



FEATURE

INVESTIGATION

General practice commissioning: in whose interests?

An investigation into England's clinical commissioning groups shows that many are commissioning from organisations in which board members are involved, **Gareth Iacobucci** reports

Gareth Iacobucci *news reporter, The BMJ*

Clinical commissioning groups (CCGs) in England have awarded hundreds of contracts worth at least £2.4bn (€3.4bn; \$3.7bn) to organisations in which their board members have a financial interest, a joint investigation by *The BMJ* and *The Times* has found.

This new analysis shows the extent to which CCG boards have become conflicted under the health reforms introduced in 2012, which handed general practitioners control of around two thirds of the NHS's total budget.

The data have reignited calls to ban GPs who are directors of provider organisations from holding board positions on CCGs that could commission them. NHS England has ordered an audit of how CCGs are managing conflicts of interest. Patient representatives, MPs, and doctors' leaders are also concerned that governance standards are too lax in some areas. NHS England's current rules allow CCGs the freedom to determine whether conflicted CCG board members should be excluded from relevant parts of meetings or join in discussions but not participate in decision making when commissioning services.¹ This guidance was described by the head of the BMA's GP committee as "too permissive."*The BMJ* and *The Times* examined contracts awarded by a sample of 151 of England's 209 CCGs between April 2013, when CCGs went live, and July 2015. These were cross referenced with the registered interests of board members that CCGs are required to maintain and keep up to date.

We identified 50 CCGs that have awarded contracts where a conflict was present, with a total of 437 out of 5671 contracts awarded to healthcare providers in which one or more CCG board members had declared an interest. Most of the money went to NHS trusts or other similar organisations providing a range of acute, community, and mental health services (£2.2bn gained from a total of 116 contracts awarded with a conflict present).

Social enterprises were the next highest earners from contracts awarded with a conflict of interest present (£64.6m from 13 contracts), followed by limited companies, (£16.6m from 36 contracts), large commercial companies (£16.6m from four contracts), and confederations or cooperatives (£10.4m from

15 contracts). These contracts ranged from large deals to run general practice out of hours services to small contracts for community based service.

The remaining money earned from contracts awarded with a conflict present went to general practices (£7.4m from 232 contracts awarded to provide services such as screening, anticoagulation clinics, and minor surgery), hospices (£4.6m from nine contracts), councils (£4.1m from four contracts), nursing homes (£440 000 from two contracts), and charities (£260 000 from five contracts).

The findings follow a previous investigation by *The BMJ* in April 2013 which found that more than a third of GPs on the boards of CCGs had a conflict of interest resulting from directorships or shares held in private companies.²

Conflicts are inevitable

CCGs and NHS England acknowledged that conflicts of interest were inevitable in a system that made GPs both purchasers and providers of services but insisted that all decisions were backed by strong governance processes and probity.

But this investigation identified wide variations in how CCGs handled conflicts of interest and their willingness to provide information on how conflicts were handled when awarding contracts. Some CCGs asked board members to leave the room when a conflict occurred, while others permitted conflicted members to participate in discussions but not vote. Often the course of action was at the discretion of the CCG chair (box).

Doctors' leaders, patient representatives, and MPs all expressed concern at the variation and said CCGs needed to be fully accountable for the money they are spending as public bodies, particularly when large sums of money are involved.

One CCG to award large sums of money to organisations in which their board members declared an interest was NHS Birmingham South Central CCG, which gave contracts worth £1.7m to South Doc Services, a GP owned company that provides services such as community pulmonary rehabilitation, anticoagulation management and audiology over two years. Four members of the CCG's governing body have declared an interest in the company, including one of the company's

CCG conflicts and how they are being handled

NHS Birmingham South Central CCG

- CCG awarded £1.7m worth of contracts to South Doc Services between 2013 and 2015 (£1m in 2014-15 and £692 000 in 2013-14). This includes contracts for community pulmonary rehabilitation (£434 030), anticoagulation management (£287 408), and audiology (value unknown)
- CCG board members with declared interests in South Doc Services between 2013-2015 were:
 - Naresh Chauhan, South Doc company director (stepped down from CCG board October 2014)
 - Mukesh Bhardwaj, minor shareholder in South Doc Services (<5%)
 - Andrew Coward, minor shareholder in South Doc Services (<1%)
 - Asfia Aftab, husband is freelance GP locum at Katie Road urgent care centre run by South Doc Services

How conflicts are managed

- CCG's conflict of interest policy requires members that declare an interest to "abstain from taking part in any decision"
- The mitigating action taken to address conflicts is determined by the CCG chair in consultation with at least two other non-conflicted members of the governing body

NHS Bedfordshire CCG

- CCG awarded at least £366 000 of contracts to Horizon Health Choices, a general practice federation owned by local GPs, for services such as anticoagulation clinics, community dermatology, and improving access to psychological therapies
- CCG board member (until September 2015) Peter Parry Okeden was chairman of Horizon Health Choices until March 2013

How conflicts of interest are managed

- If the board member holds a directorship with an organisation that is bidding for a contract, the policy is for conflicted directors to leave the room if a discussion is taking place
- The CCG employs auditors Baker Tilly to carry out annual reviews of its conflicts of interest policy and practice. The most recent review found no major risks but made some recommendations, mostly around ensuring the declaration of interests log was kept up to date
- The CCG also uses an external organisation—Attain—to manage many of its procurements. Its role includes ensuring compliance with conflict of interest rules

NHS Canterbury and Coastal CCG

- Whitstable Medical Practice has been awarded contracts totalling £1.9m since April 2013 for range of services, including a minor injury unit (£777 333), cataract surgery (£537 240), physical therapies (£203 000), and non-obstetric ultrasonography (£114 511)
- CCG board member John Ribchester is a partner at Whitstable Medical Practice, a large practice that provides numerous additional services beyond core general practice. It is owned by 19 GP partners and has a list size of 34 000 patients

How conflicts of interest are managed

- CCG acknowledges potential conflicts of interest transparently and honestly
- GPs are not involved in the separate procurement team of the CCG that awards tenders

NHS Newham CCG

- 15 potential conflicts concerning contracts worth £2.2m identified since April 2013.
- Newham GP Cooperative awarded general practice out of hours contract worth £577 047; CCG board member Jim Lawrie is chair of Newham GP cooperative and the CCG deputy chair, Ashwin Shah, is also a member of the cooperative
- Patient First—a GP led social enterprise— was awarded contracts for musculoskeletal care and physiotherapy (£439 520), minor surgery, dermatology, and gynaecology (values unknown)
- CCG board members include Bhupinder Kohli, director and chairman of Patient First, and Jim Lawrie, clinical governance director of Patient First

How conflicts of interest are managed

- "Where an interest is significant or when the individual or a connected person has a direct financial interest in a decision, the individual should not take part in the discussion or vote on the item and should consider leaving the room when the matter is discussed. The Chair of the meeting may ask that a member leaves the room if they have a significant interest or a direct financial interest in a matter under discussion."

NHS North Durham CCG

- 21 contracts awarded to organisations in which one or more of board members had a declared interest. These were worth £45m in total (£34m of this from large mental health contract). Other contracts with conflicts included self management plans for chronic obstructive pulmonary disease, near patient testing, deep vein thrombosis pathways, and minor surgery

How conflicts of interest were managed

- CCG has a separate management executive to make procurement decisions on certain contracts. Of the 21 identified contracts, only two conflicted GP board members (Neil O'Brien and Ian Davidson) were present at meetings
- When members declared a direct conflict involving their practice, they attended the meeting but were asked to leave for both the discussion and the decision making. At all other executive meetings where these contracts were discussed, GPs that declared an interest were allowed to take part in the discussion but did not take part in the decision making

directors, Naresh Chauhan, who stepped down from the CCG board in October 2014.

A CCG spokesperson said that Chauhan had "fully complied" with the organisation's conflict of interest rules when a board member. These rules require declarations to be made at any

meeting, and members that declare an interest to abstain from taking part in any decision.

Chauhan said, "I declared any conflict, and if there were any meetings that discussed anything which may have an impact on the contracts, I declared the interest and left the meetings."

When questioned on the how the money South Doc Services had received was used, Chauhan said, “We’re a non-profit making organisation, we don’t give dividends. I can’t discuss [what the money is used for] because it’s commercially sensitive.” In a follow-up letter to *The Times*, Chauhan said the company, “reinvests all funds back into patient care.”

The investigation also highlighted 15 contracts worth £2.2m awarded by NHS Newham CCG to organisations in which some members had apparent conflicts of interest (box). This included an out of hours contract worth £577 047 awarded to the Newham GP Cooperative, of which CCG board member Jim Lawrie is chair and CCG deputy chair, and Ashwin Shah, is a board member. Shah’s interest was not declared when he attended a meeting of the CCG’s procurement committee in March 2015 during which the CCG board was told of a decision to extend the out of hours contract until a wider procurement took place in 2016.

In response, a spokesperson for Newham CCG said, “We acknowledge that in the March 2015 procurement committee meeting, a conflict of interest should have been declared and recorded at the time. It is important to note that the item in question was a brief update to the meeting and not an extensive paper requiring any decisions to be made from those present and so no decision was influenced in this case.”

Other notable conflicts occurred in contracts awarded to the GP led social enterprise Patient First to provide musculoskeletal and physiotherapy services worth £439 520 and minor surgery, dermatology, and gynaecology services (value unknown). Newham CCG board member Bhupinder Kohli declared an interest as director and chair of Patient First, and Lawrie declared an interest as clinical governance director of Patient First.

The spokesperson added, “Newham CCG takes its responsibilities around managing conflicts of interests seriously and it is an area that we continuously look to strengthen.”

Other CCGs where conflicts were identified included NHS Bedfordshire, NHS North Durham, and NHS Canterbury and Coastal, the last of which awarded £1.9m worth of contracts to Whitstable Medical Practice—where CCG board member John Ribchester is a partner.

Ribchester said the CCG had a very robust process for dealing with conflicts of interest. “As a GP ... you might be involved in designing the pathway [but] at that point your involvement as a GP would end. Then it would go out to the procurement team of the CCG. It would be very wrong if you were involved in the procurement if you were also a potential provider. We certainly don’t do that.”

But Ribchester added, “I think a bit of trust in the system would be quite nice ... try to trust that there are some of us out here trying to do the right thing for patients.”

An NHS England spokesperson said, “Robust statutory guidance on managing conflicts of interest for CCGs has been published with input from the National Audit Office and other regulators. A national audit is underway to look at how these arrangements are working in practice.”

Better scrutiny

But Katherine Murphy, chief executive of the Patients Association, said current governance processes were inadequate and needed more scrutiny.

“I don’t think this is anywhere near the transparency we need,” she said.

“It’s very easy to tick a box and say we won’t participate in that part of the conversation, but what about the influence you have on your colleagues on the board who can speak up on your behalf?”

Meg Hillier, the new chair of the House of Commons Public Accounts committee—which produced a report last year demanding action on the “significant” conflicts of interest in general practice out of hours care³—said MPs may re-examine the wider issue in light of the latest findings.

“It’s about not just transparency and accountability but the appearance of those things. We want to look at that. There is definitely a governance issue. There needs to be the same level of standards for CCGs as there are for charities,” she said.

Hillier added that it was “ridiculous” for GPs to claim that their provider companies’ use of money is commercially sensitive.

“This is taxpayers’ money. There should be nothing to hide,” she said.

Clare Gerada, a GP in Lambeth and former chair of the Royal College of GPs, said there was a real danger that the current system would erode the trust and relationship between GPs and patients.

“You’re beginning to wonder whether things are being done in your best interest or in the interests of profit. We’ve got to be careful that it’s the patient’s pulse we’re feeling not the patient’s purse,” said Gerada.

Chaand Nagpaul, chair of the BMA’s GP committee, said that GPs who are directors of provider organisations should not hold a board position on a CCG which could commission that provider. “There should be a clear line,” he said.

Nagpaul added that even if CCGs are operating within the rules, the NHS should hold itself to higher standards than other industries.

“[The NHS is] a service rooted in very strong values and principles that the public expect of it,” he said. “I don’t think we should be judging ourselves on the way the commercial world may operate.”

To bolster governance, the BMA has also advised that each CCG should have a separate scrutiny committee of non-conflicted members to commission services from local general practices, which could include GPs coopted from neighbouring areas.

Nagpaul added that NHS England’s guidance may need to be revised as it is currently “too permissive” and leaves “enormous scope for variation between CCGs.”

Amanda Doyle, cochair of NHS Clinical Commissioners and chief operating officer at NHS Blackpool CCG, said CCGs acknowledged potential conflicts of interest but insisted that “they are manageable.”

“As long as CCGs ... have the recommended checks and balances in place when they procure services, then the rationale for what and how they are commissioning from member practices will withstand scrutiny,” she said.

With additional reporting by Chris Smyth and Kat Lay.

Competing interests: I have read and understood BMJ policy on declaration of interests and have no relevant interests to declare.

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1 NHS England. Managing conflicts of interest: statutory guidance for CCGs. www.england.nhs.uk/wp-content/uploads/2014/12/man-confli-int-guid-1214.pdf.

2 Iacobucci G. More than a third of GPs on commissioning groups have conflicts of interest, BMJ investigation shows. *BMJ* 2013;346:f1569.

Primary care co-commissioning

The issue of conflicts of interests has become even more problematic since NHS England decided to delegate co-commissioning of primary care services to CCGs from April 2015.

To date, over 70% of England's 209 CCGs have taken on greater responsibility for primary medical services. Of the 50 CCGs that we found had commissioned services from their members, 16 have taken on full delegated responsibility for commissioning primary medical care services in 2015-16, and a further 22 have taken on joint responsibility with NHS England.

In recognition of the additional conflicts of interest this will create, NHS England has drawn up new rules stipulating that CCGs that have taken on co-commissioning primary care must do this through new arms' length committees in which GPs are in the minority.

NHS England is also auditing a random sample of CCGs to review how conflicts of interest are being managed under co-commissioning arrangements, the findings of which it intends to share with CCGs later this year.

- 3 House of Commons Committee of Public Accounts. Out-of-hours GP services in England. 12 Nov 2014. www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/.

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