

Gifts, hospitality and anti – fraud and bribery Policy

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Introduction

Managing conflicts of interest appropriately is essential for protecting the integrity of NHS Newham Clinical Commissioning Group from perceptions of wrong doing or impropriety including all groups relating to commissioning, contracting and procurement processes and where decision making is required by those members'. The CCG must meet the highest level of transparency to demonstrate that conflicts of interest are managed in a way that does not undermine the probity and accountability of the CCG.

This policy sets out the approach that the CCG will implement to identify, manage and record any potential or actual conflicts of interests that may arise as part of the commissioning of healthcare for Newham CCG. This policy is issued in accordance with statutory guidance under Sections 14O and 14Z8 of the National Health Service Act 2006 (as amended by the Health and Social care Act 2012). The act sets out clear requirements for CCGs to make arrangements for managing actual and potential conflicts of interests, to ensure they do not affect, or appear to affect, the integrity of the CCGs decision making processes. These requirements are supplemented by procurement-specific requirements in the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013. This policy has been drafted with consideration given to the NHS England Guidance on Co-Commissioning, released in December 2014. The revised statutory guidance for CCGs updated in June 2017 has been incorporated.

This policy should be read in conjunction with the CCG's Constitution, the CCG's Conflicts of Interest Policy and Sponsorship Policy. The CCG will ensure that North and East London Commissioning Support Unit (CSU) and other Contractors are aware of the contents of this policy if applicable.

1 Purpose and scope

The purpose of this policy is to provide guidance to staff and office holders on the action that can, or should, be taken in the event that they are offered gifts and/or hospitality, make it clear where the boundaries of acceptable conduct lie and to protect the property and finances of the NHS and of patients in our care.

NHS Newham CCG does not tolerate fraud and bribery within the NHS. This policy applies to all employees of NHS Newham Clinical Commissioning Group (NCCG), any staff who are seconded to NCCG, contract and agency staff and any other individual working on NCCG premises. This Policy also applies to NCCG Office Holders, e.g. Members of the Governing Board and its Committees/Sub-Committees including all groups relating to commissioning, contracting and procurement processes and where decision making is required by those members

The CCG will ensure that North and East London Commissioning Support Unit (CSU) and other Contractors are aware of the contents of this policy if applicable. Where an individual fails to comply with this policy disciplinary action may be taken in accordance with the CCG's Disciplinary Policy and its Constitution. The CCG's disciplinary policy is located on the staff intranet and on the CCG's website

2 Responsibilities

Party	Key Responsibilities
Director of Partnerships & Governance	<ul style="list-style-type: none">• Monitor and ensure compliance with this policy.• Advising staff / Office Holders on the contents of this policy.• Providing guidance for staff / Office Holders on refusal or acceptance for gifts or hospitality.• Maintaining a central register of gifts and hospitality.

	<ul style="list-style-type: none"> • Receive declarations for inclusion in the Gifts and Hospitality Register. • Ensure that this policy is compliant with pertinent legislation and guidance.
All Managers	<ul style="list-style-type: none"> • Ensuring that their staff are aware of, and adhere to, this policy. • Make declarations of receipt of gifts or hospitality where required. • Provide advice and guidance to staff on the receipt of gifts / hospitality in the first instance, and • Consult the Director of Partnerships & Governance where additional guidance is required.
All Staff	<ul style="list-style-type: none"> • Ensuring they are aware of, and follow this policy. • Make declarations of receipt of gifts or hospitality where required in consultation with their line manager. • Refuse gifts, inducements or hospitality other than items of modest value. • Staff with authority to commit expenditure must declare any relevant and material interests. • Do not use your official position for private gain. • Respect confidentiality of business information. • Act in accordance with the seven Nolan principles (See Appendix 1) on standards in public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
Local Counter Fraud Specialist	<ul style="list-style-type: none"> • The LCFS's role is to ensure that all cases of actual or suspected fraud and bribery are notified to the Chief Financial Officer and reported accordingly. • Investigation of the majority cases of alleged fraud within NCCG • The LCFS will regularly report to the Chief Financial Officer on the progress of investigations and when/if referral to the police is required. • The LCFS and the Chief Financial Officer, in conjunction with NHS Protect, will decide who will conduct investigations and when/if referral to the police is required.
Office Holders	<ul style="list-style-type: none"> • The NCCG Governing Board has also determined that Office Holders (e.g. members of Committees/Sub-Committees) must comply with this policy.

<p>Commissioning Leads and Procurement Leads</p>	<p>Commissioning Leads and Procurement Leads and any staff leading on any relevant procurements within the CCG must ensure that bidders, contractors and direct service providers adhere to this policy, and that</p> <p>the service re-design and procurement processes used by the CCG reflect the procedures set out in this policy.</p>
<p>Lay Member for Governance and Audit Chair</p>	<p>The Chair of the Audit Committee has a lead role in ensuring that the Governing Body and the wider CCG behaves with the utmost probity at all times. The Chair of Audit Committee oversees key elements of governance including the appropriate management of conflicts of interest. In addition they will provide a view of the working of the CCG with a strategic and impartial focus and will take the Chair's role for discussions and decisions where the Chair has made a declaration of interest and has to withdraw from a meeting due to the conflict.</p>
<p>General Practitioners (GPs)</p>	<p>Following guidance from The General Medical Council (GMC) the CCG will ensure that any GPs with a responsibility for or involvement in</p> <p>commissioning of services must:</p> <ul style="list-style-type: none"> • Satisfy themselves that all decisions made are open, fair and transparent and comply with legislation. • Keep up to date and follow the guidance and codes of practice that govern the commissioning of services. • Formally declare any interest that they, or someone close to them, including their business partner, or their employer has in a provider company. • Take steps to manage any conflict between their duties as a GP and their commissioning responsibilities, for example by excluding themselves from the decision. • Take steps to manage any conflict between their duties as a GP and their commissioning responsibilities, for example by excluding themselves from the decision making process and any subsequent monitoring arrangements.

3 Definitions

3.1 Gifts

A gift is defined as 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.

All gifts of any nature offered to CCG staff, board and committee members and individuals within GP member practices by suppliers or contractors linked (currently or prospectively) to the CCGs business should be declined, whatever their value (subject to this, low cost branded promotional aids may be accepted and not declared where they are under the value of a common industry

standard of £6). The person to whom the gifts were offered should also declare the offer to the Director of Partnerships & Governance so the offer which has been declined can be recorded on the register.

Gifts offered from other sources should also be declined if accepting them might give rise to perceptions of bias or favouritism, and a common sense approach should be adopted as to whether or not this is the case:

- CCG staff should not ask for any gifts
- Gifts of cash and vouchers (e.g. vouchers, tokens, offers of remuneration to attend meetings whilst in a capacity working for or representing the CCG) to individuals must always be declined, whatever their value and whatever their source, and the offer which has been declined must be declared
- Modest gifts under a value of £50 may be accepted and do not need to be declared
- Gifts valued at over £50 should be treated with caution and only be accepted on behalf of an organisation (ie a charity). These must 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.

3.2 Hospitality

A blanket ban on accepting or providing hospitality is neither practical nor desirable from a business point of view. However, individuals should be able to demonstrate that the acceptance or provision of hospitality would benefit the NHS or CCG.

Modest hospitality provided in normal and reasonable circumstances may be acceptable, although it should be on a similar scale to that which the CCG might offer in similar circumstances (e.g., tea, coffee, light refreshments at meetings). A common sense approach should be adopted as to whether hospitality offered is modest or not. Hospitality of this nature does not need to be declared to the Director of Partnerships & Governance, nor recorded on the register, unless it is offered by suppliers or contractors linked (currently or prospectively) to the CCG's business in which case all such offers (whether or not accepted) should be declared and recorded.

Meals and refreshments:

- Under a value of £25 - may be accepted and need not be declared.
- Of a value between £25 and £75 - may be accepted and must be declared.
- Over a value of £75 - should be refused unless (in exceptional circumstances) senior approval is given. A clear reason should be recorded on the CCG's register 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).

Travel and accommodation:

- 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.
- Offers which go beyond modest, or are of a type that the CCG 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 CCG's register of interest as to why it was permissible to accept travel and accommodation of this type. A non-exhaustive list of examples includes:
 - offers of business class or first class travel and accommodation (including domestic travel)
 - offers of foreign travel and accommodation.

There may be some limited and exceptional circumstances where accepting the types of hospitality referred to in this paragraph may be contemplated. Express prior approval should be sought from a senior member of the CCG (e.g. the Director of Partnerships & Governance or equivalent) before accepting such offers, and the reasons for acceptance should be recorded in the CCGs register of gifts and hospitality. Hospitality of this nature should be declared to the Director of Partnerships & Governance and recorded on the register, whether accepted or not. In addition, particular caution should be exercised where hospitality is offered by suppliers or contractors linked (currently or prospectively) to the CCG's business. Offers of this nature can be accepted if they are modest and reasonable but advice should always be sought from a senior member of the CCG (e.g. the the Director of Partnerships & Governance or equivalent) as there may be particular sensitivities, for example if a contract re-tender is imminent. All offers of hospitality from actual or prospective suppliers or contractors (whether or not accepted) should be declared and recorded.

Covers a wide spectrum and can include: Free meals, drinks, receptions, meetings sponsored by drug companies, hospitality tents at shows, exhibitions or conferences, music and cultural events, sport and leisure events, particularly golf competitions, use of company facilities, hotel accommodation and holidays.

3.3 Sponsored events

Newham CCG has decided that, as a commissioning organisation, offers of sponsorship from any provider or potential provider of any health goods or service or other form of good or service should not be accepted as a matter of principle.

4 Guiding documentation

The key piece of legislation governing this policy is the Bribery Act 2010. This is summarised below:

4.1 The Bribery Act 2010

Under the Bribery Act 2010 it is a criminal offence to:

- Bribe another person by offering, promising or giving a financial or other advantage to induce them to perform improperly a relevant function or activity, or as a reward for already having done so, and
- Be bribed by another person by requesting, agreeing to receive or accepting a financial or other advantage with the intention that a relevant function or activity would then be performed improperly, or as a reward for having already done so.

These offences can be committed directly or by and through a third person and, in many cases, it does not matter whether the person knows or believes that the performance of the function or activity is improper.

It is, therefore, extremely important that staff adhere to this and other related documentation ([See Associated CCG documentation](#)) when considering whether to offer or accept gifts and hospitality and/or other incentives.

4.2 Pharmaceutical Companies

All private companies must now adhere to the Bribery Act 2010. Where pharmaceutical companies are involved, inducements and hospitality must comply fully with the Medicines (Advertising) Regulations 1994 (regulation 21 'Inducements and hospitality'.

Any person who contravenes regulation 21(1) is guilty of an offence, and liable, on summary conviction to a fine not exceeding £5000, and on conviction on indictment to a fine, or to imprisonment for a term not exceeding two years, or both. Anyone contravening regulation 21(5) is also guilty of an offence and is liable, on summary conviction to a fine not exceeding £5000'. The

Medicines Control Agency (MCA) Guidelines on Promotion and Advertising set out the standards to be followed.

If an offer received is contrary to the above, details should be sent to the Director of Partnerships & Governance who will take up the matter with the company concerned.

5 Policy

5.1 Introduction

NCCG manages a large commissioning budget. It is therefore imperative for office holders to not place themselves in a position where it appears their judgment has been compromised through the acceptance of inappropriate gifts or hospitality.

In some circumstances the acceptance of a gift from an organisation or individual could appear to influence the action of a member of staff and compromise the member of staff's position. This is because a gift is never really a gift; there is always an element of mutuality.

The standards that the public demand from their office holders are high and the great majority of people in public life meet those high standards. However it is imperative that a clear policy outlining where the boundaries of acceptable conduct lie is made available.

This policy sets out some guiding principles covering the acceptance of gifts and hospitality, including references to interests in contracts. It does not provide for every eventuality and, therefore, staff/Office Holders should not hesitate to seek advice from their Line Manager or the Director of Partnerships & Governance.

The action of all CCG staff and Office Holders must not give rise to, or foster the suspicion that they have been, or may have been, influenced by a gift or consideration to show favour or disadvantage to any person or organisation. Staff/Office Holders must not allow their judgement or integrity to be compromised in fact or by reasonable implication.

NCCG is committed to taking all necessary steps to counter fraud and bribery. To meet its objectives, it has adopted the seven-stage approach developed by NHS Protect:

- the creation of an anti-fraud culture
- maximum deterrence of fraud
- successful prevention of fraud which cannot be deterred
- prompt detection of fraud which cannot be prevented
- professional investigation of detected fraud
- effective sanctions, including appropriate legal action against people committing fraud and bribery, and
- effective methods of seeking redress in respect of money defrauded.

NCCG will take all necessary steps to counter fraud and bribery in accordance with this policy, the NHS Anti-Fraud Manual, the policy statement 'Applying Appropriate Sanctions Consistently' published by NHS Protect and any other relevant guidance or advice issued by NHS Protect.

5.2 Policy statement

As a general rule the CCG believes that:

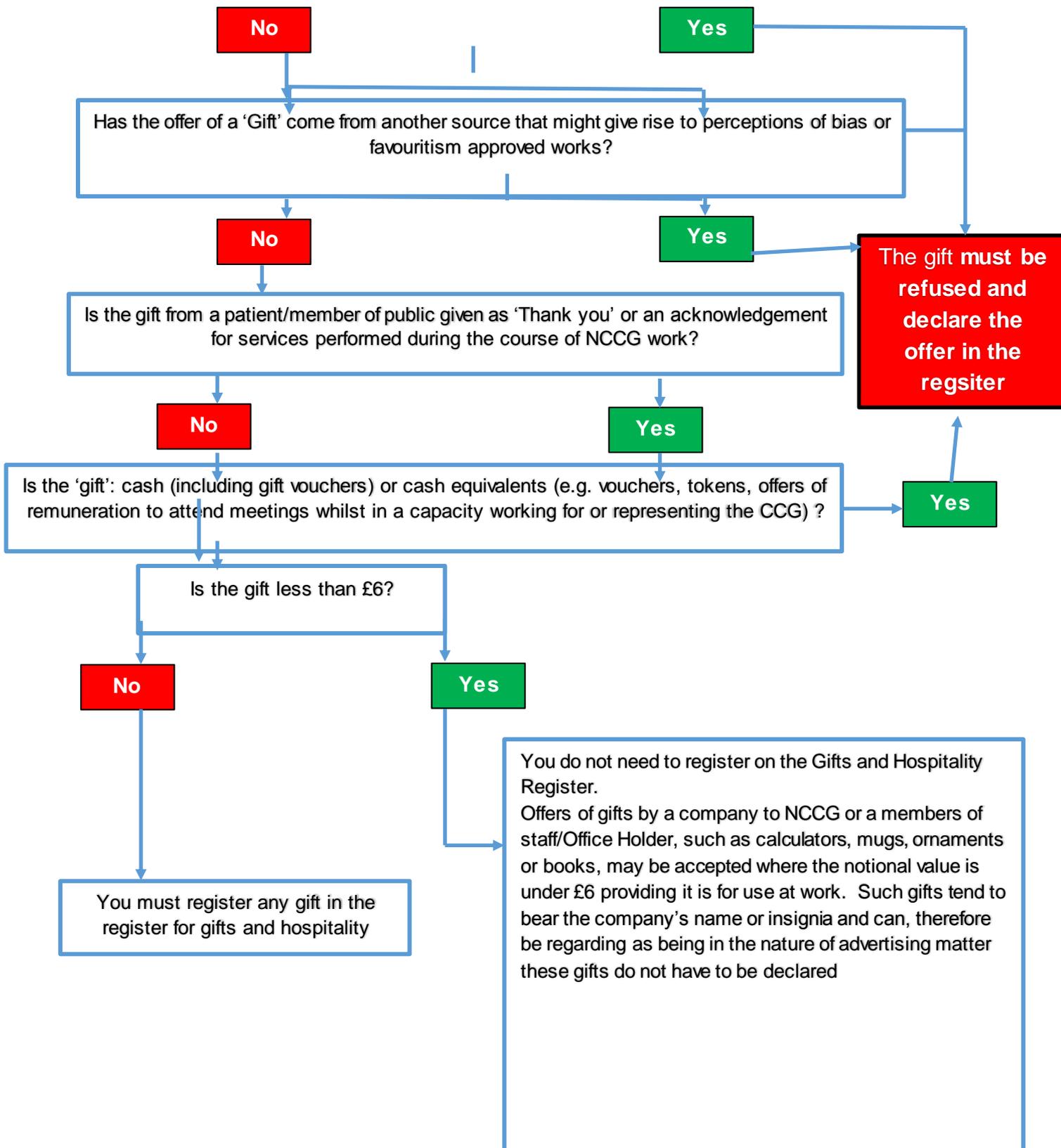
Gifts or offers of hospitality must be refused if there could be any doubt about the propriety of accepting them.

If in any doubt at all as to whether or not to accept gifts or hospitality, staff/Office Holders should immediately seek the advice of their Line Manager or the Director of Partnerships & Governance.

5.3 Guide to Gifts and Hospitality – Refusal and Acceptance

The following flow charts outline NCCG’s policy and procedure with regard to gifts and hospitality; including from patients and colleagues.

Has the offer of a ‘Gift’ to a member of staff, board member or clinical/cluster lead or individuals within GP member practices come from a supplier or contractors (current or prospective) linked to the CCG’s business (whatever the value),



The CCG document '[THCCGCGO0020 Register of Gifts and Hospitality Declaration Form](#)' is attached as [Appendix 2](#) to this document and is available on request from the [Director of Partnerships & Governance](#).

If in any doubt at all as to whether or not to accept gifts or hospitality, staff/Office Holders should immediately seek the advice of their Line Manager or the Director of Partnerships & Governance.

5.4 Gifts from patients / members of the public

Offers of gifts (e.g. flowers, chocolates, etc. but not cash/gift vouchers) by members of the public to staff may be accepted where the notional value is less than £10 when given as acknowledgment for services performed in the course of their work.

Whilst such gifts do not have to be declared, the CCG records them as a means of providing a balance to complaints. They should, therefore, be reported.

If in any doubt at all as to whether or not to accept gifts or hospitality, staff/Office Holders should immediately seek the advice of their Line Manager or the Director of Partnerships & Governance.

Where an individual believes they have been offered a generous gift to secure preferential treatment for a patient the gift should both be refused and declared, and the Director of Partnerships & Governance should be informed.

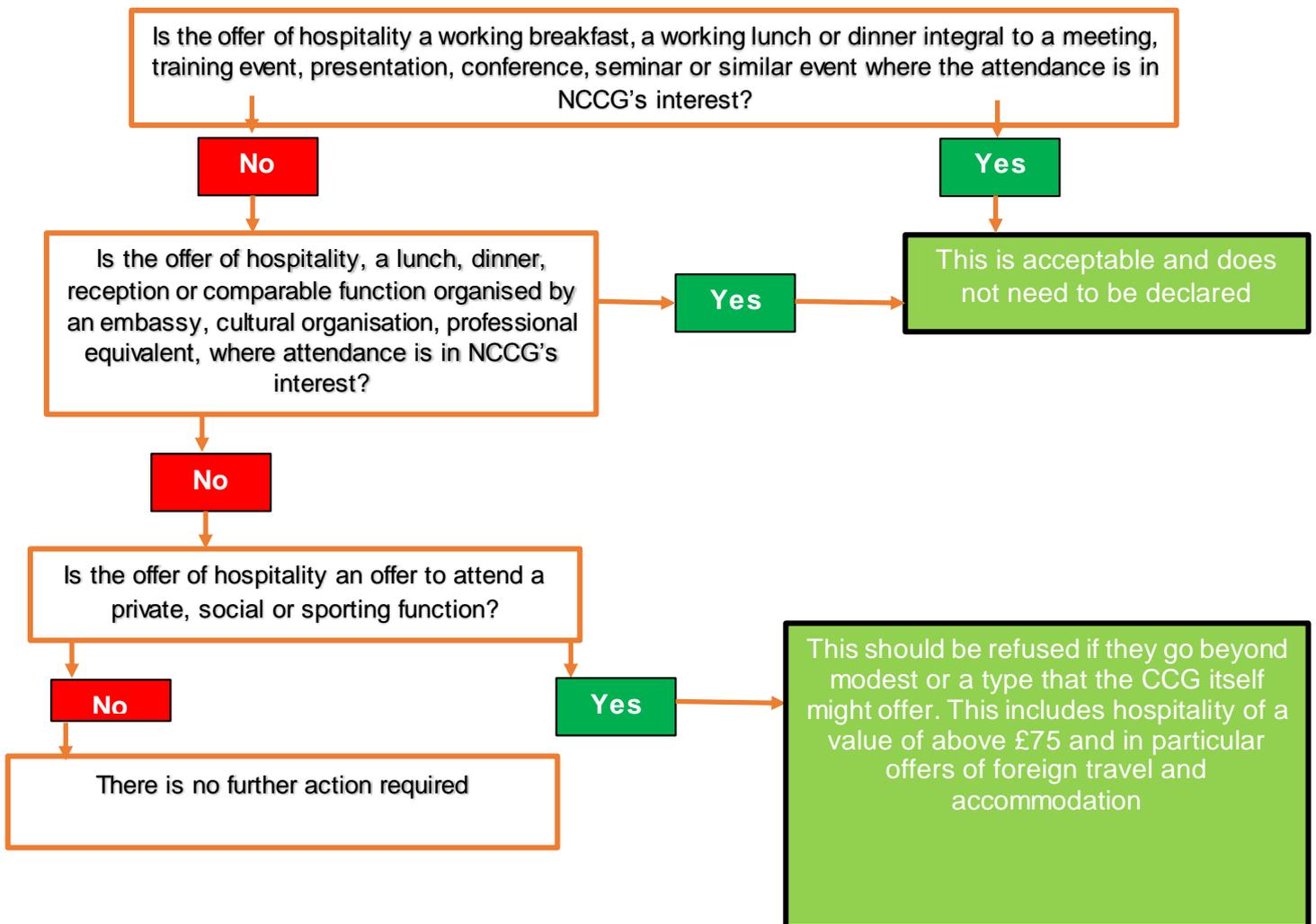
5.5 Gifts from Office holders or work colleagues.

Gifts given by Office Holders/work colleagues to other Office Holders/work colleagues are, of course, acceptable and do not have to be declared.

If in any doubt at all as to whether or not to accept gifts or hospitality, staff/Office Holders should immediately seek the advice of their Line Manager or Director of Partnerships & Governance.

5.6 Guide to other Hospitality/Offers of Hospitality - Refusal and Acceptance

The Bribery Act 2010 does not prevent companies from providing hospitality provided it is 'reasonable' and 'proportionate'. The CCG will, therefore, continue to receive offers. The CCG approach to accepting hospitality is summarised below:



Attendance at relevant company sponsored conferences is acceptable where it is clear that the hospitality is corporate rather than personal and any possible purchasing decisions are not compromised. However, prior approval is required.

When receiving authorised hospitality, staff/Office Holders should be particularly sensitive as to its timing in relation to decisions which NCCG may be taking affecting those providing the hospitality. However, account must be taken of the nature of the relationship between NCCG and the organisation concerned and the scale of the hospitality offered. If there is any doubt the offer should be declined.

All other offers of hospitality should be declared to your line manager, or the Director of Partnerships & Governance who will recommend refusal or acceptance.

If refusal is recommended, then arrangements should be made for the hospitality to be refused at the earliest opportunity with an appropriate explanation.

6 Gifts and Hospitality Register

The Gifts and Hospitality Register is maintained by the Director of Partnerships & Governance. Particular mention should be made if:

- The Gifts/Hospitality were offered to, or received by, staff/Office Holders in any part of a procurement process, and

- The Gifts/Hospitality were offered by companies, or other organisations, with which the CCG has a contractual, grant giving or regulatory relationship, or is actively considering such a relationship.

7 Penalties

This policy describes conduct which staff/Office Holders are expected to observe. Failure to do so could render an individual liable to disciplinary proceedings and may lead to criminal proceedings under the Bribery Act 2010.

Fraud is defined as if fraud and /or corruption are suspected, the matter must be reported immediately to the CCGs Local Counter Fraud Specialist of the Chief Finance Officer. Contact details for these individuals can be found on the CCG's webpage.

8 Fraud and Corruption

If fraud and /or corruption are suspected, the matter must be reported immediately to the CCGs Local Counter Fraud Specialist of the Chief Finance Officer. Contact details for these individuals can be found on the CCG's webpage.

Alternatively, staff may report any suspicions via the Whistleblowing Policy.

9 Bribery Act

9.1 What is the Bribery Act?

The Bribery Act 2010 reforms the criminal law of bribery, making it easier to tackle this offence proactively in the public and private sectors.

It introduces a corporate offence which means that commercial organisations will be exposed to criminal liability, punishable by an unlimited fine, for negligently failing to prevent bribery. It repeals the UK's existing anti-corruption legislation – the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Acts of 1906 and 1916 and the common law offence of bribery – and provides an updated and extended framework of offences to cover bribery both in the UK and abroad.

A copy of the Act can be found here: <http://www.legislation.gov.uk/ukpga/2010/23/contents>
Accompanying explanatory notes and other publications can also be found on the NHS Protect intranet: <http://www.nhsbsa.nhs.uk/3354.aspx>

9.2 When did it come into force?

The Bribery Act received Royal Assent in April 2010 and came into force on 1 July 2011.

9.3 Why is it relevant to NHS organisations, professionals and staff?

9.3.1 Professionals and staff

For the purposes of the Bribery Act, a 'trade' or 'profession' is considered a business. This means that, whether individually or in partnership, GPs, pharmacists, dental practitioners, opticians, finance professionals, etc. will also be subject to and personally liable under the Bribery Act.

9.4 Why is it relevant to the NHS Protect?

The remit of NHS Protect includes preventing, detecting and investigating fraud and bribery in the health service. It is stated in the Standards for Providers that both offences must be tackled.

9.5 What is bribery?

Bribery is generally defined as giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so.

9.6 What are the key provisions of the Bribery Act?

The Bribery Act sets out four offences:

Section 1 - Offering, promising or giving a bribe to another person to perform a relevant 'function or activity' improperly, or to reward a person for the improper performance of such a function or activity.

Under the Bribery Act, a 'relevant function or activity' is any function of a public nature or any activity connected with a business, performed in the course of a person's employment or performed by or on behalf of a body of persons, whether corporate or unincorporated, which meets one or more of the following conditions:

- a person performing the function or activity is expected to perform it in good faith
- they are expected to perform it impartially
- they are in a position of trust by virtue of performing it.

Section 2 - Requesting, agreeing to receive or accepting a bribe to perform a function or activity improperly, irrespective of whether the recipient of the bribe requests or receives it directly or through a third party, and irrespective of whether it is for the recipient's benefit.

Section 7 - Failure of a commercial organisation to prevent bribery (the corporate offence). This is a 'strict liability'* offence and an organisation can be found guilty of 'attempted' or 'actual' bribery on the organisation's behalf. It should be noted that Section 1 or section 6 needs to be proven for a section 7 offence to apply.

Section 14 – Offering or receiving a bribe or bribing foreign official. This section applies if an offence under sections 1, 2 or 6 is committed by a body corporate.

** Strict liability offences do not require proof of intention or recklessness – in other words, it is not necessary for the prosecution to show that the company intended to make the bribe in bad faith, or that it was negligent as to whether any bribery activity took place.*

9.7 Who can be prosecuted under the Bribery Act?

Any individual associated with an organisation who commits acts or omissions forming part of a bribery offence may be liable for a primary bribery offence under the Act or for conspiracy to commit the offence with others – including, for example, their employer.

Likewise, a senior management or Governing Body member who consented to or connived in a section 1 or 6 bribery offence will, together with the organisation, be liable for the section 7 'corporate offence' under the Act.

9.8 Who will investigate and prosecute these new offences?

No proceedings for an offence under the act may be commenced in England and Wales except by or with the personal consent of the Director of Public Prosecutions, the Director of the Serious Fraud Office or the Director of Revenue and Customs Prosecutions.

9.9 What penalties can be imposed?

An offence under section 1 (bribing another person) or section 2 (being bribed):

- A person guilty of an offence under these sections is liable, on summary conviction (i.e. if tried in a magistrates' court) to imprisonment for a term not exceeding 12 months (subject to section 11(4)(a)), a fine not exceeding the statutory maximum, or both. On conviction on indictment (i.e. in Crown Court), they are liable to imprisonment for a term not exceeding 10 years, a fine, or both.
- Any person associated with the organisation in question (this could be an agent or subsidiary of the organisation as well as an employee) who is guilty of an offence under these sections is liable, on summary conviction, to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

An offence under section 7 (failure of commercial organisations to prevent bribery):

- An organisation guilty of an offence under this section is liable, on conviction on indictment, to a fine. (NB: Even if an organisation has delegated the relevant activities a named individual, it remains responsible for them.)

A 'twin-track' approach can be used to take action against an individual under section 1 and an organisation under section 7 simultaneously.

9.10 What can NHS organisations do to comply?

An organisation will have to show that it has implemented 'adequate procedures' designed to prevent individuals associated with that organisation from engaging in bribery in order to avoid liability.

9.11 What is meant by ‘adequate procedures’?

This relates to relevant compliance protocols and procedures that a commercial organisation can put in place to prevent bribery by individuals associated with it. This might include training, briefing or new internal procedures. The adequate procedures will constitute a ‘complete defence’ for an organisation.

Under the Bribery Act, a person is considered to be associated with a commercial organisation if they perform services for it or on its behalf. This person can be an individual or an incorporated or unincorporated body.

9.12 Is there any guidance on what constitutes adequate procedures?

The Bribery Act requires the Secretary of State for Justice to publish guidance about procedures that relevant commercial organisations can put in place to prevent individuals associated with them from engaging in bribery. The two pieces of guidance were published in April 2011. The full guidance can be found at <http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf> whilst the quick-start version can be found at <http://www.justice.gov.uk/guidance/docs/bribery-act-2010-quick-start-guide.pdf>. NHS Protect has also issued guidance as part of its Bribery Act guidance and training package. These documents are available on the NHS Protect secure extranet.

9.13 What should I do if I suspect bribery is occurring?

Staff should report any suspicions or allegations of bribery immediately to one of the following:

- their Local Counter Fraud Specialist
- their organisation’s whistleblowing function
- the relevant regional Area Anti-Fraud Specialist
- the NHS Fraud and Corruption Reporting Line (0800 028 40 60) or the online fraud reporting form
- at www.reportnhsfraud.nhs.uk

Appendix 1: The Nolan Principles

The Nolan Committee set out '**Seven Principles of Public Life**' which it believed should apply to all in the public service. These Principles have been adopted by the CCG Governing Body. The principles are:

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other 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 seek to 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 rewards and 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 that 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.

Appendix 2: Register of Gifts and Hospitality Declaration Form

Register of Gifts and Hospitality Declaration Form

[Period]

Please ensure that one of these forms is completed for each and any instance of gifts, hospitality, consultancies, sponsorship, and support for travel, education and training. Please refer to the Policy on gifts and hospitality for guidance on what should be declared.

Name of Declarer:	
-------------------	--

Describe below acceptance of the offer. Include a value if known. Examples may include support from a commercial company for travel to a conference, payment for consultancy advice, or invitations to sporting events or meals. Casual gifts and modest hospitality are regarded as being valued at no more than £6 and declarations for this are not required.	
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Details of provider/company	
-----------------------------	--

Was the offer accepted or declined?	
-------------------------------------	--

Reason for acceptance/refusal	
-------------------------------	--

Disposal method e.g. gift has been donated to charity	
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I certify that the information I have given in this declaration form is correct and to the best of my knowledge. Should it later be discovered that I have given false information in order to obtain an advantage, I understand that my employment could be terminated by dismissal and that I may be subject to criminal investigation.

Declarer signature	Date
--------------------	------

Name and title

Please note that if there is any likelihood of a conflict of interest, you must discuss the issues with your line manager who should co- sign this form before it is sent into the Director of Partnerships & Governance

Scenario 1

A GP is also a member of the CCG Governing Body, and sit on the panel for making procurement decisions. The CCG tenders for paediatric services, and the practice partner of the GP has a financial interest in one of the providers bidding for work.

Threats:

- The GP member has failed to declare the business interest of their GP partner. Were they to then influence the procurement process to award the contract to their business partner, it could be construed that they have abused their position in order to make a gain for another.
- The GP member has declared the interest of the business partner, but is still allowed to hold decision-making powers in the procurement process. If the business partner is then awarded the contract this could lead to accusations of favouritism in the process and a challenge on the fairness of the process.

Solution:

First and foremost, the GP member should be required to declare all interests held by themselves or their business partners and spouses, which have relevance to the health sector, in line with the CCG policy. Secondly, there should be a clear process for linking declarations of interest to the procurement process, and declarations of individuals involved in the procurement process should be checked each time a procurement involving those individuals is undertaken.

The CCG should also remove the GP member from any decision-making process. The GP member may be able to add value to the procurement process from a technical point of view, but should not be part of the final decision-making process. Their contribution to the process should be clearly noted throughout by the CCG.

If technical expertise is required in the procurement process, but the only person able to offer the expertise is the individual with the conflict, the CCG can consider seeking the expert advice from a source unconnected to the CCG (essentially seeking consultancy services).

Utilising an independent expert further protects the CCG from any future challenge from any party who may wish to challenge the decision making process as to the award of any contract. Additionally the CCG can demonstrate that it has acted fairly and transparently and applied adequate procedures in line with Ministry of Justice guidance.

Scenario 2

A contracts manager for a CCG is involved in the process of tendering for the design of a new corporate logo. The tender process has not been completed and no final decision has been made. The manager and a colleague have been invited by one of the companies tendering, to a rugby game. For the past few years the colleague, in their own time, has been regularly attending design workshops offered by the company. The colleague is not on the tender panel, nor are they involved in the decision-making process for that tender. The Contracts Manager, however, will be.

Threats:

- Even though the colleague is not involved in the tender process, they may be perceived to have influence as they have an association with one of the companies tendering, and work in the department that will be determining the outcome of the tender.
- The contracts manager is in a decision-making position and acceptance of hospitality from one company, and not others, may be construed as influencing their ability to be impartial in carrying out their public duty to award the tender.

Solution:

The contracts manager and their colleague should follow the CCG policy relating to gifts and hospitality which they are bound by. To avoid any perception of a conflict of interest, it would be wise for the colleague to disclose their previous association with the company to the CCG. It is also advisable for the offer of gifts and hospitality to be declared to the CCG by both individuals in advance of acceptance, so that challenge can be made if required, and a determination as to whether the offer can be accepted can be made independently.

If the contracts manager accepts the hospitality, the CCG should request that the contracts manager restrict their involvement by refraining from being part of the decision-making in the tender process.

This enables the CCG to demonstrate they have considered any undue influence on the process and have acted accordingly to ensure a fair and transparent process.

Scenario 3

A procurement process is underway to award contracts for a number of community physiotherapy services. One of the potential providers approaches a GP with a large influence within the CCG. The provider offers to pay for the use of the GP's practice to undertake the physiotherapy services, in exchange for the awarding of a number of the contracts. The provider has actually put forward a strong tender to the CCG for the contracts, and has a good chance of successfully winning a percentage of the contracts.

Threats:

- If the approach from the provider is not reported to the CCG or the Local Counter Fraud Specialist by the GP, and the provider who sought to influence the procurement outcome is awarded contracts, there may be allegations made that the procurement process is not fair and that individuals have received incentives to reach a decision. These allegations would cause serious damage to the CCG's reputation, even if the GP had not exercised any influence over the process.
- Regardless of the strength of the provider's tender bid, by making inappropriate offers of incentives, the provider has demonstrated they are not adhering to the Bribery Act 2010 and therefore could be considered as an unsuitable provider.

Solution:

The GP should immediately report the approach to the CCG and/or the Local Counter Fraud Specialist. The CCG should allow the LCFS to make enquiries to determine whether there is any substance to the allegation of 'offering a bribe or incentive', to influence the behaviour of the GP. Depending on the outcome of the LCFS enquiries, a decision should be made by the CCG as to whether to exclude the provider from the tender process.

If the GP fails to report the offer of a bribe, and this subsequently comes to light, the CCG should direct the LCFS to investigate both parties accordingly.

Real-Life Case Studies

Since the implementation of the Bribery Act there have been three successful prosecutions in the United Kingdom as follows:

- The first case concerned Munir Patel, 22 who was handed a three-year prison term for bribery and ordered to serve six years concurrently for misconduct in a public office. He helped more than 50 offenders avoid prosecution in exchange for sums of up to £500 in relation to speeding fines and other court related matters.
- The second case concerned Mr Mawia Mushtaq, who became the first person to be successfully prosecuted under the Act for offering (as opposed to receiving a bribe). Having failed a driving test before an Oldham Council licensing officer necessary to secure a taxi licence, Mr Mushtaq offered the sum of £200 (later increased to £300) if the result of the test were changed to a pass. The officer was not so easily corrupted as Mr Patel. He refused the bribe and reported the matter to his manager and later the police. Mr Mushtaq was sentenced to 2 months imprisonment, suspended for 12 months.
- The third case concerned a Mr Yang Li. Mr Li, a Masters student at the University of Bath, was unsatisfied with the 37% mark he was awarded for a 12,000 word essay; the pass mark was 40%. He was given three options by his professor: appeal the mark; resubmit the essay; or withdraw from the course. Mr Li proposed a fourth option. He placed £5,000 on the table, stated that he was a “businessman” and told the professor he could keep the money if the mark was raised. The professor refused. As Mr Li replaced the money in this pocket, he dropped an imitation firearm on the floor, which had presumably been brought as a back-up in case his first attempt at coercion was unsuccessful. The police were called in and Mr Li was prosecuted. In April 2013, Mr Li was jailed for 12 months (both for the attempted bribery and for possession of an imitation firearm) and ordered to pay £4,800 in costs.

Parallels can be drawn with these cases which relate to NHS services, for example those staff involved in the Procurement cycle being offered lavish ‘entertainment’ prior to a tender to persuade them to choose a particular supplier/contractor above another.

The individual responsible would no doubt suffer similar consequences as the persons named above, however the corporate offence of failing to prevent bribery could also be implied if the CCG has not taken adequate procedures to mitigate against its risk of ‘negligently failing to prevent a bribe’.