

**REPORT TO:** STANDARDS COMMITTEE  
**DATE:** 7 November 2017  
**REPORT OF:** Sandra Stewart – Borough Solicitor (Monitoring Officer)  
**SUBJECT MATTER:** PROPOSAL FOR MANAGING CONFLICTS OF INTEREST IN THE SINGLE COMMISSION

**REPORT SUMMARY:** The purpose of this report is to propose to the members an approach for the management of conflicts of interest for the Single Commissioning Board (which is the joint committee between Tameside Metropolitan Borough Council and NHS Tameside and Glossop Clinical Commissioning Group).

**RECOMMENDATION(S)** The Standards Committee is asked to support the following proposals:

1. That the Single Commissioning Board adopts the framework as set out within the Tameside MBC Constitution for the reasons that:
  - This ensures that proceedings are taking place in accordance with local government statute;
  - This approach is aligned to the options set out within NHS England guidance and therefore will enable the Accountable Officer and Lay Member for Governance to make the required quarterly assurance return to NHS England.
2. In order to support the above approach it is also proposed that a single Register of Interests is maintained for the members of the Single Commissioning Board and published on the website.

**FINANCIAL IMPLICATIONS:** There are no direct financial implications arising from this report.  
**(Authorised by the Section 151 Officer)**

**LEGAL IMPLICATIONS:** The Single Commissioning Board is a joint committee governed by the local Government Act 1972 and the Local Government Act 2000 which sets out the obligations for Standards as amended by the Localism Act 2012.  
**(Authorised by the Borough Solicitor)**

**RISK MANAGEMENT:** It is intended that by identifying a unified approach for the management of conflicts of interests in the joint commissioning arrangements between the two statutory organisations this will uphold the integrity of the decision-making by the Single Commissioning Board.

This will reduce the likelihood of challenge to those decisions made by the Single Commissioning Board.

**LINKS TO COMMUNITY PLAN:** This report has no direct link to the Community Plan; however it will help to support the decision-making which in turn will help to deliver the plan.

**ACCESS TO INFORMATION**

**NON-CONFIDENTIAL**


**This report does not contain information which warrants its**

**consideration in the absence of the Press or members of the public**

**REFERENCE DOCUMENTS:** **Appendix A:** Council Constitution Part 5 (a) – Standards of Conduct and Ethics

**Appendix B:** NHS England guidance on Managing Conflicts of Interest

The background papers relating to this report can be inspected by contacting the report writer, Paul Pallister

 Telephone: 07342 056010

 e-mail: [paul.pallister@nhs.net](mailto:paul.pallister@nhs.net)

## **1. BACKGROUND**

- 1.1 In January 2016 Tameside Metropolitan Borough Council (TMBC) and NHS Tameside and Glossop Clinical Commissioning Group (CCG) established the Interim Single Commissioning Board as a shadow joint committee between the two organisations. In April 2016 these arrangements became substantive and, since that date, the Single Commissioning Board (SCB) has been the body responsible for making the commissioning decisions funded by the Integrated Commissioning Fund held within the section 75 agreement between the two organisations.
- 1.2 The Single Commissioning Board is constituted as a joint committee between the two statutory organisations. The membership of the Single Commissioning Board is comprised of some of the Executive Members of Tameside Metropolitan Borough Council (TMBC) and some of the Governing Body members of NHS Tameside and Glossop Clinical Commissioning Group (CCG) intended to be all of the Governing Body and increased numbers of elected members. It is acknowledged that the decision-making within these two statutory bodies is subject to different frameworks with regards to the management of conflicts of interest. That said when making decisions as part of the Single Commissioning Board all members must comply with those standards set by the Local Government Act 2000.
- 1.3 A national working group was established in summer 2016 and was tasked with producing guidance intended to be helpful for those economies which were establishing such joint commissioning arrangements. Unfortunately this working group has not yet reported back and there is currently no known timescale by which any such guidance is intended to be published. In the absence of any national guidance it is considered necessary that the locality proceeds with making its own arrangements.
- 1.4 This report is intended to propose to the members of the Standards Committee an approach for the management of conflicts of interest within the Single Commissioning Board with the aim of providing assurance as to its decision-making processes.

## **2. MANAGING CONFLICTS OF INTEREST**

- 2.1 It is notable that a review of the NHS England guidance for CCGs and of Chapter 7 of the Localism Act 2011 (with respect to local authorities) shows that both frameworks are broadly aligned in terms of supporting transparency and managing interests. This is perhaps reflective of the fact that both frameworks cite the desire to be consistent with the Nolan Principles of selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.
- 2.2 As a formal part of TMBC's governance the Single Commissioning Board is subject to the legislation governing local authorities within the Local Government Act 1972 as amended by the 2000 Act. This legislation provides in section 94 details of what would be considered as direct and indirect pecuniary interests for a member and how these can be managed during the decision-making process. The TMBC Constitution sets out within its Procedural Standing Orders at Part 4a, section 35 the definitions of a prejudicial interest and the process for managing these which is as follows:

### **35.3**

1. *Subject to sub-paragraph (2), where a member has a prejudicial interest in any business of the authority –*
  1. *s/he must withdraw from the room or chamber where a meeting considering the business is being held -*

1. *in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;*
  2. *in any other case, whenever it becomes apparent that the business is being considered at that meeting;*
  3. *unless s/he has obtained a dispensation from the authority's standards committee;*
2. *s/he must not exercise executive functions in relation to that business; and*
  3. *s/he must not seek improperly to influence a decision about that business.*

2. *Where a member has a prejudicial interest in any business of the authority, s/he may attend a meeting (including a meeting of the overview and scrutiny committee of the authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.*

2.3 NHS England is the body to which the CCG is accountable. NHS England is responsible for providing guidance which must be followed by CCGs and this includes the arrangements for the management of conflicts of interest. This guidance recognises that CCGs are subject to certain inherent conflicts within their essence by being clinically-led organisations. The General Practitioners (GPs) are leading the commissioning of local health and care services whilst also being a significant part of the provider landscape. This provision can extend beyond what are typically considered as general practice services into some services of greater specialism. NHS England routinely reviews and amends its guidance concerning conflicts of interest to ensure that the guidance is in step with current developments in the commissioning landscape. The CCG's Accountable Officer and its Lay Member for Governance are required to sign a quarterly declaration to NHS England to confirm that the CCG has in place robust processes for the management of conflicts of interest which follow the published guidance.

2.4 The current NHS England guidance (issued February 2017) sets out the following processes for the management of actual or perceived conflicts of interest:

**5.7.** *If a member has an actual or potential interest the chair should 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*
- *Ensuring that the member does not receive meeting papers relating to the nature of their interest*
- *Requiring the member to not attend all or part of the discussion and decision on the related matter*
- *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*

### **3. PROPOSAL FOR MANAGING CONFLICTS OF INTEREST AT THE SINGLE COMMISSIONING BOARD**

3.1 It is notable that there is a significant amount of congruence between the two approaches outlined above. This is unsurprising as both are intending to maintain the integrity of the decision-making within a statutory public organisation.

3.2 A key difference between the two frameworks is that the guidance issued by NHS England places greater discretion upon the Chair of the committee whereas the local authority framework is more absolute in its statements for example by stating that '*...where a*

*member has a prejudicial interest in any business of the authority...s/he must withdraw from the room or chamber where a meeting considering the business is being held...*' (section 35.3.1.1).

3.3 It is therefore proposed that the Single Commissioning Board adopts the framework as set out within the TMBC Constitution for the reasons that:

- This ensures that proceedings are taking place in accordance with local government statute under which the joint committee is governed
- This approach is aligned to the options set out within the NHS England guidance and therefore will enable the Accountable Officer and Lay Member for Governance to make the required quarterly assurance return to NHS England.

3.4 In order to support the above approach it is also proposed that a single Register of Interests is maintained for the members of the Single Commissioning Board and published on the website. This will enable those present, including members of the public, to have assurance in the processes in place at the Single Commissioning Board to manage conflicts of interest.

#### **4. REQUEST OF THE STANDARDS COMMITTEE**

4.1 The Standards Committee is asked to support the recommendations contained within this report.

#### **5. RECOMMENDATIONS**

5.1 These are as set out at the front of this report.

# Council Constitution

## Part 5 (a) - Standards of Conduct and Ethics

### The Code of Conduct

(Adopted by Council on 18 September 2012)

[Part 1 - General Provisions](#)

[Part 2 - Interests](#)

[Part 3 - The Register of Members' Interests](#)

## Part 1 - General Provisions

### 1. INTRODUCTION AND INTERPRETATION

- 1.1 This Code applies to you as a member of the Council.
- 1.2 It is your responsibility to comply with this Code. Failure to do so may result in a sanction being applied by the Council. Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may result in a criminal conviction and a fine of up to £5,000 and /or disqualification from office for a period of up to 5 years. In this Code -“meeting” means any meeting of:
  - (a) the Council;
  - (b) any of the Council’s committees or sub-committees, joint committees or joint sub-committees;
  - (c) the Executive or any committee of the Executive.

“Member” includes a co-opted member and an appointed member.

### 6 SCOPE

- 2.1 Subject to sub-paragraphs 2.2 and 2.3, you must comply with this Code whenever you are acting as a member or co-opted member of the Council or an appointed member of a joint committee, and, references to your official capacity are construed accordingly.
- 2.2 This Code does not have effect in relation to your conduct other than where it is in your official capacity.
- 2.3 Where you act as a representative of the Council:-
  - (a) on another relevant authority, including the Greater Manchester Combined Authority, the Greater Manchester Fire & Rescue Authority and the Greater Manchester Waste Disposal Authority, you must, when acting for that other authority, comply with that other authority’s code of conduct; or

- (b) on any other body, you must, when acting for that other body, comply with this Code, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

## **7 GENERAL OBLIGATIONS**

### **3.1 You must not:-**

- (a) do anything which may knowingly cause the Council to breach the Equality Act 2010;
- (b) bully or be abusive to any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be:
  - (i) a complainant,
  - (ii) a witness, or
  - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.

### **3.2 You must not:**

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
  - (i) you have the consent of a person authorised to give it;
  - (ii) you are required by law to do so;
  - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - (iv) the disclosure is:
    - reasonable and in the public interest; and
    - made in good faith and in compliance with the reasonable requirements of the Council; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

### **3.3 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.**

### **3.4 You:**

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of your authority:
  - (i) act in accordance with the Council's reasonable requirements; and
  - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

### **3.5 (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by**

- (a) The Council's chief finance officer; and
  - (b) The Council's monitoring officer,
- where that officer is acting pursuant to his or her personal statutory duties.

- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## PART 2 - DISCLOSABLE INTERESTS

### 1. NOTIFICATION OF DISCLOSABLE PECUNIARY INTERESTS

- 1.1 Within 28 days of becoming a member or co-opted member, you must notify the Monitoring Officer of any 'disclosable pecuniary interests'.  
*[Note: Standing order 35 requires existing members and co-opted members of the Council to notify the Monitoring Officer of disclosable pecuniary interests within 28 days of the adoption of the Code]*
- 1.2 A 'disclosable pecuniary interest' is an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in the table below.
- 1.3 "Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made or provided within the 12 month period prior to notification of the interest in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation Act) 1992 (a).
Contracts	Any contract which is made between you or your partner (or a body in which you or your partner has a beneficial interest) and the Council – (a) under which goods or services are to be provided or works are to be executed: and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of Tameside Borough Council.
Licences	Any licence (alone or jointly with others) to occupy land in the area of Tameside Borough Council for a month or longer.
Corporate Tenancies	Any tenancy where (to your knowledge) – (a) the landlord is the Council: and (b) the tenant is a body in which you or your partner has a beneficial interest.
Securities	Any beneficial interest in securities of a body where (a) that body (to your knowledge) has a place of business or land in the area of Tameside Borough Council; and (b) either – (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you or your partner has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

- 1.4 For the purposes of the above  
 (a) "a body in which you or your partner has a beneficial interest" means a firm in which you or your partner is a partner or a body corporate of which you or your partner is a director, or in the securities of which you or your partner has a beneficial interest.



- (b) "director" includes a member of the committee of management of an industrial and provident society.
- (c) "land" excludes an easement, interest or right in or over land which does not carry with it a right for you or your partner (alone or jointly) to occupy the land or receive income, and
- (d) "securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

## **2. NON PARTICIPATION IN CASE OF DISCLOSABLE PECUNIARY INTEREST**

- 2.1 If you are present at a meeting [of the authority, or any committee, subcommittee, joint committee or joint sub-committee of the authority, or the executive or committee of the executive] and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting,
- (i) You must not participate in any discussion of the matter at the meeting.
  - (ii) You must not participate in any vote taken on the matter at the meeting.
  - (iii) If the interest is not registered, you must disclose the interest to the meeting.
  - (iv) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.
- [Note: In addition, Standing Order 35 requires you to leave the room where the meeting is held while any discussion or voting takes place, and in the case of a registered (as well as unregistered interest) to disclose it to the meeting].*
- 2.2 Where an executive member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the executive member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

## **3. OFFENCES**

- 3.1 It is a criminal offence to:
- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
  - Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register
  - Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
  - Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
  - As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest
  - As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in a matter, taking any steps in relation to such a matter.
  - Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting
- 3.2 The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

## **PART 3 - OTHER INTERESTS**

### **1. NOTIFICATION OF PERSONAL INTERESTS**

- 1.1 In addition to the disclosable pecuniary interests notifiable under the Localism Act 2011, you must, within 28 days of:
- (a) this Code being adopted by or applied to your authority; or
  - (b) your election or appointment to office (where that is later),
- notify the Monitoring Officer in writing of the details of your other personal interests, where they fall within the categories set out in paragraph 1.2 below for inclusion in the register of interests.
- 1.2 You have a personal interest in any business of your authority where it relates to or is likely to affect
- (a) any body of which you are in a position of general control or management and to which you are appointed or nominated by your authority;
  - (b) any body
    - (i) exercising functions of a public nature;
    - (ii) directed to charitable purposes; or
    - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are in a position of general control or management;
  - (c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least [£100]

### **2 DISCLOSURE OF INTERESTS**

- 2.1 Subject to paragraphs 2.4 to 2.7, where you have a personal interest described in paragraph 1.2 above or in paragraph 2.2 below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of the personal interest, and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- 2.2 You also have a personal interest in any business of your authority where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a *relevant person* to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral ward, affected by the decision;
- 2.3 In paragraph 2.2, a *relevant person* is
- (a) a member of your family or any person with whom you have a close association; or
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
  - (d) anybody of a type described in paragraph 1.2(a) or (b) above.
- 2.4 Where you have a personal interest in any business of the Council which relates to or is likely to affect a body described in paragraph 1.2(a) or 1.2(b)(i) above, you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

- 2.5 Where you have a personal interest in any business of the Council of the type mentioned in paragraph 1.2(c) above, (gifts and hospitality) you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- 2.6 Where you have a personal interest but, by virtue of paragraph 16, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- 2.7 Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

### **3 NON PARTICIPATION IN CASE OF PREJUDICIAL INTEREST**

- 3.1 Where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and where that business:
- (a) affects your financial position or the financial position of a person or body described in paragraph 2.3; or
  - (b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 2.3.

- 3.2 Subject to paragraphs 3.3 and 3.4, where you have a prejudicial interest in any business of your authority:-
- (a) You must not participate in any discussion of the matter at the meeting.
  - (b) You must not participate in any vote taken on the matter at the meeting.
  - (c) If the interest is not registered, you must disclose the interest to the meeting.
  - (d) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

*[Note: In addition Standing Order 35 requires you to leave the room where the meeting is held while any discussion or voting takes place].*

- 3.3 Where you have a prejudicial interest in any business of the Council, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise and you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.

- 3.4 *Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have a prejudicial interest that relates to the functions of your authority in respect of:-*
- (a) *school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;*
  - (b) *statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay; and*
  - (c) *any ceremonial honour given to members.*

For the avoidance of doubt the following are NOT disclosable pecuniary interests:

- i. an allowance, payment or indemnity given to members;
- ii. setting council tax or a precept under the Local Government Finance Act 1992.

- 3.5 Where, as an executive member, you may discharge a function alone, and you become aware of a prejudicial interest in a matter being dealt with, or to be dealt with by you, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

#### **4. INTERESTS ARISING IN RELATION TO OVERVIEW AND SCRUTINY COMMITTEES**

- 4.1 In any business before an overview and scrutiny committee of the Council (or of a sub-committee of such a committee) where:-

- (a) that business relates to a decision made (whether implemented or not) or action taken by the executive or another of the authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken,

you may attend the meeting of the overview and scrutiny committee for the purpose of explaining the reasons for the decision, or answering questions or giving evidence relating to the business, but you cannot participate otherwise in the discussion or in any vote on the matter.

### **PART 4 - GENERAL MATTERS RELATING TO PARTS 2 AND 3**

#### **1. REGISTER OF INTERESTS**

- 1.1 Subject to paragraph 2.1 below any disclosable pecuniary interests or personal interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority's website.

#### **2. SENSITIVE INTERESTS**

- 2.1 This paragraph applies where you consider that disclosure of the details of a disclosable pecuniary interest or a personal interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees. In these circumstances, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a disclosable pecuniary interest, the details of which are withheld under Section 32(2) of the Localism Act 2011.

#### **3. DISPENSATIONS**

- 3.1 The Council may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest or a prejudicial interest.