

# GPC update on co-commissioning of primary care: Guidance for GPs and LMCs regarding Conflicts of Interest

This paper is designed to help GP practices and LMCs interpret NHS England's statutory guidance, 'Managing Conflicts of Interest: Statutory Guidance for CCGs' (hereinafter referred to as the "Statutory Guidance"). The Statutory Guidance supplants NHS England's guidance issued in 2013.

This paper is most relevant for LMCs and GP practices covered by a CCG who have taken on board delegated commissioning arrangements. As a practice it is important you are aware of what is happening in your area so you can exercise your rights as a member to democratically influence the decision of your CCG.

January 2015

## 1. What is co-commissioning?

Co-commissioning refers to the process whereby CCGs will be granted greater powers to directly commission primary medical services and performance manage practices (but not individual GP performers).

More information about co-commissioning can be found in the following documents:

- GPC Guidance on co-commissioning for CCG member practices and LMCs ([here](#))
- NHS England paper: Next steps towards primary care co-commissioning ([here](#))

## 2. Co-commissioning and Conflicts of Interest

GPC has consistently argued that clinicians – especially GPs – should have an integral role in commissioning decisions. Similarly, GPC acknowledges that co-commissioning has the potential to be a mechanism for GPs to have greater influence over the commissioning of services, including the ability to enhance the funding and provision of general practice, for the benefit of patients and the NHS.

However, GPC is clear that the proposals set out in NHS England's Next Steps document, coupled with the statutory requirement for GP practices to be members of a CCG, significantly increases the frequency and range of potential conflicts of interest, both real and perceived. This will be especially the case for CCGs taking on delegated co-commissioning arrangements. Where appropriately dealt with, concerns around conflicts of interest should not act as a barrier to GPs embracing new models of collaborative work (i.e., GP networks), or as a barrier to delivering general practice at scale.

It is important for practices to be aware that co-commissioning, especially delegated responsibility - enables CCGs to hold and manage the core GP contract of their members, with powers to issue breach notices and terminate contracts. GPC has consistently and vigorously opposed granting CCGs greater control over these functions<sup>1</sup>. As CCGs are membership organisations and must be accountable to their member practices, GPC's position is that this is therefore fundamentally incompatible with CCGs holding and managing core practice contracts.

## 3. NHS England's Statutory Guidance on conflicts of interest

NHS England released its Statutory Guidance in December 2014. This guidance is in accordance with section 14Z8 of the NHS Act 2006 (as amended by the Health and Social Care Act 2012). The Statutory Guidance sets out how CCGs should manage conflicts of interest. It is **specifically aimed at CCGs exercising delegated authority**, however all CCGs, including those who have not taken on co-commissioning, must have regard to the principles set out in the guidance. It is important that **all LMCs and GP practices**, as CCG members, are aware of this guidance and its contents.

<sup>1</sup> GPC's opposition to CCG control over GP contracts is consistent with LMC policy (2014)

The Statutory Guidance builds on existing guidance issued by other bodies, including:

- Monitor's Procurement, Patient Choice and Competition Regulations (available [here](#))
- GPC's Guidance on conflicts of interest (available [here](#))
- GMC's Good Medical Practice guidance (available [here](#))

The Statutory Guidance covers the following areas:

- Legislative frameworks
- Maintaining a register of interests and decisions
- Procurement issues
- Governance and decision-making process
- Record keeping
- Role of commissioning support

## 4. Statutory Guidance: managing conflicts of interest in primary care commissioning

The Statutory Guidance contains specific provisions relating to the co-commissioning of primary medical care. These are laid out in **Parts 67 – 74**. Although this section does not expressly refer to contract or performance management functions these activities fall within the Statutory Guidance's scope, and must be carried out in compliance with the Statutory Guidance's terms.

In the context of contract and/or performance management functions these should be considered as relating to:

- issuing of contractual remedial and breach notices,
- contract sanctions,
- dispute processes,
- contractual variations,
- suspensions and terminations

### ***Procurement decision making in relation to primary care: Primary Care Commissioning Committees***

The recommendation is that CCGs establish a Primary Care Commissioning Committee (PCCC) to oversee the exercise of the delegated functions, especially (but not limited to) those functions related to primary care. NHS England has developed model terms of reference for delegated commissioning arrangements including a scheme of delegation, which can be found [here](#).

Membership of PCCC is for CCGs to agree, however, the Committee **must be chaired by a lay member** and **must have a lay and executive majority**. NHS England also recommends that a local HealthWatch representative and a local authority representative from the local Health and Wellbeing Board are invited to join the PCCC as non-voting attendees. **GPC recommends the involvement of LMCs in PCCCs.**

CCGs are encouraged to consult the Transforming Participation in Health and Care guidance ([here](#)) when considering the membership of their PCCCs.

NHS England suggests that provision could be made for the PCCC to have the ability to call on additional lay members or CCG members when required, for example where the committee would not be quorate because of conflicts of interest. It could also include GP representatives from other CCG areas and non-GP clinical representatives (such as the CCG's secondary care specialist and/or governing body nurse lead).

The CCG may wish to consider a reciprocal arrangement with other CCGs to enable effective, but not conflicted, clinical representation within the PCCC.

Where ever possible, PCCC meetings should be held in public.

## 5. Changes to CCG Constitutions

NHS England has stipulated that CCGs looking to take on **joint and delegated** commissioning arrangements will require an amendment to their constitution. These changes empower CCGs to make co-commissioning arrangements. A suggested form of words for constitutional amendments, which can be tailored to individual circumstances, can be accessed [here](#).

All GPs and LMCs should have access to and understand their CCGs constitutions.

Any CCG considering entering into new commissioning arrangements should check its constitution to ensure there are no unsuitable or inadequate provisions contained within it. This process should be undertaken in collaboration with LMCs and member practices.

### **GPC model wording covering GP contract and performance management**

Having taken legal advice on this matter, GPC suggests that CCGs taking on board joint or delegated commissioning arrangements should introduce an additional paragraph in their constitutions. This paragraph expressly references the concerns of their member practices and specifically covers contract management.

*The principle purpose of GPC's suggested amendment is not to increase the scope of the CCGs conflicts of interest management responsibilities but to provide a public acknowledgement by the CCG that co-commissioning arrangements are likely to give rise to a greater likelihood that conflicts of interest will arise, and offer reassurances to member practices that these conflicts will be adequately addressed.*

#### "[4] Managing Conflicts of Interest

"[4.1] The CCG recognises that the making of arrangements for co-commissioning (whether with other CCGs or NHS England) and/or the exercise by the CCG of specified NHS England functions (whether jointly or under delegated arrangements) are likely to give rise to conflicts of interest or potential conflicts of interest.

[4.2] The CCG shall keep its policies and procedures for the management of conflicts of interest under review and shall promptly implement any changes necessary to counter any risks or perceived risks associated with or arising from any arrangements it may make for co-commissioning and/or the exercise of specified NHS England functions.

[4.3] The CCG shall ensure that it complies at all times with its statutory duties in relation to the avoidance and management of conflicts of interest in relation to the exercise of any functions relating to the commissioning and/or management of primary medical services and any activities relating thereto, including (without limitation):-

- designing service requirements;
- investment decisions affecting GP services;
- the establishment of new GP practices;
- approving practice mergers;
- approving contract variations;
- monitoring contracts;
- setting contract performance requirements;
- issuing any notice in relation to a contract, including the application of contract sanctions; and
- terminating any contract.

[4.4] The references at paragraph [4.3] above to the exercise of functions relating to the commissioning and/or management of primary medical services and any activities relating thereto include (without limitation) any exercise of such functions by:-

- the CCG itself or by any committee thereof; or
- any member of the Governing Body of the CCG; or
- any other officer or employee of the CCG; or
- any member of the CCG,

and whether by any such person alone or by way of their participation in any joint committee established with NHS England or with any other CCG.

[4.5] The provisions in paragraphs [4.2] to [4.4] are without prejudice to the CCG's general obligation to comply at all times with all applicable laws, regulations, codes of conduct and guidance, including (without

limitation) the statutory guidance on managing conflicts of interest published from time to time by NHS England and/or by Monitor.”

### ***Procedure to agree a change to a CCG constitution***

The procedure for making an amendment is set out in the following guidance:

[Procedures for clinical commissioning group constitution change, merger and dissolution.](#)

As membership organisations, CCGs should consult with their members on any constitutional changes. GPC also recommends CCGs consult LMCs on constitutional changes. CCGs also have a duty to consult with relevant stakeholders, such as local authorities, on constitutional changes.