

<b>Document Title:</b>	<b>MANAGEMENT OF CONFLICTS OF INTEREST AND DECLARATION OF GIFTS AND HOSPITALITY POLICY</b>		
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## 1. Policy Summary

- 1.1 Adhering to this policy will help to ensure that we use NHS money wisely, providing best value for taxpayers and accountability to our patients for the decisions we take.

As a member of staff you should...	As a Trust we will...
<ul style="list-style-type: none"> <li>• Familiarise yourself with this policy and follow it. Refer to the guidance for the rationale behind this policy <a href="https://www.england.nhs.uk/wp-content/uploads/2017/02/guidance-managing-conflicts-of-interest-nhs.pdf">https://www.england.nhs.uk/wp-content/uploads/2017/02/guidance-managing-conflicts-of-interest-nhs.pdf</a></li> <li>• Use your common sense and judgement to consider whether the interests you have could affect the way taxpayers' money is spent</li> <li>• Regularly consider what interests you have and declare these as they arise. If in doubt, declare.</li> <li>• <b>NOT</b> misuse your position to further your own interests or those close to you</li> <li>• <b>NOT</b> be influenced, or give the impression that you have been influenced by outside interests</li> <li>• <b>NOT</b> allow outside interests you have to inappropriately affect the decisions you make when using taxpayers' money</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure that this policy and supporting processes are clear and help staff understand what they need to do.</li> <li>• Identify a team or individual with responsibility for: <ul style="list-style-type: none"> <li>○ Keeping this policy under review to ensure they are in line with the guidance.</li> <li>○ Providing advice, training and support for staff on how interests should be managed.</li> <li>○ Maintaining register(s) of interests.</li> <li>○ Auditing this policy and its associated processes and procedures at least once every three years.</li> </ul> </li> <li>• <b>NOT</b> avoid managing conflicts of interest.</li> <li>• <b>NOT</b> interpret this policy in a way which stifles collaboration and innovation with our partners</li> </ul>

## 2. Introduction

- 2.1 Mid and South Essex NHS Foundation Trust ('the Trust'), and the people who work with and for us, collaborate closely with other organisations, delivering high quality care for our patients.
- 2.2 These partnerships have many benefits and should help ensure that public money is spent efficiently and wisely but there is always a risk that conflicts of interest may arise.
- 2.3 Providing best value for taxpayers and ensuring that decisions are taken transparently and clearly are both key principles in the NHS Constitution. We are committed to maximising our resources for the benefit of the whole community. As a Trust and as individuals, we have a duty to ensure that all of our dealings are conducted to the highest standards of integrity and that NHS monies are used wisely so that we are using our finite resources in the best interests of patients.
- 2.4 This policy is intended to provide a framework that is user-friendly, as automated as possible, and is accepted by staff across the organisation as part of business as usual. To facilitate this, an electronic system for the declaration of interests, gifts and hospitality 1<sup>st</sup> July 2020 As such, paper declaration forms are no longer required. The electronic system will hereafter be referred to as "the Civica System".

## 3. Purpose

- 3.1 This policy will help our staff manage conflicts of interest risks effectively. It:
- Introduces consistent principles and rules;
  - Provides simple advice about what to do in common situations; and
  - Supports good judgement about how to approach and manage interests.
- 3.2 This policy should be considered alongside these other organisational policies:
- MSEPO-20222 Disciplinary Policy;
  - MSEPO-20226 Grievance Policy and Procedure;
  - MSBPO-18001 Information Governance and Management Policy;
  - Anti- Fraud and Anti-Bribery Policy (or equivalent);
  - Raising Concerns at Work Policy and Procedure (Whistleblowing Policy) (or equivalent);
  - Standards of Business Conduct Code of Conduct for Managers (or equivalent);
  - Recruitment and Selection Policy (or equivalent);
  - Pre and Post Employment Checks Policy (or equivalent);
  - Corporate Records Management Policy (or equivalent).

## 4. Key terms

### 4.1 A 'conflict of interest' is:

“A set of circumstances by which a reasonable person would consider that an individual's ability to apply judgement or act, in the context of delivering, commissioning, or assuring taxpayer funded health and care services is, or could be, impaired or influenced by another interest they hold.”

### 4.2 A conflict of interest may be:

- Actual - there is a material conflict between one or more interests; or
- Potential – there is the possibility of a material conflict between one or more interests in the future.

### 4.3 Staff may hold interests for which they cannot see potential conflict. However, caution is always advisable because others may see it differently and perceived conflicts of interest can be damaging. All interests should be declared where there is a risk of perceived improper conduct.

## 5. Interests

### 5.1 Interests fall into the following categories:

- **Financial interests**

Where an individual may get direct financial benefit<sup>1</sup> from the consequences of a decision they are involved in making.

- **Non-financial professional interests**

Where an individual may obtain a non-financial professional benefit from the consequences of a decision they are involved in making, such as increasing their professional reputation or promoting their professional career.

- **Non-financial personal interests**

Where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit, because of decisions they are involved in making in their professional career.

- **Indirect interests**

Where an individual has a close association<sup>2</sup> with another individual who has a financial interest, a non-financial professional interest or a non-financial personal

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<sup>1</sup> This may be a financial gain, or avoidance of a loss.

<sup>2</sup> A common sense approach should be applied to the term 'close association'. Such an association might arise, depending on the circumstances, through relationships with close family members and relatives, close friends and associates, and business partners.

interest. It is an indirect interest if either the individual or their close association, could stand to benefit from a decision they are involved in making.

## 5.2 Other Key Terms

- **Gifts** – any item of cash or goods, or any service, which is provided for personal benefit, free of charge, or at less than its commercial value.
- **Hospitality** – offers of meals, refreshments, travel, accommodation, and other expenses in relation to attendance at meetings, conferences, education and training events, etc
- **Legacy organisations** – these are the three trusts that merged to form MSE on 1<sup>st</sup> April 2020: Mid Essex Hospital Services NHS Trust (MEHT), Southend University Hospital NHS Foundation Trust (SUHT) and Basildon and Thurrock University Hospitals NHS Foundation Trust (BTUH).
- **Outside employment** – includes directorships, non-executive roles, self-employment, consultancy work, charitable trustee roles, political roles and roles within not-for-profit organisations, paid advisory positions and paid honorariums which relate to bodies likely to do business with an organisation.
- **Clinical private practice** – means private clinical practice that is undertaken by clinicians outside of the terms and conditions of their employment with an NHS employer either for an external company or through a corporate vehicle established by themselves.
- **Sponsored events** – events that are organised by individuals or organisations and where sources external to the NHS seek to offer to meet some or part of the costs of running the event.
- **Sponsored research** – research carried out by individuals or organisations and where sources external to the NHS seek to offer to meet some or all of the costs of running this research.
- **Sponsored posts** – positions in the trust funded in whole or in part by organisations external to the NHS.
- **Shareholdings** – any shareholdings and other ownership interests in any publicly listed, private or not-for-profit company, business, partnership or consultancy which is doing, or might be reasonably expected to do, business with their organisation.
- **Patents** – patents and other intellectual property rights held (either individually, or by virtue of their association with a commercial or other organisation), including where applications to protect have started or are ongoing, which are, or might be reasonably expected to be, related to items to be procured or used by their organisation.
- **Donations** – charitable financial payment, which can be in the form of direct cash payment or through the application of a will or similar directive.

- **Loyalty interests** – interests which an individual has in two or more organisations or bodies or individuals which might give rise to a conflict of interest with regards to their primary duty to the NHS.
- **Mid and South Essex NHS Foundation Trust Charity** – this is the charity, registered with the Charities Commission, that was formed on 1<sup>st</sup> April 2020 as the successor body to the charitable trusts of the legacy organisations.

## 6. Staff

6.1 In the Trust, we use the skills of many different people, all of whom are vital to our work. This includes people on differing employment terms, who for the purposes of this policy we refer to as ‘staff’ and are listed below:

- All salaried employees;
- All prospective employees – who are part-way through recruitment;
- Contractors and sub-contractors;
- Agency staff;
- Students/Trainees;
- Volunteers;
- Secondees and other staff on placement with the trust;
- Other staff on placement with the trust;
- Staff of partner organisations with approved access and;
- Committee, sub-committee and advisory group members (who may not be directly employed or engaged by the Trust).

## 7. Responsibilities

### 7.1 Responsibility of the Trust Board

7.1.1 Members of the board should review and update their interests prior to the start of each meeting.

7.1.2 The chair, with members, should review interests against each agenda item to determine whether they have any specific (i.e. relevant and material) interests which could potentially conflict with an agenda item. An interest is specific when it refers directly to the matter under discussion and non-specific where it does not refer directly to the matter under discussion.

7.1.3 The chair should advise on the appropriate management action in cases where a conflict is identified, which will range from the person leaving the meeting, staying but not participating in discussion or staying and participating in the discussion.

7.1.3 The board is responsible for formal approval of this policy initially and as recommended by the Audit Committee following regular reviews and updates.

## 7.2 Responsibility of the Audit Committee

The Audit Committee is responsible for reviewing this policy and recommending its adoption by the Trust Board. The Committee monitors compliance with the policy to provide the board with assurance that standards of probity and propriety are being maintained. This will be done through annual review of the registers of interest and of gifts and hospitality, alongside any other reports brought to the committee on an exception basis.

## 7.3 Responsibility of the Chief Finance Officer

The Chief Finance Officer is the designated executive director lead on behalf of the trust board for the implementation of the Bribery Act 2010.

## 7.4 Responsibility of the Chief Commercial Officer

The Chief Commercial Officer has executive responsibility for the conflicts of interest policy.

## 7.5 Responsibility of the Company Secretary

7.5.1 The Company Secretary is operationally responsible for the conflicts of interest (including gifts and hospitality) process. This postholder will ensure that all staff are reminded six monthly via normal trust communication channels of the requirements of this policy and that a reminder is issued to decision making staff in April each year of the need to refresh or reconfirm that their declarations remain accurate.

7.5.2 The Company Secretary will maintain the Registers of interest and of gifts and hospitality and will ensure they are presented to the Audit Committee annually for assurance.

## 7.6 Responsibilities of Line Managers

7.6.1 Line managers are responsible for:

- a) Ensuring that their staff are aware of the policy.
- b) Providing staff with advice about application of the policy.
- c) Review of declarations made by staff for whom they are responsible.

## 7.7 Responsibilities of all employees

7.7.1 All employees (as defined in section 6) must declare gifts, hospitality and other interests as set out in this policy at the earliest opportunity (and at any event within 28 days). If staff are in any doubt about whether an interest is material, they should declare it so that it can be considered;

- On appointment with the trust
- When they move to a new role or their responsibilities change significantly
- At the beginning of a new project/piece of work

- As soon as circumstances change, and new interests arise.

7.7.2 After expiry, an interest will remain on the register for a minimum of 6 months and a private record of historic interests will be retained for a minimum of six years.

7.7.3 The Trust fully supports wider transparency initiatives in healthcare and staff are encouraged to engage actively with these. Relevant staff are strongly encouraged to give their consent for payments they receive from the pharmaceutical industry to be disclosed as part of the Association of British Pharmaceutical Industry (ABPI) Disclosure UK initiative. These 'transfers of value' include payments relating to speaking at and chairing meetings, training services, advisory board meetings and fees and expenses paid to healthcare professionals. Details about the ABPI Disclosure UK scheme are at <http://www.abpi.org.uk/our-work/disclosure/Pages/disclosure.asp>

7.7.4 Staff should remain alert to the risk that gifts, hospitality and expenses may be used as a subterfuge for bribery.

## 7.8 Responsibilities of Decision-Making Staff

In view of their influence in the spending of taxpayers' money, decision making staff are required to update their declarations of interest or make a nil return at least annually. Decision-making staff are defined in section 8 below. That section also sets out the detailed requirements in terms of declaration of interests for decision-makers.

## 7.9 Responsibility of the Local Counter Fraud Specialist (LCFS)

7.9.1 The LCFS is responsible for taking forward all anti-fraud and bribery work locally in accordance with national NHS Counter Fraud Authority standards and reports directly to the Chief Finance Officer.

7.9.2 The LCFS works with key colleagues and stakeholders where concerns or suspicions in relation to actions potentially constituting an offence under the Bribery Act and effectively respond to system weaknesses and investigate allegations of Bribery.

7.9.3 The LCFS's role is to ensure that all cases of actual or suspected fraud and bribery are notified to the Chief Finance Officer and reported accordingly.

7.9.4 The LCFS will regularly report to the Chief Finance Officer on the progress of the investigation and when/if referral to the police is required.

## **8. Decision Making Staff**

- 8.1 Some groups of staff are more likely than others to have a decision-making influence on the use of taxpayers' money, because of the requirements of their role. For the purposes of this guidance these people are referred to as 'decision making staff.'
- 8.2 Decision making staff are those that are able to materially influence the organisation in entering into a contract with suppliers for goods or services due to their ability to enter into contractual commitments through delegations within the Trust's Standing Financial Instructions (SFIs).
- 8.3 Decision making staff (within this definition) for MSE include:
- Executive and non-executive directors;
  - Those at Agenda for Change Band 8d or above (in line with the definition of senior decision-makers within the Freedom of Information Act 2000);
  - Members of advisory groups which contribute to direct or delegated decision making on the commission or provision of taxpayer funded services;
  - Administrative and clinical staff who have the power to enter into contracts on behalf of the Trust and
  - Administrative and clinical staff involved in decision making concerning the commissioning of services, purchasing of goods, medicines, medical devices or equipment and formulary decisions. This includes, as a minimum, all staff within the finance and procurement teams, and the Company Secretary.

## **9. Identification, declaration and review of interests**

### **9.1 Identification & declaration of interests (including gifts and hospitality)**

- 9.1.1 All decision making staff should identify and declare material interests (or the ending of material interests) at the earliest opportunity (and in any event within 28 days). If staff are in any doubt as to whether an interest is material then they should declare it, so that it can be considered. Declarations should be made:
- On appointment with the Trust;
  - When staff move to a new role or their responsibilities change significantly;
  - At the beginning of a new project/piece of work;
  - As soon as circumstances change, and new interests arise (for instance, in a meeting when interests staff hold are relevant to the matters in discussion); and/or
  - Refreshed or re-confirmed every 12 months in any event.

9.1.2 **All interests declared will be considered current at the moment of receipt and applicable prospectively going forward unless and until notification is received by the Company Secretary from the staff member that they are no longer active and relevant.**

9.1.3 **Whilst the Trust will issue annual reminders to each individual as well as interim messaging through the Trust's internal communications channels, each staff member is responsible for ensuring that his or her declaration remains up-to-date.**

9.1.4 Interests that have existed but have been previously undeclared, or which have arisen during the preceding year but not declared at the time (contrary to the expectation in this policy of declaration at the earliest opportunity) shall also be regarded as retrospectively declared interests and investigation will be made as to their impact and influence on any related decision of the Trust

9.1.5 Declarations should be made to on the Civica System.

9.1.6 If any problems are experienced, please contact the Company Secretary.

9.1.7 After expiry, an interest will remain on register(s) for a minimum of 6 months and a private record of historic interests will be retained for a minimum of 6 years.

## 9.2 **Proactive review of interests**

9.2.1 The Company Secretary will prompt decision making staff annually to review declarations they have made and, as appropriate, update them or make a nil return.

9.2.2 The Trust will monitor the number, frequency and nature of declarations with a view to assessing the effectiveness of the policy on an annual basis.

9.2.3 The Company Secretary will undertake a six-monthly review of the online register of interests and gifts and hospitality, reporting detailed findings to the audit committee. This will include analysis both of compliance with the requirement to make declarations and the nature of the declarations made, review will include checking registers and declarations for completeness.

## 9.3 **General management actions**

9.3.1 If an interest or gift and hospitality presents an actual or potential conflict of interest then management action is required, which will include the following:

- Deciding that no action is warranted
- Restricting an individual's involvement in discussions and excluding them from decision making
- Removing an individual from the whole decision-making process
- Removing an individual's responsibility for an entire area of work
- Removing an individual from their role altogether if the conflict is so significant that they are unable to operate effectively in the role

- 9.3.2 Each case will be different and context-specific, and the Trust will always clarify the circumstances and issues with the individuals involved. Staff should maintain a written audit trail of information considered and actions taken.
- 9.3.3 Staff who declare interests should make their line manager or the person(s) they are reporting to are aware of the existence of those interests.

## **10. Records and publication**

### **10.1 Maintenance**

- 10.1.1 The Trust will maintain an interest register and a gifts and hospitality register.
- 10.1.2 All declared interests that are material will be promptly transferred to the registers by the Company Secretary.
- 10.1.3 The information contained within the registers will be utilised for the purposes of ensuring transparency, openness, and the effective management of conflicts of interest and the prevention of fraud. This includes sharing the register for the purposes of managing potential conflicts during procurement processes, sharing with internal audit, external audit and the Local Counter Fraud Specialist (LCFS) and other purposes where sharing the data is legitimate, proportionate and in line with legislation.

### **10.2 Publication**

- 10.2.1 The Trust will:
- Publish the interests declared by decision making staff in the interests register and gifts and hospitality register;
  - Refresh this information annually; and
  - Make this information available on the Trust's website.
- 10.2.2 If decision making staff have substantial grounds for believing that publication of their interests should not take place, then they should contact the Company Secretary to discuss.
- 10.2.3 In exceptional circumstances, for instance where publication of information might put a member of staff at risk of harm, information may be withheld or redacted on public registers. However, this would be the exception and information will not be withheld or redacted merely because of a personal preference.

### **10.3 Wider transparency initiatives**

- 10.3.1 The Trust fully supports wider transparency initiatives in healthcare, and encourages staff to engage actively with these. Consenting to share information in this capacity does not negate the requirement to make the appropriate declaration to the Trust.

10.3.2 Relevant staff are strongly encouraged to give their consent for payments they receive from the pharmaceutical industry to be disclosed as part of the Association of British Pharmaceutical Industry (ABPI) Disclosure UK initiative. These “transfers of value” include payments relating to:

- Speaking at and chairing meetings;
- Training services;
- Advisory board meetings;
- Fees and expenses paid to healthcare professionals;
- Sponsorship of attendance at meetings, which includes registration fees and the costs of accommodation and travel, both inside and outside the UK; and
- Donations, grants and benefits in kind provided to healthcare organisations.

10.3.3 Further information about the scheme can be found on the ABPI website.

## **11. Management of interests – general**

11.1 If an interest is declared but there is no risk of a conflict arising, then no action is warranted. However, if a material interest is declared then the general management actions that could be applied include:

- Restricting staff involvement in associated discussions and excluding them from decision making;
- Removing staff from the whole decision-making process;
- Removing staff responsibility for an entire area of work; and/or
- Removing staff from their role altogether if they are unable to operate effectively in it because the conflict is so significant.

11.2 Each case will be different and context-specific, and the Trust will always clarify the circumstances and issues with the individuals involved. Staff should maintain a written audit trail of information considered and actions taken.

11.3 Staff who declare material interests should make their line manager or the person(s) they are working to aware of their existence.

11.4 In the event of possible disputes about the most appropriate management action, please contact the Company Secretary.

## 12. Management of interests – common situations

12.1 This section sets out the principles and rules to be adopted by staff in common situations, and what information should be declared.

### 12.2 Gifts

Staff should not accept gifts that may affect, or be seen to affect, their professional judgement or whenever they could be perceived to affect the outcome of a business transaction. This is because gifts may give the appearance of bribery which is prohibited by Trust policy and by the Bribery Act 2010.

12.2.1 Gifts from suppliers or contractors:

- Gifts from suppliers or contractors doing business (or likely to do business) with the Trust should be declined, whatever their value;
- Low cost branded promotional aids such as pens or post-it notes may, however, be accepted where they are under the value of £6<sup>3</sup> in total and need not be declared;
- Any gifts that are declined still need to be declared.

12.2.2 Gifts from other sources (e.g. patients, families, service users):

- Gifts of cash and vouchers to individuals should always be declined;
- Staff should not ask for any gifts;
- Gifts valued at over £50 should be treated with caution and only be accepted on behalf of the Trust's Charitable Funds, subject to the Trust's charitable funds procedure, but not in a personal capacity. These should be declared by staff;
- Gifts valued between £25 and £50 should be declared and authorisation should be sought before accepting the gift;
- Modest gifts accepted under a value of £25 do not need to be declared;
- A common-sense approach should be applied to the valuing of gifts (using an actual amount, if known, or an estimate that a reasonable person would make as to its value);
- Multiple gifts from the same source over a 12-month period should be treated in the same way as single gifts over £50 where the cumulative value exceeds £50.
- Any gifts that are declined still need to be declared.

12.2.3 The Trust does not permit the offer of gifts to third parties by Trust staff or Board members.

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<sup>3</sup> The £6 value has been selected with reference to existing industry guidance issued by the ABPI: <http://www.pmcpa.org.uk/thecode/Pages/default.aspx>

#### 12.2.4 What should be declared:

- Staff name and their role with the Trust;
- A description of the nature and value of the gift, including its source;
- Date of receipt;
- Details of previous gifts and hospitality offered or accepted by this offeror/ supplier ;
- Whether the offer was accepted or not;
- Reasons for accepting or declining the offer;
- Any other relevant information (e.g. circumstances surrounding the gift, action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy).

### 12.3 Hospitality

12.3.1 Staff should not ask for or accept hospitality that may affect, or be seen to affect, their professional judgement.

12.3.2 Hospitality must only be accepted when there is a legitimate business reason and it is proportionate to the nature and purpose of the event.

12.3.3 Particular caution should be exercised when hospitality is offered by actual or potential suppliers or contractors. This can be accepted, and must be declared, if modest and reasonable. Senior approval must be obtained.

12.3.4 Offers of hospitality relating to theatre evenings, sporting fixtures or holiday accommodation must be declined.

#### 12.3.5 Meals and refreshments:

- Under a value of £25 - may be accepted and need not be declared;
- Of a value between £25 and £75<sup>4</sup> - may be accepted and must be declared prior (were possible) to acceptance to allow for senior management to consider;
- Over a value of £75 - should be refused unless (in exceptional circumstances) senior approval is given. A clear reason should be recorded on the Trust's register(s) of interest as to why it was permissible to accept;
- A common-sense approach should be applied to the valuing of meals and refreshments (using an actual amount, if known, or a reasonable estimate);
- Any meals or refreshments that are declined still need to be declared.

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<sup>4</sup> The £75 value has been selected with reference to existing industry guidance issued by the ABPI <http://www.pmcpa.org.uk/thecode/Pages/default.aspx>

## 12.4 Travel and accommodation:

12.4.1 Modest offers to pay some or all of the travel and accommodation costs related to attendance at events may be accepted and must be declared prior to acceptance to allow for senior management to consider.

12.4.2 Offers which go beyond modest (or are of a type that the Trust itself might not usually offer) need approval by senior staff, should only be accepted in exceptional circumstances, and must be declared. A clear reason should be recorded on the

12.4.3 Trust's register(s) of interest as to why it was permissible to accept travel and accommodation of this type. A non-exhaustive list of examples includes:

- a. offers of business class or first-class travel and accommodation (including domestic travel); or
- b. offers of foreign travel and accommodation.

12.4.4 Any travel and accommodation that is declined still needs to be declared.

12.4.5 What should be declared

- Staff name and their role with the Trust;
- The nature and value of the hospitality including the circumstances;
- Date of receipt;
- Details of previous gifts and hospitality offered or accepted by this offeror/ supplier;
- Whether the offer was accepted or not;
- Reasons for accepting or declining the offer and;
- Any other relevant information (e.g. action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy).

## 12.5 Management of Gifts and Hospitality

If gift or hospitality is declared but there is no risk of a conflict arising, then no action is warranted. However, if a gift of hospitality is declared that causes a risk of conflict, then the general management actions that could be applied include:

- Restricting staff involvement in associated discussions and excluding them from decision making;
- Removing staff from the whole decision-making process;
- Removing staff responsibility for an entire area of work; and/or
- Removing staff from their role altogether if they are unable to operate effectively in it because the conflict is so significant.

12.6 Each case will be different and context-specific, and the Trust will always clarify the circumstances and issues with the individuals involved. Staff should maintain a written audit trail of information considered and actions taken.

12.7 Staff who declare material interests should make their line manager or the person(s) they are working to aware of their existence.

12.8 In the event of possible disputes about the most appropriate management action, please contact the Company Secretary.

## 12.9 **Outside Employment**

- Staff should declare any existing outside employment on appointment and any new outside employment when it arises;
- Where a risk of conflict of interest arises, the general management actions outlined in this policy should be considered and applied to mitigate risks;
- Where contracts of employment or terms and conditions of engagement permit, staff may be required to seek prior approval from the Trust to engage in outside employment;
- Outside employment can include payment for services rendered such as speaking at conferences and consultancy work. If this is carried out in the Trust time any payment received should be paid to the Trust.

12.9.1 The Trust may also have legitimate reasons within employment law for knowing about outside employment of staff, even when this does not give rise to risk of a conflict.

12.9.2 What should be declared:

- Staff name and their role with the Trust;
- The nature of the outside employment (e.g. who it is with, a description of duties, time commitment);
- Relevant dates; and
- Other relevant information (e.g. action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy).

## 12.10 **Shareholdings and other ownership issues**

- Staff should declare, as a minimum, any shareholdings and other ownership interests in any publicly listed, private or not-for-profit company, business, partnership or consultancy which is doing, or might be reasonably expected to do, business with the Trust;
- Where shareholdings or other ownership interests are declared and give rise to risk of conflicts of interest then the general management actions outlined in this policy should be considered and applied to mitigate risks;
- There is no need to declare shares or securities held in collective investment or pension funds or units of authorised unit trusts.

12.10.1 What should be declared

- Staff name and their role with the Trust;
- Nature of the shareholdings/other ownership interest;
- Relevant dates; and
- Other relevant information (e.g. action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy).

### 12.11 Patents

Staff should declare patents and other intellectual property rights they hold (either individually, or by virtue of their association with a commercial or other organisation):

- Including where applications to protect have started or are on-going, which are, or might be reasonably expected to be, related to items to be procured or used by the Trust;
- Staff should seek prior permission from the Trust before entering into any agreement with bodies regarding product development, research, work on pathways etc., where this impacts on the Trust's own time, or uses its equipment, resources or intellectual property;
- Where holding of patents and other intellectual property rights give rise to a conflict of interest then the general management actions outlined in this policy should be considered and applied to mitigate risks.

#### 12.11.1 What should be declared:

- Staff name and their role with the Trust;
- A description of the patent;
- Relevant dates; and
- Other relevant information (e.g. action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy).

### 12.12 Loyalty interests

Loyalty interests should be declared by staff involved in decision making where they:

- Hold a position of authority in another NHS Trust or commercial, charity, voluntary, professional, statutory or other body which could be seen to influence decisions they take in their NHS role;
- Sit on advisory groups or other paid or unpaid decision-making forums that can influence how a Trust spends taxpayers' money;
- Are, or could be, involved in the recruitment or management of close family members and relatives, close friends and associates, and business partners;
- Are aware that their Trust does business with an organisation in which close family members and relatives, close friends and associates, and business partners have decision making responsibilities.

#### 12.12.1 What should be declared:

- Staff name and their role with the Trust;
- Nature of the loyalty interest;
- Relevant dates; and
- Other relevant information (e.g. action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy).

### 12.13 Donations

Donations made by suppliers or bodies seeking to do business with the Trust should be treated with caution and not routinely accepted. In exceptional circumstances they may be accepted but should always be declared. If an individual believes that it is appropriate or necessary to accept a donation of this type, advance senior approval should be sought. A clear reason should be recorded as to why it was deemed acceptable, alongside the actual or estimated value.

- Staff should not actively solicit charitable donations unless this is a prescribed or expected part of their duties for the Trust or is being pursued on behalf of the Trust's own registered charity or other charitable body and is not for their own personal gain;
- Staff must obtain permission from the Trust if in their professional role they intend to undertake fundraising activities on behalf of a pre-approved charitable campaign for a charity other than the Trust's own;
- Donations, when received, should be made to a specific charitable fund (never to an individual) and a receipt should be issued;
- Staff wishing to make a donation to a charitable fund in lieu of receiving a professional fee may do so, subject to ensuring that they take personal responsibility for ensuring that any tax liabilities related to such donations are properly discharged and accounted for.

#### 12.13.1 What should be declared

The Trust will maintain records in line with the above principles and rules and relevant obligations under charity law.

### 12.14 Sponsored events

- Sponsorship of events by appropriate external bodies will only be approved if a reasonable person would conclude that the event will result in clear benefit to Trusts and the NHS;
- During dealings with sponsors there must be no breach of patient or individual confidentiality or data protection rules and legislation;
- No information should be supplied to the sponsor from whom they could gain a commercial advantage, and information which is not in the public domain should not normally be supplied;
- At the Trust's discretion, sponsors or their representatives may attend or take part in the event but they should not have a dominant influence over the content or the main purpose of the event;
- The involvement of a sponsor in an event should always be clearly identified.
- Staff within the Trust involved in securing sponsorship of events should make it clear that sponsorship does not equate to endorsement of a company or its products and this should be made visibly clear on any promotional or other materials relating to the event;
- Staff arranging sponsored events must declare this to the Trust.

## 12.14.1 What should be declared

The Trust will maintain records regarding sponsored events in line with the above principles and rules.

12.15 **Sponsored research**

- Funding sources for research purposes must be transparent;
- Any proposed research must go through the relevant health research authority or other approvals process;
- There must be a written protocol and written contract between staff, the Trust, and/or institutes at which the study will take place and the sponsoring organisation, which specifies the nature of the services to be provided and the payment for those services;
- The study must not constitute an inducement to prescribe, supply, administer, recommend, buy or sell any medicine, medical device, equipment or service;
- Staff should declare involvement with sponsored research to the Trust.

## 12.15.1 What should be declared

- The Trust will retain written records of sponsorship of research, in line with the above principles and rules.
- Staff should declare:
  - a. their name and their role with the Trust;
  - b. Nature of their involvement in the sponsored research;
  - c. relevant dates; and
  - d. Other relevant information (e.g. what, if any, benefit the sponsor derives from the sponsorship, action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy).

12.16 **Sponsored posts**

- External sponsorship of a post requires prior approval from the Trust.
- Rolling sponsorship of posts should be avoided unless appropriate checkpoints are put in place to review and withdraw if appropriate.
- Sponsorship of a post should only happen where there is written confirmation that the arrangements will have no effect on purchasing decisions or prescribing and dispensing habits. This should be audited for the duration of the sponsorship. Written agreements should detail the circumstances under which the Trust has the ability to exit sponsorship arrangements if conflicts of interest which cannot be managed arise.
- Sponsored post holders must not promote or favour the sponsor's products, and information about alternative products and suppliers should be provided.
- Sponsors should not have any undue influence over the duties of the post or have any preferential access to services, materials or intellectual property relating to or developed in connection with the sponsored posts.

### 12.16.1 What should be declared

- The Trust will retain written records of sponsorship of posts, in line with the above principles and rules;
- Staff should declare any other interests arising as a result of their association with the sponsor, in line with the content in the rest of this policy.

### 12.17 Clinical private practice

Clinical staff should declare all private practice on appointment, and/or any new private practice when it arises<sup>5</sup> including:

- Where they practise (name of private facility);
- What they practise (specialty, major procedures); and
- When they practise (identified sessions/time commitment).

#### 12.17.1 Clinical staff should (unless existing contractual provisions require otherwise or unless emergency treatment for private patients is needed):

- Seek prior approval of their Trust before taking up private practice;
- Ensure that, where there would otherwise be a conflict or potential conflict of interest, NHS commitments take precedence over private work<sup>6</sup>; and
- Not accept direct or indirect financial incentives from private providers other than those allowed by Competition and Markets Authority guidelines: [https://assets.publishing.service.gov.uk/media/542c1543e5274a1314000c56/Non-Divestment\\_Order\\_amended.pdf](https://assets.publishing.service.gov.uk/media/542c1543e5274a1314000c56/Non-Divestment_Order_amended.pdf).

#### 12.17.2 Hospital Consultants should not initiate discussions about providing their Private Professional Services for NHS patients, nor should they ask other staff to initiate such discussions on their behalf.

#### 12.17.3 What should be declared

- Staff name and their role with the Trust;
- A description of the nature of the private practice (e.g. what, where and when staff practise, sessional activity, etc.);
- Relevant dates; and
- Any other relevant information (e.g. action taken to mitigate against a conflict, details of any approvals given to depart from the terms of this policy).

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<sup>5</sup> Hospital Consultants are already required to provide their employer with this information by virtue of Para.3 Sch. 9 of the Terms and Conditions – Consultants (England) 2003: [https://www.bma.org.uk/-/media/files/pdfs/practical\\_advice\\_at\\_work/contracts/consultanttermsandconditions.pdf](https://www.bma.org.uk/-/media/files/pdfs/practical_advice_at_work/contracts/consultanttermsandconditions.pdf)

<sup>6</sup> These provisions already apply to Hospital Consultants by virtue of Paras.5 and 20, Sch. 9 of the Terms and Conditions – Consultants (England) 2003: [https://www.bma.org.uk/-/media/files/pdfs/practical\\_advice\\_at\\_work/contracts/consultanttermsandconditions.pdf](https://www.bma.org.uk/-/media/files/pdfs/practical_advice_at_work/contracts/consultanttermsandconditions.pdf)

## 13. Management of interests – advice in specific contexts

### 13.1 Strategic decision making groups

In common with other NHS bodies, Mid and South Essex NHS Foundation Trust a variety of different groups to make key strategic decisions about things such as:

- Entering into (or renewing) large scale contracts;
- Awarding grants;
- Making procurement decisions; and
- Selection of medicines, equipment, and devices.

13.1.1 The interests of those who are involved in these groups should be well known so that they can be managed effectively. For this Trust, these groups are:

- The Board of Directors;
- The Executive Team;
- The Site Leadership Teams;
- The Finance and Performance Committee; and
- The Investment Committee.

13.1.2 These groups should adopt the following principles:

- Chairs should consider any known interests of members in advance and begin each meeting by asking for declaration of relevant material interests.
- Members should take personal responsibility for declaring material interests at the beginning of each meeting and as they arise.
- Any new interests identified should be added to the Trust's register(s).
- The vice chair (or other non-conflicted member) should chair all or part of the meeting if the chair has an interest that may prejudice their judgement.

13.1.3 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;
- Excluding the member from receiving meeting papers relating to their interest;
- Excluding the member from all or part of the relevant discussion and decision;
- Noting the nature and extent of the interest, but judging it appropriate to allow the member to remain and participate; and/or
- Removing the member from the group or process altogether.

13.1.4 The default response should not always be to exclude members with interests, as this may have a detrimental effect on the quality of the decision being made. Good judgement is required to ensure proportionate management of risk.

## 13.2 Procurement

13.2.1 Procurement should be managed in an open and transparent manner, compliant with procurement and other relevant law, to ensure there is no discrimination against or in favour of any provider. Procurement processes should be conducted in a manner that does not constitute anti-competitive behaviour - which is against the interest of patients and the public.

13.2.2 Those involved in procurement exercises for and on behalf of the Trust should keep records that show a clear audit trail of how conflicts of interest have been identified and managed as part of procurement processes. At every stage of procurement steps should be taken to identify and manage conflicts of interest to ensure and to protect the integrity of the process.

## 14. Dealing with breaches

There will be situations when interests will not be identified, declared or managed appropriately and effectively. This may happen innocently, accidentally, or because of the deliberate actions of staff or other organisations. For the purposes of this policy these situations are referred to as 'breaches'.

### 14.1 Identifying and reporting breaches

Staff who are aware about actual breaches of this policy, or who are concerned that there has been, or may be, a breach, should report these concerns to the Trust's Local Counter Fraud Specialist, Mark Kidd, on 07528 970251 or [mark.kidd@nhs.net](mailto:mark.kidd@nhs.net) or by contacting NHS Counter Fraud Authority on <https://cfa.nhs.uk/reportfraud> or the National Fraud and Corruption reporting line 0800 028 40 60.

14.1.1 To ensure that interests are effectively managed, staff are encouraged to speak up about actual or suspected breaches. Every individual has a responsibility to do this. For further information about how concerns should be raised, please refer to the Raising Concerns at Work Policy and Procedure (Whistleblowing Policy).

14.1.2 The Trust will investigate each reported breach according to its own specific facts and merits and give relevant parties the opportunity to explain and clarify any relevant circumstances.

14.1.3 Following investigation the Trust will:

- Decide if there has been or is potential for a breach and, if so, what severity of the breach is;
- Assess whether further action is required in response – this is likely to involve any staff member involved and their line manager, as a minimum;
- Consider who else inside and outside the Trust should be made aware; and
- Take appropriate action as set out in the next section.

## 14.2 Taking action in response to breaches

Action taken in response to breaches of this policy will be in accordance with the disciplinary procedures of the Trust and could involve Trust leads for staff support (e.g. Human Resources), fraud and bribery (e.g. Local Counter Fraud Specialists), members of the management or executive teams and auditors.

### 14.2.1 Breaches could require action in one or more of the following ways:

- Clarification or strengthening of existing policy, process and procedures;
- Consideration as to whether HR/employment law/contractual action should be taken against staff or others; and/or
- Consideration being given to escalation to external parties. This might include referral of matters to external auditors, the Police, statutory health bodies (such as NHS England, NHS Improvement or the CQC), and/or health professional regulatory bodies.

### 14.2.2 Inappropriate or ineffective management of interests can have serious implications for the Trust and staff. There will be occasions where it is necessary to consider the imposition of sanctions for breaches.

### 14.2.3 Sanctions should not be considered until the circumstances surrounding breaches have been properly investigated. However, if such investigations establish wrongdoing or fault then the Trust can and will consider the range of possible sanctions that are available, in a manner which is proportionate to the breach. This includes:

- Employment law action against staff, which itself might include:
  - a. Informal action (such as reprimand, or signposting to training and/or guidance); and/or
  - b. Formal disciplinary action (such as a formal warning, the requirement for additional training, re-arrangement of duties, re-deployment, demotion, or dismissal).
- Reporting incidents to the external parties described above for them to consider what further investigations or sanctions might be;
- Contractual action, such as exercise of remedies or sanctions against the body or staff which caused the breach;
- Legal action, such as investigation and prosecution under The Fraud Act and/or Bribery Act.

## 14.3 Learning and transparency concerning breaches

Reports on breaches, the impact of these, and action taken will be considered by the Site Leadership Team at least quarterly.

### 14.3.1 To ensure that lessons are learnt and management of interests can continually improve, anonymised information on breaches, the impact of these, and action taken will be prepared and published on the Trust's Intranet as appropriate, or made available for inspection by the public upon request.

## **15. Review**

This policy will be reviewed in 2 years' time unless an earlier review is required. This will be led by the Company Secretary.

## **16. Monitoring compliance**

Monitoring is via the Audit Committee.

## **17. Training**

Training and education includes communications in staff briefing, screensavers and easy read summaries, also conflicts of interest covered as part of staff induction.

## **18. Approval and Implementation**

11.1 This policy will be approved by the Audit Committee & Trust Board which are the groups with the authority to approve Corporate Governance policies. The policy will be forwarded to the Document Control Team for submission and ratification by the Joint Document Management Group.

11.2 It is the author's responsibility to inform the Audit Committee & Trust Board of the approved policy document when they are uploaded to the Trust's Intranets.

## **19. Equality Impact Assessment**

19.1 The Trust is committed to the provision of a service that is fair, accessible and meets the needs of all individuals.  
(Refer to appendix 1)

## **20. Associated documentation**

Freedom of Information Act 2000

ABPI: The Code of Practice for the Pharmaceutical Industry (2014)

ABHI Code of Business Practice

NHS Code of Conduct and Accountability (July 2004)

**APPENDIX 1: Preliminary Equality Analysis**

This assessment relates to: Conflicts of Interest Policy/MSEPO20233

A change in a service to patients		A change to an existing policy		A change to the way staff work	
A new policy	X	Something else (please give details)			
<b>Questions</b>			<b>Answers</b>		
1. What are you proposing to change?			Harmonise existing site policies into the development of an MSE policy		
2. Why are you making this change? (What will the change achieve?)			MSE standardisation		
3. Who benefits from this change and how?			Staff and patients		
4. Is anyone likely to suffer any negative impact as a result of this change? If no, please record reasons here and sign and date this assessment. If yes, please complete a full EIA.			No		
5. a) Will you be undertaking any consultation as part of this change? b) If so, with whom?			Yes Refer to pages 1& 2		

Preliminary analysis completed by:

<b>Name</b>	Lee Stuckey	<b>Job Title</b>	Head of Health and Safety	<b>Date</b>	14/03/2020
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