TRUST BOARD – MARCH 2012

Conflicts of Interest Policy

PURPOSE: To present a Conflicts of Interest Policy for approval

PREVIOUSLY CONSIDERED BY: Audit Committee, February 2012. FPC, March 2012. Required amendments have been incorporated

IMPLICATIONS:

Objective(s) to which issue relates: Relates to all Trust values and objectives

Risk Issues: Failure to take adequate steps to ensure that the correct procedures are followed for conflicts of interest could result in potential situations of undue bias or influence in the decision-making of the Trust.

Financial: The nature of pecuniary interests is set out in the policy

HR: Applies to all Board members, senior managers (as defined in the policy), Consultants and Governors (when FT Trust)

Healthcare/ National Policy: In line with best practice in corporate governance; draws on guidance from Institute of Chartered Secretaries and Administrators

Legal Issues: Bribery Act 2010

Equality Issues: None identified

RECOMMENDATIONS:

The Board is asked to:
- consider and approve the Conflicts of Interest Policy
- note that the annual review of the Declarations of Interests will commence at the beginning of April 2012 and this will also be used to raise awareness of the new policy.

DIRECTOR: Chief Executive
PRESENTED BY: Director of Finance
AUTHOR: Trust Secretary / Company Secretary
DATE: March 2012
# TRUST CONFLICTS OF INTEREST POLICY

**A policy recommended for use**

**In:** All areas

**By:** All directors, both Executive and Non-Executive, Senior Managers (defined for the purposes of this policy as Divisional Directors, Divisional Chairs and the Company Secretary), consultants and Governors (when authorised as a Foundation Trust).

**For:** This policy sets out how the East and North Hertfordshire NHS Trust will manage conflicts of interest arising from the operation of the Trust’s business.

**Key Words:** Declaration, Conflict, Interests, Fraud, Bribery

**Written by:** Trust Secretary  
Company Secretary

**Supported by:** Audit Committee, February 2012  
LCFS, February 2012  
Members of Divisional Executive Committee

**Approved by:** Finance & Performance Committee

**Signature**  
**Date**

**Ratified by:** Trust Board  
**Name & Signature**  
**Date**

**Policy issued:** March 2012  
**To be reviewed before:** March 2014  
**To be reviewed by:** Trust Secretary / Company Secretary  
**Policy supersedes:** New Policy  
**Location of archived copy:** Corporate Development Drive  
**Corporate Governance Registration No. CG 2012 /01**  
**Version No. 1**
CONFLICTS OF INTEREST POLICY

1. Introduction

This policy sets out how the East and North Hertfordshire NHS Trust will manage conflicts of interest arising from the operation of the Trust's business. It applies to all directors, both executive and non-executive, senior managers (defined for the purposes of this policy as Divisional Directors, Divisional Chairs and the Company Secretary), consultants and Governors (when authorised as a Foundation Trust). The policy should be read and operated alongside the Trust's Standing Orders and Standing Financial Instructions, and its Gifts and Hospitality Policy, which apply to all staff. The policy reflects the Code of Accountability and Code of Conduct for NHS Boards, the Code of Conduct for NHS Managers, 2002, the Trust's Code of Conduct for Directors and Governors that will be adopted upon authorisation as a Foundation Trust, and the seven principles of public life known as the Nolan Principles. The seven principles include:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership.

All members of staff must comply with the Trust’s Standing Orders and Standing Financial Instructions, as well as with the Standards of Business Conduct for NHS Staff (1993).

2. Purpose

The Board of East and North Hertfordshire NHS Trust has ultimate responsibility for all actions carried out by staff and committees throughout the Trust's activities. This responsibility includes the stewardship of substantial public resources and the provision of health services to the community. The Board is therefore determined to ensure that the organisation inspires confidence and trust amongst its patients, staff, commissioners, suppliers, and the wider community, by demonstrating integrity and avoiding any potential or real situations of undue bias or influence in the decision-making of the Trust.

The Board has a legal obligation to act in the best interests of the Trust and in accordance with the Trust's establishment order, and to avoid situations where there may be a potential conflict of interest.

Conflicts of interest may arise where an individual’s personal interests and/or loyalties, or those of a person connected to that individual, conflict with those of the Trust. Such conflicts may create problems such as inhibiting free discussion which could:

- result in decisions or actions that are not in the interests of the Trust and
- risk the impression that the Trust has acted improperly.

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1 This document can be found at [http://www.appointments.org.uk/docs/code_of_conduct.pdf](http://www.appointments.org.uk/docs/code_of_conduct.pdf).
The aim of this policy is to protect both the Trust and the individuals involved from any appearance of impropriety.

3. The declaration of interests

To serve this purpose, all directors, senior managers and consultants are asked to declare any relevant and material interests that may impact on the work of the Trust. These include, but are not limited to:

a) Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies);
b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
d) A position of Authority in a charity or voluntary organisation in the field of health and social care;
e) Any connection with a voluntary or other organisation contracting for NHS services;
f) Research funding/grants that may be received by an individual or their department;
g) Interests in pooled funds that are under separate management;
h) Any relevant position held by a spouse or partner;
i) Any influence over recruitment, or management (or other oversight) over family members, close friends or spouse/partner

A declaration of interests form is provided for this purpose, listing the types of interest you must declare (see Appendix 1).

The declaration of interests must be completed upon appointment, then updated at least annually and when any material changes occur. All such changes must be reported to the Company Secretary and declared at the next Trust Board meeting following the change occurring, and recorded in the minutes of that meeting.

If you are not sure what to declare, or whether/when your declaration needs to be updated, please err on the side of caution. As a general rule, consider how your actions (or inactions) might be perceived by an impartial third party. If you would like to discuss this issue, please contact the Chairman or the Company Secretary for confidential guidance.

Interests will be recorded in the Trust’s register of interests, which will be maintained by the Company Secretary on behalf of the Chief Executive. The register will be accessible and free for inspection by any member of the public.

Data Protection
The information provided will be processed in accordance with data protection principles as set out in the Data Protection Act 1998. Data will be processed only to ensure that directors, senior managers and consultants act in the best interests of the Trust. The information provided will not be used for any other purpose.

Signing the declaration form will also signify that you consent to your data being processed for the purposes set out in this policy.

3 Clause 7.1.5 of the Trust’s Standing Orders, Reservation and Delegation of Powers and Standing Financial Instructions states that such directorships should be included in the Trust’s annual report.
4 Interests must “...not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.” Clause 7.3.1, of the Trust’s Standing Orders, Reservation and Delegation of Powers and Standing Financial Instructions.
4. **What conflicts does this policy cover?**

Directors, senior managers, consultants and Governors (when authorised as a Foundation Trust) should declare an interest in the following circumstances:

- direct financial interests;
- indirect financial interests;
- non-financial or personal interests; and
- conflicts of loyalty.

5. **What to do if you face a conflict of interest**

All members of the Board should declare their interests in relation to any items on the agenda at the start of each Board or committee meeting. Where a conflict of interest is material to the discussion of the Board, that director shall withdraw from discussions pertaining to that agenda item, and the conflict and the action will be recorded in the minutes of the meeting. The register of interests will be updated accordingly. This practice should be replicated in any meeting (such as committee meetings, Divisional Board meetings, Council of Governors) where decisions are taken that affect the operation of the Trust’s business.

It is the responsibility of the Company Secretary in the case of the Board, or the secretary in the case of other meetings, to ensure that a quorum is maintained throughout the discussion and decision of the agenda item. Should the withdrawal of the individual with a conflict of interest result in the loss of the quorum, no decision can be made upon the item at that meeting.

Under Regulation 11(2) of the NHS (Membership and Procedure Regulations SI 1999/2024) legislation for NHS Trusts, the Secretary of State has the power to waive restrictions on a Chairman or director participating in Board (or committee) business, where to authorise such a conflict would be in the interests of the NHS entity. The application of a waiver can, therefore, be used in the following situations:

- where a member of the Board is a clinical professional providing healthcare services to the Trust; or
- where the Board member has a pecuniary interest arising out of the delivery of some professional service on behalf of the Trust, and the conflict has been judged by the Chair not to bestow any greater pecuniary benefit than to other professionals in a similar relationship with the Trust.

Where the Chair has approved the use of the waiver, the Chair must have discussed it with the Chief Executive before the meeting. In such circumstances where the waiver is used, the Board member:

- must disclose his/her interest as soon as practicable at the start of the meeting;
- may participate in the discussion of the matter under consideration; but
- must not vote on the subject under discussion.

In the case of a meeting of a committee, the member may vote but the resolution which is subject to the vote must comprise a recommendation to, and be referred for approval by, the Trust Board.

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5 Standing Order 7.3.2 – Exclusion in proceedings of the Trust Board – makes clear that it applies to a committee or sub-committee as it applies to the Trust.
The minutes of the meeting will formally record that the waiver has been used, and that this policy and the provisions of the Trust’s standing orders have been observed in managing that authorised conflict.

6. Decisions taken where a director or board member has an interest

In the event of the Board having to decide upon a question in which a director or Board member has an interest, all decisions will be made by vote, with a simple majority required. A quorum must be present for the discussion and decision; interested parties will not be counted when deciding whether the meeting is quorate. Interested Board members must not vote on matters affecting their own interests.

All decisions made under a conflict of interest will be recorded by the secretary and reported in the minutes of the meeting. The report will record:

- the nature and extent of the conflict;
- an outline of the discussion;
- the actions taken to manage the conflict.

Where a director benefits from the decision, this will be reported in the annual report and accounts, as a matter of best practice.

Independent external moderation will be used where conflicts cannot be resolved through the usual procedures.

7. Breaches of this Policy

Breaches of the policy on the Conflicts of Interests will be investigated under the Trust’s disciplinary policy and procedures, and where bribery is suspected will be subject to criminal investigation by the Trust’s Local Counter Fraud Specialist (see section 2).

Breaches of the code of accountability will be notified to the regional commissioner of the NHS Appointments Commission6).

Upon authorisation as a Foundation Trust, any breach of this policy will be handled in the same way as a breach of the Code of Conduct for Directors or Code of Conduct for Governors, in accordance with the procedures set out in that Code.

8. Managing contracts

If you have a conflict of interest, you must not be involved in managing or monitoring a contract in which you have an interest. Monitoring arrangements for such contracts will include provisions for an independent challenge of bills and invoices, and termination of the contract if the relationship is unsatisfactory.

9. Review

The Company Secretary will ensure that the register of interests is kept up to date. The register will be reviewed annually by the Audit Committee.

10. Publication

The register of interests will be published on the Trust’s website.

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## DECLARATION OF INTEREST(S)

**Name:**  
**Role:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Details of the interest(s) – ie name of company etc</th>
<th>Dates</th>
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<tbody>
<tr>
<td>Directorships, including non-executive directorships held in private companies or PLCs</td>
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<tr>
<td>Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS</td>
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<td>Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS</td>
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<td>Positions of authority in charities or voluntary organisations in the field of health and social care</td>
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<td>Connections with voluntary or other organisations contracting for NHS services</td>
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<td>Research funding or grants received, whether personally or through the department</td>
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<td>Interest in pooled funds that are under separate management</td>
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<td>Any other relevant appointments or positions held</td>
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<td>Relevant appointments / positions held by spouse or partner</td>
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Signed……………………………………………………………………

Date……………………………………………………………………

(Please send form to Company / Trust Secretary, L70, Corporate Governance, Lister Hospital)

This form must be completed by all Executive and Non-Executive Directors, Divisional Chairs, Divisional Directors and the Company Secretary:

- upon appointment
- annually thereafter
- and resubmitted with signature showing clearly any change as and when such a change occurs