CONFLICTS OF INTEREST POLICY
**Conflicts of Interest Policy**

**Lead Officer**: Nicola Lester, Director of Corporate Affairs

**Purpose of document**: This policy sets out how the CCGs will manage conflicts of interest.

**Status**: Final

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**Author(s)**: Kate Holmes/Nicola Lester/Russell Carpenter

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**Review Date**: Annual

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### Version Control Summary

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<th>Date &amp; Version</th>
<th>Author</th>
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<td>Jan 2014 v1.0</td>
<td>Kate Holmes</td>
<td>Approved. For review Jan 2015</td>
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<td>Dec 2014 v2.0</td>
<td>Nicola Lester</td>
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<td>Jan 2015 v2.2</td>
<td>Nicola Lester</td>
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<td>28th Jan 2015 v2.2</td>
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<tr>
<td>20th July 2015 v2.3</td>
<td>Nicola Lester</td>
<td>Changes proposed to reflect Internal Audit recommendations. For Audit meeting on 29th July.</td>
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<tr>
<td>27th Sept 2016 v2.4</td>
<td>Russell Carpenter</td>
<td>Re-write and changes to reflect new NHS England Guidance</td>
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<tr>
<td>13th June 2017 v 2.5</td>
<td>Russell Carpenter</td>
<td>Amendments to breaches section post internal audit report findings and published of revised NHSE England guidance for CCGs June 2017. Director of Corporate Affairs changed to Deputy Accountable Officer. New CCG logos. Updated policy not subject to additional approval post ratification by Governing Bodies 13/10/2016. Updated requirement for “nil returns” at six monthly reviews.</td>
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<tr>
<td>21 June 2017 v 2.6</td>
<td>Russell Carpenter</td>
<td>Following updated NHS England guidance June 2017: Sections 4.2 and 6: Switch from six monthly to annual reviews. Section 14: inclusion of breach definition. Only decision making staff now requires declarations to be published. CCG staff Band 8 and above published to capture those groups of staff that have a material influence on how taxpayers’ money is spent. All other registers remain the same. Further update on “decision-making staff” whose declarations would be published on CCG websites, and capture of CSU staff declarations</td>
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1. Introduction

1.1 Purpose and Scope

This policy applies to Aylesbury Vale and Chiltern Clinical Commissioning Groups (the CCGs) and sets out how the CCGs will manage conflicts of interest. It will not always be possible to avoid conflicts of interest. However, by recognising where and how they arise, and dealing with them appropriately, commissioners will be able to ensure proper governance and demonstrate that decision-making is appropriate.

This policy should be read in conjunction with the CCGs’ constitutions (specifically the relevant section on conflicts of interest), and the policies on standards of business conduct, whistleblowing, gifts and hospitality, counter fraud and bribery, and the disciplinary procedure.

This policy applies to all individuals, whether Members, employees or appointed individuals who are working for the CCGs, and persons serving on committees and other decision-making groups established by the CCGs (including representatives of third-party organisations and members of the public). It also applies to any relevant ‘in attendance’ members; that is, any individual who sits on a committee or acts in an advisory capacity.

1.2 Objectives

This policy outlines:

- How the CCGs and member clinicians in commissioning roles work within legal frameworks (including the Bribery Act 2010) to demonstrate transparency, fairness and probity in decision making and to ensure that they do not seek advantage.

- How conflicts of interest – personal and business interests that are perceived or actual – must be declared by members of committees, member practices, employees and others such as contractors. This applies declarations at meetings and for inclusion on published registers.

- The processes in place to manage declarations and maintain published registers of interests on CCG websites.

1.3 Legal requirements

The consequences of failing to manage conflicts of interest properly could have significant implications both legal and reputational. All individuals impacted by this policy should act in good faith and in the interests of the CCGs. Furthermore, they should reflect the expectations set out in the Standards for Members of NHS Boards and Clinical Commissioning Groups and act in accordance with the Nolan Principles and other internal documents as listed in section 1.1. Non-compliance with this policy will be investigated by the Audit Committee. Any individual failing to comply with the policy may face disciplinary action.

1.4 Review

This policy will be reviewed annually, or otherwise when new guidance is published which prompts it earlier. The Audit Committee will review this policy in tandem with annual internal audit of management of conflicts of interest in accordance with guidance provided by NHS England. The Audit Committee will also oversee
quarterly self-certification of compliance to NHS England and an annual assessment as part of the NHS England integrated assurance framework for CCGs.

2. Definition of an interest

This is documented in statutory guidance published by NHS England (December 2014, updated June 2016), pages 13 to 17, and in Question and Answer documents for both primary care and CCG employees.


G:\AVCCG CCG SCWCSU\Statutory Documents\Conflicts of Interest

- Declarations of Interest – primary care FAQ
- Declarations of Interest – CCG employees FAQ

3. Principles

A number of principles for good governance to be considered when discharging this policy include:

- The Seven Principles of Public Life (commonly known as the Nolan Principles);
- The Good Governance Standards of Public Services;
- The Seven Key Principles of the NHS Constitution;

4. Declarations

4.1 Requirements

National statutory guidance also includes how interests should be identified and managed, and templates for declaration. NHS England’s template declaration form also describes the types of interest to be declared:


GP member practices/GP Partners must also declare any interest that they would be required to declare in accordance with paragraphs 10-13 of the GMC’s Financial and Commercial Arrangements and Conflicts of Interest (2013) or any successor guidance.

Any nursing staff must declare any interest that they would be required to declare in accordance with paragraph 21 (Uphold your position as a registered nurse or midwife) of the NMC’s publication Code of Professional Conduct or any successor Code.
For CCG lay members of the Governing Body, there is additional criteria that disqualify people from being appointed as per Regulation 12(6) of the NHS Clinical Commissioning group) Regulations 2012.

4.2 At appointment and on annual review

All applicants for roles on the Governing Body and Executive Committee should be tested for conflicts of interest before appointment (see section 8 for further detail). All members of CCG committees and employees will also be required to complete a declaration on appointment. These declarations will be transferred to registers published on CCG websites, to be reviewed annually.

Where an individual changes role or responsibility within the CCG any change to the individual’s interest should be declared as soon as they are aware, and in any event within 28 days. Otherwise a nil return is to be documented to confirm that there are no changes, which will be evidenced within the minutes for the meeting where the register has been formally circulated and reviewed. Where review relates to staff members who are not otherwise members of committees which review their register, email based nil returns stored centrally alongside original signed declarations are acceptable.

4.3 Changing circumstances

Wherever an individual’s circumstances change in a way that affects the individual’s interests (e.g. where an individual takes on a new role outside of the CCG or sets up a new business or relationship), a revised declaration should be made to the Corporate Governance Lead to reflect the change in circumstances. This could involve a conflict of interest ceasing to exist or a new one materialising.

4.4 Secondary employment

In particular, it is the responsibility of all individuals to inform their line manager if they are employed or engaged in, or wish to be employed or engaged in, any employment or consultancy work in addition to their work with the CCGs, in order to enable the CCGs to be aware of any potential conflict of interest. Members are required to obtain prior permission to engage in such secondary employment and the CCGs reserve the right to refuse permission where it believes a conflict will arise which cannot be effectively managed.

4.5 Reporting declarations

Declarations should be reported to Locality Business Support Managers for member practices in primary care and localities, and the Corporate Governance Lead for employee declarations and those of committees other than localities. The Corporate Governance Lead oversees maintenance of registers and publication of these on the CCGs’ websites.
4.6 Additional information

Summary guides have also been published by NHS England for:

- GPs in commissioning roles
- Conflicts of Interest Guardians
- CCG Governance Leads
- CCG Lay Members
- CCG Admin Teams
- Healthwatch Representatives on Primary Care Commissioning Committees

These can be found through the following link:
https://www.england.nhs.uk/commissioning/pc-co-comms/coi/

5. Governance arrangements and decision making

5.1 Standing item

All CCG committee and sub-committee meetings have declarations of interest as a standing agenda item, with interests to be declared by all members even if the interest has been declared on registers, for an agenda item of potential conflict. These must be recorded in the minutes, as well as the agenda item for which conflict has been declared. All relevant register entries will also be made available for the Chair in advance of the meeting.

Where such a declaration is made, the following information shall also be recorded in the minutes of the meeting.

- who has the interest;
- the nature of the interest and why it gives rise to a conflict;
- how the conflict was agreed to be managed; and
- evidence that the conflict was managed as intended.

5.2 Managing declared conflicts

In circumstances where a potential perceived or actual conflict is known to exist, the chair of the meeting has ultimate responsibility for agreeing how to manage any conflict of interest in the meeting. Possible actions may include (but are not limited to):

- Asking conflicted individuals to leave the meeting when the relevant matter(s) are being discussed;
- Allowing conflicted individuals to participate in some of the discussion, but asking them to leave the meeting at the point of decision-making;
- Restricting access to papers in advance of the meeting.

Were this to result in an absence of members to the extent that the meeting would no longer be quorate, then the meeting would be unable to make any formal decisions. The Chair reserves the right to adjourn and reconvene the meeting when appropriate membership can be ensured. This would need to be recorded in the minutes.
Should it never be possible to have a quorate decision through the need to exclude conflicted voting members for a certain item, such items/decisions will be escalated as described within the committee’s terms of reference.

The above will apply not only in relation to formal CCG decision making meetings, but equally at contract monitoring meetings with providers, and also where a contract is held jointly with another organisation such as the Local Authority or with other CCGs under lead commissioner arrangements.

**Governing Body**

In the event of the Governing Body needing to make a decision in which a Governing Body member has declared a potential conflict of interest (real or perceived) in accordance with this policy, the conflicted individual may be excluded from all discussions and voting in relation to the matter in question.

If a quorum is still present for the discussion and decision, the Governing Body may continue to make decisions.

In the event that exclusion renders the Governing Body inquorate due to the number of conflicted individuals, alternative quorum arrangements may be made, as per the Constitution. This may also require co-opting clinical expertise from outside the membership of the CCG or individuals from the Health and Wellbeing Board or escalating the decision to another committee. The management of conflicts of interest will be reported in the minutes of the meeting.

Where, having adhered to the requirements of this policy, a Member practice benefits from a decision through payment or benefits in kind, this will be reported in the CCG’s annual report and accounts, as a matter of best practice.

See paragraphs 72 to 94 of the guidance (Managing conflicts of interest at meetings) for further details.

Advice on conflict management should be sought from the Conflict of Interest Guardian and Corporate Governance Lead. The decision of the Chair of the governing body on questions of order, relevancy and regularity and their interpretation of the constitution, standing orders, scheme of reservation and delegation and prime financial policies at the meeting, shall be final.

A template for recording minutes has been published as follows: https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/06/coi-annx-f.docx

6. **Maintaining Registers of Interests**

Details of which individuals need to declare interests is documented in statutory guidance published by NHS England (December 2014, updated June 2016), **pages 19 and 20**, and in Question and Answer documents for both primary care and CCG employees. This also refers to review annually.
The CCGs will maintain registers for the following:

- All GP Practices (divided by locality), including GP Partners (or, where the practice is a company, its directors) and any other individual directly involved with the business or decision making of the CCG;
- All members of the Governing Body, the Governing Body's committees, sub-committees; and
- All employees of the CCG, including agency staff and seconded staff.
- All employees of the Commissioning Support Unit involved in decision making on behalf of the CCG.

In terms of registers published on websites, updated NHS England guidance published June 2017 requires these to include only decision-making staff, including but not limited to:

- All governing body members;
- Members of advisory groups which contribute to direct or delegated decision making on the commissioning or provision of taxpayer funded services such as working groups involved in service redesign or stakeholder engagement that will affect future provision of services;
- Members of the Primary Care Commissioning Committee (PCCC);
- Members of other committees of the CCG e.g., audit committee, remuneration committee etc.;
- Members of new care models joint provider / commissioner groups / committees;
- Members of procurement (sub-)committees;
- Those at Agenda for Change band 8d and above;
- Management, administrative and clinical staff who have the power to enter into contracts on behalf of the CCG; and
- Management, administrative and clinical staff involved in decision making concerning the commissioning of services, purchasing of goods, medicines, medical devices or equipment, and formulary decisions.

These groups will likely include employees, and therefore only those declarations for employees at Band 8a and above are published on the website in order to capture those groups of staff that have a material influence on how taxpayers’ money is spent.

Where an individual believes that substantial damage or distress may be caused to him/herself or somebody else by the publication of information about them, they are entitled to make a written request that the information is not published. The Conflicts of Interest Guardian will make the decision whether or not such information should be published, who may seek independent legal advice if required. The CCGs will always retain a confidential un-redacted version of the relevant register(s).
7. Declarations of gifts and hospitality

This is covered by a separate CCG policy and also pages 20 and 21 of the statutory guidance. Updating these declarations will fall within the same timescale as declarations of interest. A definition of a gift is given within statutory guidance. Gifts and hospitality are considered one-off benefits and a different declaration is required. Declarations should also include those offers of commercial sponsorship which could include grants (for which there is also a separate policy), even when such offers have been declined.

Under the Bribery Act 2010 it is a criminal offence to accept a bribe, which the offer of a gift or hospitality could be construed as if it is not managed appropriately. A bribe is offering an incentive to someone to perform a relevant function or activity improperly (e.g. to improperly enable the briber to secure or retain a business contract or to gain an advantage over a competitor by obtaining confidential information).

A template form for declarations of gifts and hospitality can be found here: https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/06/coi-annx-c.docx

The above provisions for registers of interests shall apply in respect of gifts and hospitality for publication on websites (i.e. in relation to damage or distress from publication).

8. Roles and responsibilities

Oversight of the management of conflicts of interest will be provided by the Accountable Officer, supported by the Deputy Accountable Officer and Corporate Governance Lead. A number of additional considerations are also required.
Appointment of Governing Body or Committee Members

When appointments are being made to the Governing Body or its committees, the CCGs will consider on a case-by-case basis as to whether conflicts of interest should exclude individuals from being appointed.

The following will be taken into consideration:

a. The materiality of the interest - in particular whether the individual (or a family member or business partner) could benefit from any decision the Governing Body might take. This will be particularly relevant for any profit sharing member of any organisation but will also be considered for all employees and especially those operating at senior or Governing Body level;

b. The extent of the interest – if the interest is related to an area of business significant enough that the individual would be unable to make a full and proper contribution to the Governing Body, that individual will be excluded from becoming a member of the Governing Body.

c. Any individual who has a material interest in an organisation which provides, or is likely to provide, substantial services to a CCG (whether as a provider of healthcare or commissioning support services, or otherwise) should recognise the inherent conflict of interest risk that may arise and should not be a member of the Governing Body or of a committee or sub-committee, in particular if the nature and extent of their interest and the nature of their proposed role is such that they are likely to need to exclude themselves from decision-making on so regular a basis that it significantly limits their ability to effectively perform that role.

The role of lay members

CCG lay members play a critical role in CCGs, providing scrutiny, challenge and an independent voice in support of robust and transparent decision-making and management of conflicts of interest. They also chair a number of CCG committees, including the Audit Committee and the Primary Care Commissioning Committee.

By statute, CCGs must have at least three lay members; one of whom must have qualifications, expertise or experience such as to enable the person to express informed views about financial management and audit matters and serve as the chair of the audit committee. Another should have knowledge of the geographical area covered in the CCG’s constitution such as to enable the person to express informed views about the discharge of the CCG’s functions.

National guidance also stipulates that the primary care commissioning committee must have a lay chair and lay vice chair (page 28).


To provide appropriate oversight and assurance, and to ensure the CCG audit chair’s position as Conflicts of Interest Guardian is not compromised, the audit chair should not hold the position of chair of the primary care commissioning committee.
At present this applies only to Aylesbury Vale CCG which has delegated responsibility for commissioning of general practice.

Conflicts of Interest Guardian

To further strengthen scrutiny and transparency of the CCGs’ decision-making processes, the CCGs’ audit chairs are appointed Conflicts of Interest Guardians and will be supported in their role by the Corporate Governance Lead.

The latter will have responsibility for the day-to-day management of conflicts of interest matters and queries, and to keep the Conflicts of Interest Guardians well briefed on conflicts of interest matters and issues arising.

The Guardian has the following responsibilities:
- Act as a conduit for GP practice staff, members of the public and healthcare professionals who have any concerns with regards to conflicts of interest;
- Be a safe point of contact for employees or workers of the CCGs to raise any concerns in relation to this policy;
- Support the rigorous application of this policy;
- Provide independent advice and judgment where there is any doubt about how to apply this policy in an individual situation; and
- Provide advice on minimising the risks of conflicts of interest.

Page 27 of the national statutory guidance further describes the role of the conflict of interest guardian.

Responsibilities of CCG member practices

The most obvious area in which conflicts of interest could arise is where the CCGs commission (or continue to commission by contract extension) healthcare services, including GP services, in which a member of either CCG has a financial or other interest. This is inherent when commissioning services in primary care where GPs are current or possible providers.

It is the responsibility of all Members to familiarise themselves with this policy and comply with its provisions. Any updates shall be circulated to Members, who will be asked to confirm that they have read this policy on a minimum of an annual basis and that they have completed online training provided by NHS England. CCGs have to report statutorily regulated healthcare professionals to their regulator if they believe that they have acted improperly, so that these concerns can be investigated.

Statutorily regulated healthcare professionals should be made aware that the consequences for inappropriate action could include fitness to practise proceedings being brought against them, and that they could, if appropriate, be struck off by their professional regulator as a result.

Responsibilities of CCG employees

Line managers must ensure their team members are aware of this policy and the processes to be followed to manage conflicts of interest. Furthermore, they must make sure that staff also complete the online training provided by NHS England.
9. Managing conflicts of interest throughout the commissioning cycle

Service design

Engagement with relevant providers, especially clinicians, in confirming the design of a service specification is entirely permissible, provided it is done fairly, transparently and in a non-discriminatory manner.

Conflicts of interest can occur if a commissioner engages selectively with only certain providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid. Therefore steps should be taken to ensure that any potential providers are all subject to equal process and information.

The CCGs will, as far as possible, specify the outcomes that they wish to see delivered through a new service, rather than state the way in which these outcomes are to be achieved. As well as supporting innovation, this will help to prevent bias towards particular providers in the specification of services.

Procurement

The NHS Act and associated regulations set out the statutory rules with which commissioners are required to comply when procuring or contracting for the provision of clinical services. They need to be considered alongside Public Contract Regulations (revised 2015), and where appropriate, EU procurement rules. Other statutory guidance the CCG should abide by is Monitor’s ‘Substantive Guidance on the Procurement, Patients Choice and Competition regulations (2013)’.

The above requirements will apply not only to those participating in procurement, but also anyone seeking information in relation to procurement.

The CCGs must not award a contract for the provision of NHS health care services where conflicts, or potential conflicts, between the interests involved in commissioning such services and the interests involved in providing them affect, or appear to affect, the integrity of the award of that contract.

Where a relevant and material interest or position of influence exists in the context of the specification for, or award of, a contract, then the member will be expected to:

- Declare the interest;
- Ensure that the interest is recorded in the register;
- Withdraw from all discussion on the specification or award;
- Not have a vote in relation to the specification or award.

Members will be expected to declare any interest early in any procurement process if they are to be a potential bidder in that process. Failure to do this could result in the procurement process being declared invalid and possible suspension of the relevant member from the CCG (following due process with ConSultHR for CCG employees/appointees or NHS England for Member Practice representatives).

If necessary, the CCGs shall prohibit the award of a contract where the integrity of the award has been, or appears to have been, affected by a conflict. If the contract
has already been awarded, the CCGs may, if necessary, seek to terminate the contract, or may remove the relevant individual from their post.

Potential conflicts will vary to some degree depending on the way in which a service is being commissioned e.g.:

- Where a CCG is commissioning a service through Competitive Tender (i.e. seeking to identify the best provider or set of providers for a service) a conflict of interest may arise where GP practices or other providers in which CCG members have an interest are amongst those bidding.
- Where the CCG is commissioning a service through Any Qualified Provider a conflict could arise where one or more GP practices (or other providers in which CCG members have an interest) are amongst the qualified providers from whom patients can choose.

Statutory guidance published by NHS England (December 2014, updated June 2016), details a number of annexes to be used for procurement related declarations:

- Annex G: Procurement checklist
- Annex H: Template Register of procurement decisions and contracts awarded
- Annex I: Template Declaration of interests for bidders/contractors

Please refer to the following link for these documents: https://www.england.nhs.uk/commissioning/pc-co-comms/coi/

Declarations of external conflicts of interest will be expected from bidders in advance of the PQQ (Pre-Qualification Questionnaire) stage to avoid spending time completing the PQQ in the event that the response would be excluded as a result of an irreconcilable conflict of interest.

Register of procurement decisions

The CCGs will maintain a register of procurement decisions which will include the details of the decision, who was involved in making the decision, and a summary of any conflicts of interest in relation to the decision and how this was managed by the CCGs. It will also detail the award decision taken.

The register will be updated whenever a procurement decision is taken and be made publicly available both on the website and by having a copy available in the office for inspection. Once agreed, details of the contract and contract value (including any qualified provider contracts) will also be made available on the CCGs’ websites.

These records will be retained for a period of at least three years from the date of award of the contract. The register will form part of the CCGs’ Annual Accounts and will thus be signed off by external auditors.
10. Raising concerns

Where a Member or employee has genuine concerns in relation to this policy and/or any breaches of this policy, they need not investigate their concerns but should report the matter to the Conflicts of Interest Guardian in accordance with the terms of this policy and the CCGs’ whistleblowing policy. Suspicions or concerns relating to acts of fraud or bribery can be reported online via https://www.reportnhsfraud.nhs.uk/ or via the NHS Fraud and Corruption Reporting Line on 0800 0284060.

11. Breach of conflicts of interest policy

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 organisations. For the purposes of this policy these situations are referred to as ‘breaches’.

Non-compliance with this policy may result in civil challenges to the CCGs’ decisions, criminal proceedings for offences such as fraud, bribery and corruption, professional regulatory proceedings and/or disciplinary action. If the situation arises where a contract has been entered into and a breach of this policy has occurred, the CCGs will investigate and take action appropriate to circumstances.

The CCGs will view instances where this policy is not followed as serious and may take disciplinary or other relevant action against individuals, which may result in dismissal. Any unwitting failure to declare a relevant and material interest or position of influence and/or to record a relevant or material interest or position of influence that has been declared will not necessarily render void any decision made by the CCGs or their properly constituted committees or sub-committees, although the CCGs will reserve the right to declare such a contract void.

Where the breach is reported by an employee or worker of another organisation, it will be investigated with the terms of the whistleblowing policy of the relevant employer organisation.

The Conflicts of Interest Guardian will record anonymised details of, and investigate the alleged breach with support from the Deputy Accountable Officer and act in accordance with all relevant law and CCG policies (e.g. whistleblowing and Human Resources). Breaches will be reported to the Audit Committee as standing agenda item.

The CCGs will publish anonymised details of material breaches of this policy on websites for learning and development purposes. This will be updated each time the register is updated.

Breaches should also be reported to NHS England through its Customer Contact Centre at https://www.england.nhs.uk/contact-us/.
12. Acknowledgement of external sources

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<td>Managing conflicts of interest in clinical commissioning groups (2011)</td>
<td>Royal College of General Practitioners Centre for Commissioning/NHS Confederation</td>
<td><a href="http://www.rcgp.org.uk/~/media/Files/CIRC/Managing_conflicts_of_interest.ashx">http://www.rcgp.org.uk/~/media/Files/CIRC/Managing_conflicts_of_interest.ashx</a></td>
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