

How are CCGs managing conflicts of interest under primary care co-commissioning?

PRUComm Research Seminar

15th March 2018



POLICY RESEARCH UNIT IN
COMMISSIONING AND THE
HEALTHCARE SYSTEM

Valerie Moran, Pauline Allen, Imelda McDermott, Kath Checkland, Lynsey Warwick-Giles, Oz Gore, Donna Bramwell, Anna Coleman

London School of Hygiene and Tropical Medicine and University of Manchester

Improving health worldwide

www.lshtm.ac.uk

LONDON
SCHOOL of
HYGIENE
& TROPICAL
MEDICINE



Overview of talk

- Study methods
- What is a conflict of interest and why should it be of interest?
- Results
 - Risks of conflicts of interest
 - Accountability, control and assurance
 - Management of conflicts of interest
- Issues for Integrated and Accountable Care
- Recommendations



Methods

- Interviews with senior officials from Department of Health and NHS England (n=6)
- Analysis of policy documents
- Review of CCGs' application documents (n=147 out of 150 CCGs)
- Two telephone surveys (n=37 and n=20 out of 46 sample CCGs)
- Case studies in 4 CCGs nationally – 74 meetings (approx. 111 hours of observations) and 42 interviews



Why an interest in conflict of interest

- From 2015 responsibility for commissioning primary care started to be devolved to CCGs
- Previously NHSE held this responsibility due to risk of conflicts of interest
- Conflicts of interest arise from GPs being commissioners *and* providers of primary care
- Policy created an inherent risk of conflicts of interest



What is a conflict of interest?

- “A conflict of interest is a set of circumstances that creates a risk that an individual’s ability to apply judgement or act in one role is, or could be, impaired or influenced by a secondary interest”

(National Audit Office. Cross-government conflicts of interest. London: National Audit Office, 2015.)



Concern over conflict of interest

- NAO (2015) report highlighted the potential for conflicts of interest
- Expected the risk of conflicts of interest to increase with the introduction of primary care co-commissioning
- Raised concerns about the ability of NHSE to respond adequately to this increase.
- We add to NAO report:
 - our research commenced in 2015, after CCGs took on responsibility for commissioning primary care.
 - we collected rich and detailed primary data using a combination of an in-depth case study approach of four CCGs nationally, and two telephone surveys of a sample of CCGs



What is a conflict of interest for CCGs?

- CCGs are agents acting on behalf of NHSE (the principal) which carries statutory responsibility for spending public funds, acting as a proxy for taxpayers.
- GPs assume a stewardship function for those funds, from which they could potentially benefit
- In the absence of adequate monitoring by NHSE or a proxy, GPs have a potential conflict of interest if they pursue their own interests, which diverge from those of NHSE.



What do we know about how conflict of interest is managed in other spheres?

- How do we deal with conflict of interest?
- Simply disclosing a conflict of interest is viewed as inadequate
- Corporate governance mechanisms act to align the interests of shareholders and management and limit undesirable behaviour on the part of management
 - prohibition of actions and decisions leading to self-dealing



NHSE Statutory Guidance 2016

- Declarations/Registers of Interest
- Lay members of PCCC including a conflicts of interest guardian
- Gifts and hospitality
- Audit
- Mandatory conflicts of interest training



Results: risks of conflicts of interest

- Arises from the public stewardship role that GPs assume in their position of commissioners of primary care
- Obtaining clinical input for contract and service specifications;
- Supporting the development of GP provider organisations;
- GPs' influence over discussions and decision-making;
- GPs' perceived bias towards primary care



Results: Understanding of risks of conflicts of interest

- Conflicts of interest inevitable and something to *manage* rather than *eliminate*
- The *perception* of a conflict of interest was viewed as being just as serious as an actual conflict of interest



Results: Accountability, control and assurance arrangements

- Still confusion around conflicts of interest despite statutory guidance:

“But it’s still sometimes not everybody gets where there’s a conflict of interest and what you should be doing in terms of declaring that conflict, managing that conflict, even down to business support to that committee, knowing when they have to make it absolutely clear in the minutes that that person has [withdrawn from the meeting] that person has come back into the meeting for the very reason of conflict...” [Lay member ID 15]

- Confusion around terminology e.g. ‘close’ friend or relative



Results: Risks of conflicts of interest

- For some, it was not immediately evident why conflicts of interest should be an issue for concern:
 - *“GPs are ultimately trustworthy people and, therefore, you know, can rise above conflicts and make decisions.” [CCG Chair GP ID38].*
- Lack of understanding of public stewardship role:
 - One GP did not seem to understand how making decisions with the CCG that affected income differed from practice decision-making affecting income.



Results: Risks of conflicts of interest

- GPs' influence over discussions and decision-making

“We may be non-executives taking decisions but we’re here in the presence of two other constituencies. One is patient representatives and so on. The other is the clinical input from GPs and GPs’ organisations, like the LMC. They have an influence on us. They may not have executive power, but they have an influence. [Lay member ID 14]
- Lay members also had conflicts of interest



Results: Management of Conflicts of Interest

- Separate committee for primary care commissioning with GPs as a minority
- Lay membership of PCCC
- Independent clinical input
- Publishing registers of interests and gifts and hospitality
- Declarations of interest common but lack of consensus about the appropriate approach to take following declarations
- Onus on committee members to draw attention to conflicts of interest of other members



Results: Management of Conflicts of Interest

- GPs were sometimes involved in discussions about funding or contracts

“with the conflict of interest policy, they would be out of the room if they were directly conflicted, if they were discussing, I don't know, for example, an estates issue or funding that affected their practice or their locality directly. But if it came to a vote around overall funding pot for primary care or new initiatives for primary care, the GPs are in the minority there. And I think that's fine and that's good.” [Manager ID 33]



Results: GPs' attitudes

- GPs on the GB felt divorced from the PCCC and this caused frustration as primary care was their area of expertise and the separation could inhibit a strategic overview of the CCG.
- Resentment that GPs did not create the issue of conflicts of interest yet they were seemingly to blame for it:

“The cynic in me will say well the government created...we didn't create this ourselves, the government created this system, they brought it up and then said that you need to manage the conflicts of interest. But they created the conflicts of interest in the first place. I mean, they created a body because they specifically wanted to do so, which has a majority of GPs voting on it. They said that they wanted to hand down Primary Care Commissioning, and then said well now you've got all these conflicts of interest, and look at all the rotten things that you are doing. So well, they created the body in the first place.” [GP ID 17]



Issues for Accountable/Integrated Care

- Revision of Col guidance in 2017 included annex on New Care Models
 - Declarations of interest
 - Meeting participation – only act in CCG role
 - Up to CCG to decide if GB takes decisions on NCMs or delegate to sub-committee e.g. PCCC
- Allocation of resources
- Managing and developing supply chain
- Sub-contracting
- Changes to scope/scale post contract award



Conclusions

- Conflict of interest inherent in system
- NHSE guidance ambiguous
- Sense of confusion regarding the national rules for managing conflicts of interest and there is wide variation in local practice and structures
- Conflict of interest arising from CCGs commissioning primary care is not akin to conflicts of interest faced by GPs in clinical practice
- Simply disclosing an interest does not prevent GPs and practice managers from influencing discussions about primary care, which may undermine their public stewardship role
- Increasing awareness of and concern about the potential for less overt conflicts that are more difficult to identify and address



Recommendations

- Independent clinicians
- Clearer guidance
- Training and support for lay and non-executive members to enable them to make decisions requiring clinical input

