

MANAGING CONFLICTS OF INTEREST

Introduction

In public services, decision makers must act in the public interest and be seen to do so. Conflicts of interest may arise where it might be perceived that a decision maker is being influenced by factors other than the public interest. It does not matter if everything is 'above board' if the wrong impression is given. It is important to demonstrate that potential conflicts are being identified and properly managed.

One of the most important tools in managing conflicts of interest at an organisational level is transparency: evidence for all to see that potential conflicts are being identified and reported. To this end, trusts are required to publish conflicts of interest for staff over a particular pay grade and report on compliance with the requirement each year (NHS England, 2017).

However, trusts have limited corporate resources and variable access to supportive technology to meet this objective. They are faced with many competing demands, including other clinical, financial and staffing priorities. Until recently the NHS has not been explicit on how conflicts of interest are being identified and managed. This has raised two issues – on the one hand, some push back from trusts about fixing something that isn't broken, and on the other, the challenge that trusts may not always be meeting the public's expectations of probity within public services. Proper recording and publishing of potential conflicts of interest is therefore central to evidencing the open, transparent culture that trusts strive to maintain.

However, recording and publishing conflicts of interest remains central to enabling trusts to manage conflicts of interest. It is crucial to maintaining an open, transparent culture and meeting the public's expectations of high levels of probity within public services. While the resource needed to establish a system might be substantial, it is probably no greater than the resource required to maintain and track annual appraisals.

NHS Providers is working with NHS England and NHS Improvement to produce a series of short publications, of which this is the first, to encourage increased compliance, to share good practice from compliant trusts and to provide you with signposts to the tools and support you will need to progress. As part of this work, we are producing a series of short briefings for providers, of which this is the first.

The case for action now

While it has been universal good practice for trust board members to declare, register and publish their interests, the NHS has lagged behind much of the public sector in ensuring that senior staff who make important policy and financial decisions also register their interests. There will never be a time when there are no competing priorities and there will always be other matters that require prompt action. Therefore, there will also never be a better time than now to tackle your obligation to collate and publish information on conflicts of interest.

NHS England has made resources available on their website to accompany the guidance on managing conflicts of interest in the NHS. These include: guidance for staff and organisations, templates for consistent declarations and publishing interests, a model policy on managing conflicts including the guidance and Q&A documents for provider managers, secondary care clinicians and secondary care medics.

Overcoming barriers to compliance

Each of our publications will deal with a different barrier to compliance with a short case study setting out an approach to dealing with it. On the following pages, our first case study covers utilising supportive technology.

CASE STUDY

Leeds Teaching Hospitals NHS Trust

Managing conflicts of interest

Jo Bray is a company secretary at Leeds Teaching Hospitals NHS Trust. She tells us how technology has transformed the organisation's ability to proactively gather declarations of interest, to support the trust's ongoing commitment to accountability.

Six years ago, I joined the trust as company secretary and in my handover I was given a ring binder folder with 40 or so hard copies of declaration forms with entry dates spread over a couple of years, and informed this was the organisation's register of interests.

It's written in my job description, as with many company secretaries, and along with the trust wide policy *Standards of business conduct* (now *Managing conflicts of interest*), that "on behalf of the chief executive it is my role to be the custodian of the register of interests for the organisation". It also says that I will ensure that the board has an up to date register of interests and that is available to the public. This was historically published by many organisations within their annual report but it is now part of our website, with a live link to our electronic system. The principle, however, is that this information is easily accessible to the public.

Back to basics: what is this fundamentally about?

Six years ago, we asked why do we need to record this and what do we want to know from our staff? Never mind the more probing question of what we will do with this information?

As a large teaching hospital, we spend over £1.3m of tax payers' money each day on procurement and we need to ensure that we do this in a transparent way. The historic policy of recording gifts, hospitality and sponsorship over £25, with 40 completed forms, was by no means an accurate reflection of what was taking place across the trust.

What do you need or want to record and why?

Five years ago we redefined our policy to include all staff at band seven and above, and all our consultants, as these members of staff were budget holders or could influence purchasing, therefore these were the staff we should seek greater understanding and transparency from. Each year, these staff are required to make positive or negative declaration(s), attributed to a financial year. As company secretary I can define the size of this group, collect data against this and accurately report compliance against the policy.

When NHS England revised the national guidance, we retained our working practices in keeping this group of staff as our 'defined decision makers' and our local threshold of £25.

In defining this group, the ESR data extract equates to approximately 3,500 of our 18,442 staff. Recording entries within a register was no longer achievable by returning paper-based forms, or collating by means of a spreadsheet. We chose to record this electronically, within a locally developed system that also records appraisal and mandatory training within the trust. This is a system that staff are familiar with, underpinned by automated data extracts from ESR, hence starters and leavers are automatically updated. All staff outside these defined grades (our decision makers) are required to record only positive declarations, and where any member of staff has been offered but declined a gift, hospitality or sponsorship, it is also encouraged to record this. Over the last five years, we have annually reported compliance to our audit committee.

The system now has automated email reminders programmed for in-year email reminders, for example, a polite prompt at the start of December to record any gifts or hospitality associated with the festive season.

For Agenda for Change staff, the trust has a defined appraisal season during Q1 of the year. At least 90% of our staff complete their appraisal electronically and over a three-year period we now have 'shifted' from asking a prompting question, such as *'are you compliant with your declarations of interest'*, to an automated link (thus you cannot complete your appraisal unless you have a 'live' entry in the register of interests). For 2019/20, this has also been added to the electronic appraisal system for our consultants.

Why does this need to happen?

The company secretary, on behalf of the chief executive, functions as the custodian of a register and not the scrutineer of what is being declared and recorded within the register. Our trust is organised into 18 clinical service units, each with a triumvirate management team – a clinical director, general manager and head of nursing – along with executive team members holding accountability over corporate functions. These members of staff hold administration rights to view the entries in the register for their respective staff. They are accountable for these staff and can hold the right conversations around the data recorded within the register. The system is set up to help them with a number of search functions – for example, greatest values, staff name or company name. Each quarter they receive an automated email reminder to review the data within their respective sub set of the register and, should our procurement or fraud prevention colleagues want to review information relating to individuals, contracts or patterns of departmental spending, this information is easily searchable.

Transparency

New entries are automatically recorded into the 'live' full staff register, which is displayed on the trust website – however, this does not include the detailed search functions available to administrators of the system. Each financial year we will receive over 5,000 entries into the full staff register of interests, with by far the majority of these being a nil declaration. We hold a separate live extract of the register for board members also displayed on the website.

We've made great progress over recent years by communicating with our staff so they understand why, how and what they should be registering as potential conflicts of interests. Our trust values, established by our staff a number of years ago, include accountability and we all strive to uphold this value. The progress we have made is a simple example of this but culturally needs to be supported across the organisation and upheld by the board and senior leaders.

What next?

In addition to these short publications, we will review progress being made in trusts over time and are also working with trusts to capture good practice in recording and managing conflicts of interest. We plan to issue a range of podcasts and videos, as well as a publication of case studies.

For further information or to contribute

Please contact John Coutts, NHS Providers policy advisor: john.coutts@nhsproviders.org or visit NHS England's guidance on conflicts of interest: www.england.nhs.uk/publication/managing-conflicts-of-interest-in-the-nhs-guidance-for-staff-and-organisations

For more information:

www.nhsproviders.org/managing-conflicts-of-interest

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