: ICB Governance Inbox; [governance@staffsstoke.icb.nhs.uk](mailto:governance@staffsstoke.icb.nhs.uk)*

<b>SECTION ONE: Recipient Details</b>					
Title		Surname		Forename	
Job Title			Telephone		
<b>SECTION TWO: Receipt / Offer of Hospitality &amp; Gifts</b>					
Details of gifts/hospitality Offered				Date offered	
Value/Estimated Value					
Company or individual from which offer received				Date of Event	
Details of previous offers or acceptances by this company or individual					
Was the Gift / Hospitality accepted? [YES / NO]				Date refused/accepted	
Reason for accepting/declining offer					
Signed			Date		
<b>SECTION THREE: Authorisation (for completion by Line Manager)</b>					
Title		Surname		Forename	
Job Title			Telephone		
Signed			Date		
<b>SECTION FOUR: Authorisation (for completion by ICB Chief Finance Officer)</b>					
Signed			Date		
Job Title			Telephone		
<b>For Governance Use Only:</b>					
Date entered onto CCG Register				Reference Number	

*I understand that if I knowingly make a false declaration or fail to make a declaration when required, then action may be taken against me. This may include internal disciplinary action or referring the matter to the Trust's Local Counter Fraud Specialist which may result in criminal or civil action being taken against me.*

*For sponsorship forms, please contact a member of the Governance team.*

## APPENDIX C ~ NOLAN PRINCIPLES

- **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 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.