

CONFLICTS OF INTEREST, GIFTS AND HOSPITALITY POLICY

(including sponsorship, outside employment
(including private practice), patents and
donations)

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The Executive Director responsible for monitoring and reviewing this policy is
The Chief Executive Officer

ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

**CONFLICTS OF INTEREST, GIFTS AND HOSPITALITY POLICY
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ASSOCIATING PROCEDURAL GUIDELINES:

**CPG80 - PROCEDURAL GUIDELINES FOR CONFLICTS OF INTEREST, GIFTS
AND HOSPITALITY (including sponsorship, outside employment (including
private practice), patents and donations)**

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Assurance Statement

Every year the taxpayer entrusts NHS organisations with monies to provide care for millions of people. This money must be spent well, free from undue influence. To deliver high quality and innovative care, organisations need to work collaboratively with each other, local authorities, industry and other public, private and voluntary bodies. Partnership working brings many benefits, but also creates the risk of conflicts of interest.

Organisations and the people who work with, for, and on behalf of them want to manage these risks in the right way. This Policy has been developed from national guidance on managing conflicts of interest issued by NHS England. This guidance was designed to assist staff and organisations to understand what to do to take the best action and to protect themselves from allegations that they have acted inappropriately.

Adhering to this Policy will thus help ensure that the Trust uses NHS money wisely, providing best value for taxpayers and accountability to our patients for the decisions we take.

It also supports the Trust in delivery of one of its key values – that of being open and transparent.

1.0 INTRODUCTION

- 1.1 Essex Partnership University NHS Foundation Trust (the ‘organisation’ / the ‘Trust’), and the people who work with and for the Trust, collaborate closely with other organisations, delivering high quality care for patients.
- 1.2 These partnerships have many benefits and should help ensure that public money is spent efficiently and wisely. But there is a risk that conflicts of interest may arise.
- 1.3 Providing best value for taxpayers and ensuring that decisions are taken transparently and clearly, are both key principles in the NHS Constitution. The Trust is committed to maximising its resources for the benefit of the whole community. As an organisation and as individuals, the Trust has a duty to ensure that all its dealings are conducted to the highest standards of integrity and that NHS monies are used wisely so that it is using its finite resources in the best interests of patients.

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- 1.4 A number of Trust policies / documents make reference to the requirement to declare conflicts of interest. Key Trust documents making reference to this include:
- Trust Constitution
 - TB01 – Standing Orders for the Practice and Procedures of the Board of Directors
 - TB02 – Standing Orders for the Practice and Procedures of the Council of Governors
 - CP15 – Code of Conduct for Members of the Board of Directors
 - HR27A - Disciplinary Rules
 - CP70 – Fit and Proper Persons Policy
 - Contracts of Employment
- 1.5 This Conflicts of Interest, Gifts and Hospitality Policy and associating Procedural Guidelines set out detailed information in relation to potential conflicts of interest and the declaration of these.
- 1.6 This policy will help staff manage conflicts of interest risks effectively. It:
- Introduces consistent principles and rules;
 - Provides simple advice about what to do in common situations; and
 - Supports good judgement about how to approach and manage interests.
- 1.7 This policy should be considered alongside a number of other Trust policies. These are listed in section 7 below.

2.0 DUTIES

- 2.1 The Board of Directors is ultimately responsible for ensuring that there are appropriate arrangements in place for the management of conflicts of interest.
- 2.2 The Board of Directors will:
- Ensure that this policy and supporting processes are clear and help staff understand what they need to do.
 - Identify a team or individual with responsibility for:
 - Keeping this policy under review to ensure they are in line with the guidance.
 - Providing advice, training (if appropriate) and support for staff on how interests should be managed.
 - Maintaining register(s) of interests.
 - Auditing this policy and its associated processes and procedures at least once every three years.
- The individual holding these responsibilities for Essex Partnership University NHS Foundation Trust is the Trust Secretary.
- NOT avoid managing conflicts of interest.
 - NOT interpret this policy in a way which stifles collaboration and innovation with the Trust's partners.

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2.3 All staff will:

- Familiarise themselves with this policy and follow it. Refer to the guidance for the rationale behind this policy <https://www.england.nhs.uk/wp-content/uploads/2017/02/guidance-managing-conflicts-of-interest-nhs.pdf>
- Use their common sense and judgement to consider whether the interests they have could affect the way taxpayers' money is spent.
- Regularly consider what interests they have and declare these as they arise. If in doubt, declare.
- NOT misuse their position to further their own interests or those close to them.
- NOT be influenced, or give the impression that they have been influenced by outside interests.
- NOT allow outside interests they have to inappropriately affect the decisions they make when using taxpayers' money.

2.4 Essex Partnership University NHS Foundation Trust uses the skills of many different people, all of whom are vital to its work. This includes people on differing employment terms, who for the purposes of this policy are referred to as 'staff' and are listed below:

- All salaried employees and bank workers;
- All prospective employees – who are part-way through recruitment;
- Contractors and sub-contractors;
- Agency staff; and
- Committee, sub-committee and advisory group members (who may not be directly employed or engaged by the organisation) - this includes Board of Director and Council of Governors members.

2.5 Some staff are more likely than others to have a decision making influence on the use of taxpayers' money, because of the requirements of their role. For the purposes of this Policy and associated Procedural Guidelines these people are referred to as 'decision making staff' (please see paragraph 3.5 below for a definition of 'decision making staff'). There are differing enhanced requirements for 'decision making' staff which are laid out in this Policy and associated Procedural Guideline.

3.0 DEFINITIONS

3.1 A 'conflict of interest' is:

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

3.2 A 'conflict of interest' may be:

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

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3.3 Staff may hold interests for which they cannot see potential conflict. However, caution is always advisable because others may see it differently and perceived conflicts of interest can be damaging. All interests should be declared where there is a risk of perceived improper conduct.

3.4 **Interests** fall into the following categories:

- **Financial interests:**

Where an individual may get direct financial benefit¹ from the consequences of a decision they are involved in making.

- **Non-financial professional interests:**

Where an individual may obtain a non-financial professional benefit from the consequences of a decision they are involved in making, such as increasing their professional reputation or promoting their professional career.

- **Non-financial personal interests:**

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, because of decisions they are involved in making in their professional career.

- **Indirect interests:**

Where an individual has a close association² with another individual who has a financial interest, a non-financial professional interest or a non-financial personal interest and could stand to benefit from a decision they are involved in making.

3.5 “**Decision making staff**” in this organisation for the purposes of this Policy have initially been defined as:

- Executive and Non-Executive Directors (or equivalent roles) who have decision making roles which involve the spending of taxpayers’ money;
- Members of advisory groups which contribute to direct or delegated decision making on the commissioning or provision of taxpayer funded services (see paragraph 3.6 below); and
- Those at Agenda for Change band 8d (or equivalent) and above.

The definition of “decision making staff” for the purposes of this Policy will be reviewed on an annual basis.

3.6 Strategic decision making groups

3.6.1 In common with other NHS bodies, the Trust uses a variety of different groups to make key strategic decisions about things such as:

- Entering into (or renewing) large scale contracts.
- Awarding grants.
- Making procurement decisions.
- Selection of medicines, equipment, and devices.

¹ This may be a financial gain, or avoidance of a loss.

² A common sense approach should be applied to the term ‘close association’. Such an association might arise, depending on the circumstances, through relationships with close family members and relatives, close friends and associates, and business partners.

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3.6.2 The interests of those who are involved in these groups should be well known so that they can be managed effectively. For the purposes of this Policy these groups have been defined as:

- Board of Directors
- Standing Committees of the Board of Directors
- Council of Governors
- Standing Committees of the Council of Governors

4.0 PRINCIPLES

Further guidance and information on the processes to be followed in relation to all of the following principles is included in the associating Procedural Guideline CPG80.

4.1 Identification & declaration of interests (including gifts and hospitality)

4.1.1 All staff should identify and declare material interests at the earliest opportunity (and in any event within 28 days). If staff are in any doubt as to whether an interest is material then they should declare it, so that it can be considered. Declarations should be made:

- On appointment with the organisation.
- When staff move to a new role or their responsibilities change significantly.
- At the beginning of a new project/piece of work.
- As soon as circumstances change and new interests arise (for instance, in a meeting when interests staff hold are relevant to the matters in discussion).

4.1.2 After expiry, an interest will remain on register(s) for a minimum of 6 months and a private record of historic interests will be retained for a minimum of 6 years.

4.1.3 The Trust will annually prompt ‘decision making staff’ for the purposes of this policy (see paragraph 3.5 above) to review declarations they have made and, as appropriate, update them or make a nil return.

4.1.4 All other staff will be reminded via general Trust communications mechanisms of their responsibilities to identify and declare conflicts of interest should they arise. Staff who are not deemed to be ‘decision making staff’ for the purposes of this policy (see paragraph 3.5 above), will only be required to declare interests should they exist; they will not be required to make nil returns.

4.2 Records and publication

4.2.1 The Trust will maintain:

- A register of interests (including gifts and hospitality) for “decision making staff” as defined in paragraph 3.5 above;
- A register of interests (including gifts and hospitality) for the Council of Governors; and
- A register of interests (including gifts and hospitality) for all other staff.

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4.2.2 The Trust will:

- Publish the interests declared by “decision making staff” in the register/s outlined above.
- Refresh this information annually.
- Make this information available on the Trust’s website.

4.2.3 If decision making staff have substantial grounds for believing that publication of their interests should not take place then they should contact the Trust Secretary to explain why. In exceptional circumstances, for instance where publication of information might put a member of staff at risk of harm, information may be withheld or redacted on public registers. However, this would be the exception and information will not be withheld or redacted merely because of a personal preference.

4.3 Wider Transparency Initiatives

4.3.1 The Trust fully supports wider transparency initiatives in healthcare (such as the Association of British Pharmaceutical Industry (ABPI) Disclosure UK initiative) and encourages staff to engage actively with these.

4.4 Management of Interests (individuals)

4.4.1 If an interest is declared but there is no risk of a conflict arising then no action is warranted. However, if a material interest is declared then the general management actions that could be applied include:

- restricting staff involvement in associated discussions and excluding them from decision making
- removing staff from the whole decision making process
- removing staff responsibility for an entire area of work
- removing staff from their role altogether if they are unable to operate effectively in it because the conflict is so significant.

4.4.2 Each case will be different and context-specific, and the Trust will always clarify the circumstances and issues with the individuals involved. Staff should maintain a written audit trail of information considered and actions taken.

4.4.3 There are a number of common situations which can give rise to risk of conflicts of interest, as follows:

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

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4.4.4 The associating Procedural Guidelines CPG80 set out detailed guidance on actions staff and managers must take relating to the following potential conflicts of interest.

4.5 Management of interests (Strategic Decision Making Groups)

4.5.1 These groups (defined in paragraph 3.6.2 above) will adopt the following principles:

- Chairs will consider any known interests of members in advance, and begin each meeting by asking for declaration of relevant material interests.
- Members will take personal responsibility for declaring material interests at the beginning of each meeting and as they arise.
- Any new interests identified will be added to the organisation's register(s).
- The vice chair (or other non-conflicted member) will chair all or part of the meeting if the chair has an interest that may prejudice their judgement.

4.5.2 If a member has an actual or potential interest the chair will consider the following approaches and ensure that the reason for the chosen action is documented in minutes or records:

- Requiring the member to not attend the meeting.
- Excluding the member from receiving meeting papers relating to their interest.
- Excluding the member from all or part of the relevant discussion and decision.
- Noting the nature and extent of the interest, but judging it appropriate to allow the member to remain and participate.
- Removing the member from the group or process altogether.

In the case of the Board of Directors, it will be the Chair that will decide whether the Director is required to withdraw from discussions. In the event of disagreement, the Board will decide.

4.6 Procurement

4.6.1 Procurement will be managed in an open and transparent manner, compliant with procurement and other relevant law, to ensure there is no discrimination against or in favour of any provider. Procurement processes will be conducted in a manner that does not constitute anti-competitive behaviour - which is against the interest of patients and the public.

4.6.2 Those involved in procurement exercises for and on behalf of the organisation will keep records that show a clear audit trail of how conflicts of interest have been identified and managed as part of procurement processes. At every stage of procurement, steps will be taken to identify and manage conflicts of interest to ensure and to protect the integrity of the process.

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4.7 Breaches

- 4.7.1 There will be situations when interests will not be identified, declared or managed appropriately and effectively. This may happen innocently, accidentally, or because of the deliberate actions of staff or other organisations. For the purposes of this policy these situations are referred to as 'breaches'.
- 4.7.2 The Trust has a defined process for identifying, reporting and responding to reported breaches. This is detailed in the associating Procedural Guidelines CPG80.

5.0 MONITORING OF IMPLEMENTATION AND COMPLIANCE

- 5.1 The Finance and Performance Committee is responsible for ensuring that this Policy is appropriately implemented and for monitoring the effectiveness of this Policy.
- 5.2 A quarterly report will be presented to the Finance and Performance Committee from the Trust Secretary outlining any known breaches of this Policy.
- 5.3 An annual assurance report will be presented to the Finance and Performance Committee from the Trust Secretary confirming that a) declarations of interest returns (including nil returns) have been made by all staff defined as "decision making staff" for the purposes of this Policy and b) a reminder has been sent to all other staff via general Trust communication channels of their responsibilities under this Policy.
- In accordance with the Board of Directors Code of Conduct, all Registers of Interest will be reviewed annually by the Board.
- 5.4 An annual declaration of compliance with the requirements of the NHS England "Managing Conflicts of Interest in the NHS: Guidance for staff and organisations" will be made within the Trust's Annual Report and Accounts (in line with requirements of the NHS Foundation Trust Annual Reporting Manual).
- 5.6 This Policy and associating Procedural Guidelines will be reviewed every 3 years by the Executive Operational Sub-Committee, or earlier should changes in legislation or guidance require this. This review will be led by the Trust Secretary. A review of the definition of "decision making staff" for the purposes of this Policy to be applied in the Trust will be undertaken on an annual basis and any updates incorporated into the Policy.
- 5.7 Any amendments to this Policy will be submitted to the Executive Operational Sub-Committee for approval and ratified by the Finance and Performance Committee.

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6.0 POLICY REFERENCES / ASSOCIATED DOCUMENTATION

The following general information applies:

- Freedom of Information Act 2000
- ABPI: The Code of Practice for the Pharmaceutical Industry (2014)
- ABHI Code of Business Practice
- NHS Code of Conduct and Accountability (July 2004)

The following guidance relates specifically to conflicts of interest in the NHS:

“Managing Conflicts of Interest in the NHS: Guidance for staff and organisations”
NHS England, February 2017

In support of the above, NHS England also published guidance on frequently asked questions for specific staff groups (NHS provider managers, clinical staff and medical staff) on the issues posed by the Conflicts of Interest guidance and how the guidance applies to them.

All the above guidance is available at: www.england.nhs.uk/ourwork/coi.

Association of British Pharmaceutical Industry (ABPI) website link for details of their disclosure initiative:

<https://abpi.org.uk/our-ethics/disclosure-uk/about-disclosure-uk/>

7.0 REFERENCE TO OTHER TRUST POLICIES/PROCEDURES

Trust Constitution

TB01 – Standing Orders for the Practice and Procedures of the Board of Directors

TB02 – Standing Orders for the Practice and Procedures of the Council of Governors

CLP19 Research Conduct and Processes Policy and Procedure

CLP51 – Hospitality, Gifts and Sponsorship Provided by the Pharmaceutical Industry and Related Supply Companies and Contact with Company Representatives Policy

CLP78 - Appraisal and development (medical staff policy)

CP8 & CPG8 – Purchasing Policy and Procedure

CP11 - Fraud and Bribery Policy

CP15 – Code of Conduct for Members of the Board of Directors Policy

CP21 & CPG21 ITT Purchasing Policy and Procedure

CP25 & CPG25 - Freedom of Information Act 2000 Policy and Procedure

CP45 Intellectual Property (under development)

CP48 and CPG48 – Private and Independent Practice Policy and Procedure

CP53 and CPG53 – Raising Concerns (Whistleblowing) Policy and Procedure

CP59 & CPG59 Data Protection and Confidentiality Policy and Procedure

CP70 & CPG70 – Fit and Proper Persons Policy and Procedure

FP01/03 Requisitioning of Goods and Services

FP09/03a and FP09/03b Charitable Funds Policy and Procedure

FP09/07 Tendering and Quotations

FP10 Standing Financial Instructions

FP11 Detailed Scheme of Delegation

FP12 Scheme of Delegation

HR27& HRPG27 Disciplinary Policy and Procedures

HRPG27A Appendix 2 - Disciplinary Rules

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HR32 & HRP32 Maintaining High Professional Standards Conduct and Capability Policy and Procedure for Medical and Dental Staff

HR40 & HRP40 Deployment of Temporary Workers Policy and Procedure

HR48 & HRP48 Supervision & Appraisal Policy and Procedure

HR52 & HRP52 Travel and Business Costs Policy and Procedural Guidelines

HR57 & HRP57 Recruitment and Retention Policy and Procedure

HR59 & HRP59 Managing Temporary Workers Conduct & Complaint Policy and Procedure

END
