

# GUIDANCE FOR DIRECTORS, GOVERNORS AND STAFF ON BUSINESS CONDUCT

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# GUIDANCE FOR DIRECTORS, GOVERNORS AND STAFF ON BUSINESS CONDUCT

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## 1. CORE PRINCIPLES

This policy is based on the 7 Nolan principles (*Appendix B*) of:

- selflessness
- integrity
- objectivity
- accountability
- openness
- honesty
- leadership

## 2. STANDARDS OF BUSINESS CONDUCT – INTRODUCTION AND SCOPE

This policy applies to all Trust employees, Executive Directors, Non-Executive Directors, Governors, contractors and management consultants.

The guidance contained in this document is derived from material produced by the Department of Health and is based on the principles that the NHS as a public service must be impartial and honest in the conduct of its business. Staff must not abuse their official position for personal gain or to benefit their family and friends, and they must not further their private interests in the course of their duties. All staff must be seen to use the public funds entrusted to them to the best advantage of the service, including obtaining value for money; mindful that the interests of patients are paramount at all times.

The fulfilment of contractual obligations is expected from all staff.

The primary rule is that each member of staff must ensure that he/she is not placed in a position which risks, or appears to risk, conflict between an individual's private interests and his/her NHS duties.

Equally high standards are to be expected from the Executive, Non-Executive Directors and Governors of the Trust to whom this guidance also applies. It must be noted that the guidance should be read in conjunction with the Trust's:

- Standing Orders
- Standing Financial Instructions
- Gifts, Hospitality and Sponsorship Policy
- Policy on Fraud, Financial Irregularities and Corruption
- Nolan principles
- Policy on Conflicts of Interest

Where an employee fails to declare a relevant interest, or is found to have abused their official position or knowledge for the purpose of self-benefit or that of family and friends, he or she will be subject to action under the Trust's disciplinary policy.

A quick guide on business conduct is attached as *Appendix A*.

## 3. The Bribery Act 2010

Under the **Prevention of Corruption Acts 1906 and 1916** it was an offence for Directors/Governors/Employees corruptly to accept any gifts or consideration as an inducement or reward for:

- doing or refraining from doing, anything in their official capacity; or
- showing favour or disfavour to any person in their official capacity.

The provisions of the Prevention of Corruption Acts were in this respect superseded by **The Bribery Act of 2010**, which came into force on the 1<sup>st</sup> of July 2011, creating the following offences:

- Offering or giving an 'advantage'
- Requesting, agreeing to receive or accepting an 'advantage', either at home or abroad
- Failure of a commercial organisation to prevent bribery

Bribery can be broadly defined as the offering or acceptance of inducements, gifts, favours, payment or benefit-in-kind which may influence the action of any person. Corruption does not always result in a loss. The corrupt person may not benefit directly from their deeds; however, they may be unreasonably using their position to give some advantage to another.

Appendix C sets out some examples and FAQs in relation to the new Bribery Act.

Any breach of the provision of these Acts by a Director/Governor/Employee renders him/her liable to prosecution and may also lead to loss of employment and superannuation rights.

#### **4. DEFINITIONS OF PECUNIARY AND NON-PECUNIARY INTEREST**

##### **Pecuniary Interest**

A pecuniary interest may be either direct or indirect (as through a spouse, relative or associate) and the concept includes actual payments or receipts in cash or in kind and benefits or disbenefits to the value of assets.

##### **Non Pecuniary Interest**

Any non-financial interest arising through any relationship with an individual or as a result of membership of or association with any group or organisation which may be construed as promoting a private or personal interest rather than that of the Trust and its patients.

Any such interest should be declared to the Company Secretary who will record the declaration in the Register of Interests.

In the case of an Executive, Non-Executive Director or Governor of the Trust, the declaration should be noted in the Minutes of the relevant meeting and the Chair will rule on entitlement to vote/speak/attend on the matter under consideration.

#### **5. DECLARATION OF INTEREST**

The Trust needs to be aware of all cases where a Director/Governor/Employee, in his or her business (including a private company, public sector organisation, other NHS employer and/or voluntary organisation), or in any other activity or pursuit, may compete for an NHS contract to supply either goods or services to the Trust.

All Directors/Governors/Employees must therefore declare such interests to the Company Secretary in writing, either on starting employment or on acquisition of the interest, in order that the interest may be known and in no way promoted to the detriment of either the Trust or the patients it serves.

Directors/Governors are required to make a formal declaration regularly. Each declaration shall be recorded in the register maintained by the Company Secretary for declarations of pecuniary and non-pecuniary interest.

Where an interest arises, the Chief Executive shall ensure that the Director/Governor/Employee will be removed from any direct or indirect involvement in purchasing, contracting or any related decision.

The register shall be available for public inspection by contacting the Company Secretary in writing.

The following interests should be declared (indicating the existence of an interest rather than its detailed nature):

- (a) All paid employment and occupations including directorships, consultancies and any sponsorship of a member of staff by any organisation or person.
- (b) Companies or other bodies where the member of staff has a beneficial interest in securities of a nominal value greater £5,000 or 1% of the issued share capital, whichever is less, but the amount of the holding not to be stated. In the event the interest is in a Public Limited Company, Building Society or investment vehicle such as a Unit Trust, the interest should be declared only if it exceeds 1% of the issued share capital of the organisation (Standing Orders 7.3)
- (c) Any tenancy of premises owned by the Trust.
- (d) Any membership, by election or co-option, of another Trust.

Directors/Governors/Employees are advised that entries should include interests of a spouse / partner in respect of pecuniary interests.

Interests which might conflict with the impartial performance of a Director's / Governor's / Employee's functions are not, however, confined to financial ones and ties of blood or friendship may be equally potent influences. A Director/Governor/Employee should not allow the impression to be created that they are, or may be, using their position to promote a private or personal interest. Private and personal interests include those of their family and friends, as well as those arising from the membership of, or association with, clubs, societies and other organisations. The following rules and guidance are aimed at avoiding conflict between interest and duty where possible:

- (a) No Director/Governor/Employee, if a sole trader, or partner in a partnership, or senior manager or Director in a company, shall apply for any Trust contract.
- (b) All Directors/Governors/Employees involved in the award or management of contracts shall declare to the Company Secretary any association or friendship with any contractor on any part of the Trust's list of Approved Contractors.
- (c) Any Directors/Governors/Employees engaged in the consideration or determination of any application for any contract, permission, grant, approval or consent is advised to declare to the Company Secretary any interest in or association or friendship with any person or body who is known to be, or who the Director/Employee considers may in the future be, an applicant in the field of work in which that officer is engaged.

- (d) The Chief Executive when any such interest, association or friendship is declared shall take appropriate steps to ensure that the officer concerned is not placed in a position where private interests and official duties may conflict.

If a Director/Governor/Employee has a private or personal non-pecuniary interest, they should always declare it, unless it is insignificant, or one which is shared with other members of the public generally or other employees of the Trust.

## **6. USE OF TRUST TIME AND MATERIALS**

Where a Director/Governor/Employee uses directly or causes to be used Trust time, staffing, materials or services for his direct or indirect benefit, he shall seek the authorisation of the Chief Executive. Where approval is granted, the Director of Finance shall be notified by the Chief Executive in order that an appropriate invoice may be raised in respect of the service/items used.

## **7. HOSPITALITY**

Under the Bribery Act 2010, a "financial advantage" could include corporate hospitality. The statutory guidance suggests that it will not amount to a bribe provided that the hospitality:

- has a legitimate business aim (including developing relationships)
- is reasonable, proportionate and appropriate in the circumstances (including with reference to what is normal in the particular industry).

In respect of the QEH, hospitality is not the "norm" when conducting business, and should only be provided when it is necessary and fully justifiable in pursuing the work of the Trust.

Hospitality should not be provided simply to reciprocate hospitality received on some previous occasion, nor should it be extended to spouses of staff or guests unless the circumstances justify this.

Drinks may be provided taking into account the likely length of the meeting, and the distance travelled by staff attending. Drinks provided should be non-alcoholic. Buffet style working lunches may normally be considered when lunch time meetings include some attendees from off-site.

The attention of staff is drawn to HSG (96) 10 on expenditure on staff benefits, and in particular to the importance of ensuring that those responsible for public money do not derive private benefit from it. Therefore, where hospitality received by staff exceeds £25 per head, this should be for the benefit of the Trust and must be recorded in the Sponsorship, Gifts and Hospitality Register.

Staff should decline to arrange hospitality through the use of Exchequer funds, unless the approval of the line/budget manager has been obtained.

## **8. CASUAL GIFTS**

Casual gifts such as pens, calendars, diaries which constitute general promotional material from contractors or others may not be in any way connected with the performance of duties so as to constitute an offence under the Bribery Act and would be acceptable. However, gifts which are not of a promotional nature or which exceed in value approximately £25 should be declined.

Articles of low intrinsic value or small tokens of gratitude from patients or their relatives need not necessarily be refused. If the value of a gift is more than £25 or there is any doubt, the advice of the line manager must be sought or acceptance politely declined.

The offer or receipt of gifts or invitations should always be reported in accordance with the provisions of the Gifts, Hospitality and Sponsorship Policy and Procedures.

## **9. OUTSIDE EMPLOYMENT (INCLUDING VOLUNTARY WORK AND PAID EMPLOYMENT)**

Staff must declare to the Chief Executive any other paid appointment they hold outside of the Trust. Should any other paid appointments be held, they must in no way interfere with work for the Trust.

Employees of the Trust should not engage in outside employment which may conflict with their NHS work, or be detrimental to it. Where individuals consider a conflict may arise they must inform their manager who will judge if the interests of patients may be harmed.

## **10. PRIVATE PRACTICE**

There are special conditions relating to Hospital, Medical and Dental Staff, as specified in the relevant terms and conditions and national circulars.

Consultants and Associate Specialists may carry out private practice in accordance with the guidance outlined in the handbook "A code of conduct for private practice for NHS consultants" unless these terms are specifically varied in contracts of employment with the Trust.

Other grades may undertake private practice or work for outside agencies provided they do not do so within the time they are contracted to the Trust and they observe the conditions in Section 8 on outside employment.

All hospital doctors are currently entitled to fees outside their contractual duties under "Category 2" arrangements. Hospital doctors and dentists in training should not undertake locum work outside their contracts where such work would be in breach of their contracted hours and/or EWTD.

## **11. COMMERCIAL SPONSORSHIP**

Any offers of commercial sponsorship of any nature for any purpose must be approved by the Chief Executive prior to acceptance.

Where the Trust considers it necessary for Directors/Governors/Employees advising on the purchase of equipment/supplies/services to inspect such equipment/supplies/services in operation, the Chief Executive shall consider the Trust meeting the cost so as to avoid placing in jeopardy the integrity of any subsequent purchasing decision.

Reference should be made to the Trust's "Gifts, Hospitality and Commercial Sponsorship Policy and Procedures". The document "Commercial Sponsorship - Ethical Standards in the NHS", published by the Department of Health, contains further guidance.

## **12. REWARDS FOR INITIATIVE (INCLUDING ROYALTIES AND INTELLECTUAL PROPERTY)**

Prior to the commissioning or commencement of any work from which any intellectual property rights may arise and consequently any rewards or accrue to the Trust, the approval of the Chief Executive/Director of Finance must be sought.

Where Employees of the Trust have been involved in additional work outside that paid for by the Trust, the Chief Executive and Director of Finance shall be responsible for evaluating the share of the reward to be passed on to the Employee.

In the case of collaborative research and evaluative exercises with manufacturers where an Employee has been involved in additional work for the Trust outside that paid for by the Trust, the Chief Executive/Director of Finance shall be responsible for evaluating the share of the reward to be passed on to the Employee.

Participation in such projects must not influence the purchase of other equipment / supplies / services from any specific manufacturer.

### **13. COMMERCIAL SENSITIVITY/CONFIDENTIALITY**

Whether for personal gain or otherwise Directors/Governors/Employees may not use or make available publicly internal Trust information of a confidential nature which may have some commercial value if made known outside the Trust. The word "confidential" does not include information about service delivery and activity information which is routinely and normally available to the public. Nor does it cover the free exchange of data for Clinical Audit purposes, subject to the normal rules governing patient confidentiality and data protection.

### **14. FAVOURITISM IN AWARDING CONTRACTS**

Fair and open competition between prospective contractors or suppliers for NHS contracts is a requirement of Trust Standing Financial Instructions and of EC Directives on Public Purchasing for Works and Supplies. This means that:

- (a) No private, public or voluntary organisation or company which may bid for Trust business should be given any advantage over its competitors, such as advance notice of Trust requirements. This applies to all potential contractors, whether or not there is a relationship between them and the Trust, such as a long-running series of previous contracts.
- (b) Each new contract should be awarded solely on merit, taking into account the requirements of the Trust and the ability of the contractors to fulfil them.

No special favour should be shown to current or former Employees or their close relatives or associates in the award of contracts to private or other businesses run by them or employing them in a senior or relevant managerial capacity. Contracts may be awarded to such businesses only where they are won in fair competition against other tenders.

All staff who are in contact with suppliers and contractors (including external consultants), and in particular those who are authorised to sign Purchase Orders, or place contracts for goods, materials or services, are expected to adhere to professional standards of the kind set out in the Ethical Code of the Chartered Institute Purchasing and Supply (CIPS).

## **15. PREFERENTIAL TREATMENT IN PRIVATE TRANSACTIONS**

Individual Directors/Governors/Employees of the Trust must not seek or accept preferential rates or benefits in kind for transactions carried out with companies, partnerships or sole traders with which they have had, or may have, official dealings. This excludes concessionary agreements negotiated by the Trust, or recognised staff interests, on behalf of all staff.

## **16. REGISTER OF GIFTS, HOSPITALITY AND SPONSORSHIP**

The Company Secretary will maintain a register in relation to offers of gifts, hospitality or sponsorship to Directors/Governors/Employees of the Trust. The following information shall be recorded:

- (a) the person or body making the offer
- (b) the individual to whom offer was made
- (c) details of the gift, hospitality or sponsorship offered
- (d) the approximate value, or an estimated value of the gift, hospitality or sponsorship
- (e) whether it was accepted or rejected by the individual
- (f) line manager approval (where the value exceeds £25)

Every Director/Governor/Employee who receives or is offered gifts, hospitality, accommodation, transport or sponsorship which these guidelines necessitate to be registered is required to report the circumstances to the Company Secretary, or indirectly through their Manager, so that a record may be kept.

Every member of staff is entitled to see what is recorded in the register against their name.

The register will be subject to quarterly review by the Audit Committee.

### **2. Policy Review**

This policy will be reviewed every 3 years unless legislation, guidance requires earlier review.

## 2. EQUALITY IMPACT ASSESSMENT

This policy has been subject to an Equality Impact Assessment (see below) and is not considered to have a discriminatory impact on any individual or groups. A translated version of this policy will be provided upon receipt of request.

### EQUALITY IMPACT ASSESSMENT TOOL

#### STAGE 1 – SCREENING

<b>Name &amp; Job Title of Assessor:</b> Gill Rejzl, Company Secretary
<b>Policy or Function to be assessed:</b> Guidance on Business Conduct
<b>Date of Initial Screening:</b> 10 <sup>th</sup> January 2011

		Yes/No	Comments
1.	<b>Does the policy, function, service or project affect one group more or less favourably than another on the basis of:</b>		
	• Race & Ethnic background	No	
	• Gender including transgender	No	
	• Disability	No	
	• Religion or belief	No	
	• Sexual orientation	No	
	• Age	No	
2.	<b>Does the public have a perception/concern regarding the potential for discrimination?</b>	No	

If the answer to any of the questions above is yes, please complete a full Stage 2 Equality Impact Assessment.

**Signature of Assessor:** Gill Rejzl 28 July 2011

**Signature of Line Manager:** Mark Henry

## GUIDANCE ON BUSINESS CONDUCT – CHECKLIST

### DO:

- Make sure you understand the guidelines on standards of business conduct, and consult your line manager or the Company Secretary if you are not sure.
- Make sure you understand the offences created by The Bribery Act 2010
- Make sure you are not in a position where your private interests and NHS duties may conflict.
- Declare to the Trust any relevant interests. If in doubt, ask yourself:
  - (a) Am I, or might I be perceived to be, in a position where I, (or my family/friends) could gain from the connection between my private interests and my employment?
  - (b) Do I have access to information which could influence purchasing decisions?
  - (c) Could my outside interests be in any way detrimental to the NHS or to patients' interests?
  - (d) Do I have any other reasons to think I may be risking a conflict of interest?

### If still unsure – Declare it!

- Adhere to the ethical code of the Chartered Institute of Purchasing & Supply if you are involved in any way with the acquisition of goods and services.
- Seek your line manager's permission before taking on outside work, if there is any question of it adversely affecting your NHS duties. Note that special guidance applies to doctors.
- Obtain the Trust's permission before accepting any commercial sponsorship.
- Notify the Company Secretary of details of any gifts and hospitality accepted or refused amounting to £25 or more (within 2 weeks of offer), or where several small items of hospitality/gifts worth more than £100 are received from the same or closely related source in a 12 month period.

### DO NOT:

- Accept any inappropriate gifts, inducements or hospitality
- Abuse your past or present official position to obtain preferential rates for private deals.
- Unfairly advantage one competitor over another or show favouritism in awarding contracts.
- Misuse or make available official "commercial / in confidence" information.

This checklist is extracted from HSG (93) 5 Standards of Business Conduct for Staff. If you have any queries, contact the Company Secretary.

## Appendix B

# The Nolan Principles

The seven principles of public life were identified by the Nolan Committee in their First Report on Standards in Public Life in May 1995 and subsequently endorsed by the Government.

## The Seven Nolan Principles:

### **Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material 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 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 awards or 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.

**THE BRIBERY ACT 2010 – SUPPLEMENT**

**EXAMPLES OF PRACTICES WHICH MAY CONSTITUTE AN OFFENCE UNDER THE BRIBERY ACT 2010**

**Offences of bribing another person**

A person (“P”) is guilty of an offence if either of the following cases applies.

**Case 1**

- (a) P offers, promises or gives a financial or other advantage to another person, and
- (b) P intends the advantage: -
  - (i) to induce a person to perform improperly a relevant function or activity, or
  - (ii) to reward a person for the improper performance of such a function or activity.

**Case 2**

- (a) P offers, promises or gives a financial or other advantage to another person, and
- (b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

**In Case 1** it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.

**In Cases 1 and 2** it does not matter whether the advantage is offered, promised or given by P directly or through a third party.

**Offences relating to being bribed**

A person (“R”) is guilty of an offence if any of the following cases applies.

**Case 3**

- (a) R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by R or another person).

**Case 4**

- (a) R requests, agrees to receive or accepts a financial or other advantage, and
- (b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.

**Case 5**

(a) R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.

**Case 6**

(a) In anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly —  
(i) by R, or  
(ii) by another person at R's request or with R's assent or acquiescence.

In **Cases 3 to 6** it does not matter—

- (a) whether R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party,
- (b) whether the advantage is (or is to be) for the benefit of R or another person.

In **Cases 4 to 6** it does not matter whether R knows or believes that the performance of the function or activity is improper.

In **Case 6**, where a person other than R is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.

**Failure of commercial organisations to prevent bribery**

A relevant commercial organisation ("C") is guilty of an offence under this section if a person ("A") associated with C bribes another person intending:-

- to obtain or retain business for C, or
- to obtain or retain an advantage in the conduct of business for C.

But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.