

## STANDARDS OF BUSINESS CONDUCT AND BEHAVIOUR POLICY

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<b>DIRECTOR LEAD</b>	Director of Communications & CA
<b>AUTHOR</b>	Deputy Company Secretary
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<b>CONSULTATION</b>	JCNC
<b>THIS DOCUMENT REPLACES</b>	CP.2013.3 (Standards of business conduct & behaviour policy)

*This document is available in alternative formats upon request, such as large print, electronically or community languages.*

<b>RELATED POLICIES, CODES AND GUIDANCE</b>	
<b>Trust</b>	<b>National</b>
Standing Orders, Standing Financial Instructions and the Scheme of Delegation	Code of Conduct for Private Practice – Guidance for NHS Medical Staff
Trust Disciplinary Policy and procedures	The Code of Conduct for NHS Managers
Raising concerns (Whistleblowing Policy)	The Fraud Act 2006
Counter-Fraud Policy	The Data Protection Act and Caldicott Guardian Principles
Medicines Management Policy for the Promotion of Medicines	Terms and Conditions – Consultants (England) 2003
Information Governance Policy and principles	The Bribery Act 2010
Policy for Visiting Medical & Dental Staff, Clinical Attachments, Students & other visitors	“Commercial Sponsorship – Ethical Standards for the NHS” (DoH Guidance)
	Association of British Pharmaceutical Industries (ABPI) Code of Practice
	Chartered Institute of Purchasing and Supply Ethical Code
	Any relevant national professional code of conduct

## Document Control Sheet

Document title		Standards of Business Conduct policy
Version	1	Approved by the Nomination & remuneration committee at its meeting on 15 June 2009
Version	2	Revised and approved by the Nomination & remuneration committee at its meeting on 27 February 2014
Version	3	Revised and approved by the Finance and performance committee at its meeting on 21 July 2016
Version	4	Updated to include NHS England national guidance for all staff and organisations on managing conflicts of interest (Publications Gateway Reference: 06419) and Approved by the Audit committee at its meeting on 20 September 2017
Version	5	Revised to ensure consistency in the way in which gifts of cash and vouchers are managed (S8.1.2). These may now be donated to the QVH Charity. This revision was approved by the Audit committee at its meeting on 21 March 2018
Version	6	Revised to expand scope (item 2.3). Decision making staff are now classed as those at AfC Band 8b and above, and consultants. This revision was approved by the Audit committee at its meeting on 12 December 2018.  Revised to update contact details since QVH moved across to NHS.net mail

## STANDARDS OF BUSINESS CONDUCT AND BEHAVIOUR POLICY

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## INTRODUCTION

Queen Victoria Hospital NHS Foundation Trust and the people who work with and for us, collaborate closely with other organisations, delivering high quality care for our patients.

These partnerships have many benefits and should help ensure that public money is spent efficiently and wisely. But there is a risk that conflicts of interest may arise.

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 an organisation and as individuals, we have a duty to ensure that all 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.

To comply with the Trust's Standards of Business Conduct and Behaviour Policy, all staff should maintain high standards of conduct at all times. All staff and any others carrying out any of the Trust's business in any other capacity other than that of employee are expected to ensure that public confidence in their integrity is not harmed in any way.

This policy reinforces a range of national guidance relating to the conduct of business within the Trust and underpins the Trust's Constitution, Standing Orders and Standing Financial Instructions. It consolidates existing laws, regulations, conditions of service and guidance from a variety of sources and now incorporates national guidance on managing conflicts of interest. The policy applies to all Trust employees, including Executive Directors, all Non-Executive Directors, Governors and, all those who undertake work, for the benefit of the Trust, on a contract for services basis or under any other arrangement.

This policy sets out broad principles and points of contact for staff with specific queries.

## KEY MESSAGES

- 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.
- 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.*"
- 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).
- Those staff identified by the Trust as 'decision making' are required, at least annually, to update their declarations of interest **OR MAKE A NIL RETURN.**

### As a member of staff you should:

- Familiarise yourself with this policy and follow it. Refer to the guidance for the rationale behind this policy <https://www.england.nhs.uk/wp-content/uploads/2017/02/guidance-managing-conflicts-of-interest-nhs.pdf>
- Familiarise yourself with specific guidance in relation to gifts, hospitality, outside employment, shareholding, patents, loyalty interests, donations, sponsored events, research and posts, and clinical practice as set out in Section 8 of this policy.
- Use your common sense and judgement to consider whether the interests you have could affect the way taxpayers' money is spent.
- Regularly consider what interests you have and declare these as they arise. If in doubt, declare.
- **NOT** misuse your position to further your own interests or those close to you;
- **NOT** be influenced, or give the impression that you have been influenced by outside interests
- **NOT** allow outside interests you have to inappropriately affect the decisions you make when using taxpayers' money.

## 1. PURPOSE

- 1.1 The purpose of this policy is to assist all staff to understand their responsibilities in relation to standards of business conduct and behaviour that apply within the Trust. This policy is for the protection of the Trust, its staff and all those acting in connection with the business of the Trust against accusations or suspicion. This policy is designed to help staff manage the risk of perceived conflicts of interest by introducing consistent principles and rules, providing simple advice about what to do in common situations and supporting good judgement about how to approach and manage interests.

## 2. SCOPE

- 2.1 The policy explains how staff and all those to whom the policy applies are expected to deal with any conflicts of interest, confidential matters, gifts, offers of hospitality and sponsorship and the relationship between NHS work, private practice and fee paying services.
- 2.2 Employees must follow these requirements and it is important that employees understand that any deliberate breach will be viewed as a serious disciplinary matter, which could lead to an internal or Professional Regulatory Body dismissal, civil remedy or prosecution for a criminal offence.

At QVH 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; and
  - Committee, sub-committee and advisory group members (who may not be directly employed or engaged by the organisation)
- 2.3 Some 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.'

At QVH, decision making staff are classed as those at AfC Band 8b and above, and consultants.

Decision making staff are required, at least annually, to update their declarations of interest **OR MAKE A NIL RETURN**

### **3. RAISING CONCERNS**

- 3.1 It is expected that, through agreed procedures and, without fear of recrimination, employees will bring to the attention of their line manager, any impropriety or breach of procedure in line with the Raising Concerns (Whistleblowing) Policy.
- 3.2 If you have concerns please talk to you line manager. If that is not appropriate you can talk in confidence to the Freedom to Speak up Guardian or the Local Counter Fraud Specialist.

All expressions of concern will be treated confidentially and staff will not be penalised in any way in line with the Raising Concerns (Whistleblowing) or Anti-Fraud and Bribery Policy.

### **4. DISCLOSURE OF INFORMATION AND CONFIDENTIALITY**

- 4.1 Statutory requirements ensure that certain types of information be made available to members of the Board of Directors and Council of Governors, auditors, NHS departments, service users and the public. In addition, the Trust also has guidance on relations with the public and the media, which includes guidance on information which can be regarded as open. Staff and all those persons to whom this policy applies must ensure that they are aware of this guidance and they must act accordingly. If staff are in any doubt, they must consult their immediate supervisor. No confidential information should be released to anyone without proper authorisation. If in doubt, staff should seek advice from the Caldicott Guardian and/or the lead for Information Governance.
- 4.2 External consultants (individuals or corporate bodies) will be required to sign the Trust's 'Confidentiality Undertaking for Commercial Consultants' document.
- 4.3 Staff and all those persons to whom this policy applies who obtain any information in the course of employment or other service to the Trust, must not use such information for personal gain or benefit, nor should they pass on such information to others who might use it in such a way. In addition, official positions previously or currently held by any person must not be abused to obtain preferential rates for private deals.
- 4.4 Where information is covered by any statutory provisions, such as the Freedom of Information Act or the General Data Protection Regulations (GDPR) these must also be adhered to and the Trust's policies in that regard must be adhered to.

- 4.5 Disclosure & Barring Service (DBS) checks will be undertaken on all appropriate staff, as defined within DBS and NHS guidance. With agreement from staff side groups, retrospective checks may also be undertaken, but only if the member of staff falls within the criteria indicated by NHS guidance.

## 5. IDENTIFICATION, DECLARATION AND REVIEW OF INTERESTS

### 5.1 Identification and declaration of interests (including gifts and hospitality)

Whilst the off-duty hours of employees or other persons covered by this policy are their own concern, all employees and others covered by this policy should ensure that their private interests do not come before their job or duty to the Trust and they should not put themselves in a position where their private interests conflict with their job duty to the Trust.

#### 5.1.1 Interests fall into the following categories:

- Financial interests:  
Where an individual may get direct financial benefit 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 with another individual who has a financial interest, a non-financial professional interest or a non-financial personal interest and could stand to benefit from a decision they are involved in making.

#### 5.1.2 All staff should identify and declare 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 organisation.
- 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).

- Those staff identified as 'decision making' are required, at least annually, to update their declarations of interest **OR MAKE A NIL RETURN**

5.1.3 If staff need to make a declaration, they should complete a Declarations of Interest form and either email a signed copy to [Hilary.Saunders1@nhs.net](mailto:Hilary.Saunders1@nhs.net) or send a hard copy directly to the Deputy company secretary, c/o Corporate Affairs Department, marking it 'Declarations of Interest'. A declaration of interest(s) form is available on Qnet at <http://qnet.xqvh.nhs.uk/Teams/CorporateHR/CorporateAffairs/CorpGov/PublishedDocuments/Forms/Corporate%20governance%20documents.aspx>

5.1.4 If staff require further clarification with regard to guidance, they should contact the Deputy Company Secretary in the Corporate Affairs Team.

5.1.5 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.

## 5.2 Proactive review of interests

The Trust will prompt decision making staff annually, via its staff newsletter Connect, to review declarations they have made and, as appropriate, update them or make a nil return. Members of the Board of Directors and Council of Governors will be contacted directly by the Deputy Company Secretary with a reminder to update their declarations at the beginning of each financial year.

## 6. RECORDS AND PUBLICATION

### 6.1 Maintenance

6.1.1 The organisation will maintain one central register of interests.

6.1.2 All declared interests that are material will be promptly transferred to the register by the Deputy Company Secretary or a member of the Corporate Affairs Team.

### 6.2 Publication

6.2.1 The Trust will:

- Publish the interests declared by decision-making staff.

- Refresh this information annually.
- Make this information available on the QVH website.

6.2.2 If decision making staff have substantial grounds for believing that publication of their interests should not take place then they should contact the Director of Communications and Corporate Affairs to explain why. 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

### **6.3 Wider transparency initiatives**

6.3.1 Queen Victoria Hospital NHS FT fully supports wider transparency initiatives in healthcare, and we encourage staff to engage actively with these.

6.3.2 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
- Donations, grants and benefits in kind provided to healthcare organisations

Further information about the scheme can be found on the ABPI website:

<http://www.abpi.org.uk/our-work/disclosure/about/Pages/default.aspx>

## **7. MANAGEMENT OF INTERESTS: GENERAL**

7.1 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
- removing staff from their role altogether if they are unable to operate effectively in it because the conflict is so significant

- 7.2 Each case will be different and context-specific, and Queen Victoria Hospital NHS FT will always clarify the circumstances and issues with the individuals involved. Staff should maintain a written audit trail of information considered and actions taken.
- 7.3 Staff who declare material interests should make their line manager or the person(s) they are working to aware of their existence.

## 8. MANAGEMENT OF INTERESTS: COMMON SITUATIONS

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

### 8.1 Gifts

Staff should not accept gifts that may affect, or be seen to affect, their professional judgement.

#### 8.1.1 Gifts from suppliers or contractors:

- Gifts from suppliers or contractors doing business (or likely to do business) with the organisation 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>1</sup> in total, and need not be declared.

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

- Gifts of cash and vouchers to individuals should always be declined. However, when declining, staff are permitted to suggest the option of donating cash or vouchers to the QVH Charity.
- 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, and not in a personal capacity. These should be declared by staff.
- Gifts valued between £25 and £50 should be declared.
- 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.

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<sup>1</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>

- 8.1.3 What should be declared?
- Staff name and their role with the organisation.
  - A description of the nature and value of the gift, including its source.
  - Date of receipt.
  - 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).

## 8.2 Hospitality

- 8.2.1
- Staff should not ask for or accept hospitality that may affect, or be seen to affect, their professional judgement.
  - Hospitality must only be accepted when there is a legitimate business reason and it is proportionate to the nature and purpose of the event.
  - 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. Executive approval must be obtained.
- 8.2.2 Meals and refreshments:
- Under a value of £25 - may be accepted and need not be declared.
  - Of a value between £25 and £75<sup>2</sup> - may be accepted and must be declared.
  - Over a value of £75 - should be refused unless (in exceptional circumstances) executive approval is given. A clear reason should be recorded on the organisation'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).
- 8.2.3 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 organisation itself might not usually offer, need approval by executive staff, should only be accepted in exceptional circumstances, and must be declared. A clear reason should be recorded on the organisation'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:

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<sup>2</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>

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

8.2.4 What should be declared?

- Staff name and their role with the organisation.
- The nature and value of the hospitality including the circumstances.
- Date of receipt.
- 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).

**8.3 Outside employment**

- 8.3.1
- 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 organisation to engage in outside employment.

8.3.2 The organisation 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.

8.3.3 What should be declared?

- Staff name and their role with the organisation.
- The nature of the outside employment (e.g. who it is with, a description of duties, time commitment).
- Relevant dates.
- 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).

**8.4 Shareholdings and other ownership issues**

- 8.4.1
- 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 organisation.
  - 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.

#### 8.4.2 What should be declared

- Staff name and their role with the organisation.
- Nature of the shareholdings/other ownership interest.
- Relevant dates.
- 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).

### 8.5 Patents

- #### 8.5.1
- 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 ongoing, which are, or might be reasonably expected to be, related to items to be procured or used by the organisation.
  - Staff should seek prior permission from the organisation before entering into any agreement with bodies regarding product development, research, work on pathways etc., where this impacts on the organisation'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.

#### 8.5.2 What should be declared?

- Staff name and their role with the organisation.
- A description of the patent.
- Relevant dates.
- 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)

### 8.6 Loyalty interests

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

- Hold a position of authority in another NHS organisation 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 an organisation 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 organisation does business with an organisation in which close family members and relatives, close friends and associates, and business partners have decision making responsibilities.

8.6.2 What should be declared?

- Staff name and their role with the organisation.
- Nature of the loyalty interest.
- Relevant dates.
- 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).

**8.7 Donations**

- 8.7.1
- Donations made by suppliers or bodies seeking to do business with the organisation should be treated with caution and not routinely accepted. In exceptional circumstances they may be accepted but should always be declared. 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 organisation, or is being pursued on behalf of the organisation's own registered charity or other charitable body and is not for their own personal gain.
  - Staff must obtain permission from the organisation 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 organisation'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

8.7.2 What should be declared?

QVH NHS FT will maintain records in line with the above principles and rules and relevant obligations under charity law.

## **8.8 Sponsored events**

- 8.8.1
- 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 the organisations 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 organisation'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 organisation 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 organisation.

8.8.2 What should be declared?

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

## **8.9 Sponsored research**

- 8.9.1
- 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 organisation, 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 organisation.

8.9.2 What should be declared?

- The organisation will retain written records of sponsorship of

research, in line with the above principles and rules.

- Staff should declare:
  - their name and their role with the organisation.
  - Nature of their involvement in the sponsored research.
  - relevant dates.
- 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).

## **8.10 Sponsored posts**

- 8.10.1
- External sponsorship of a post requires prior approval from the organisation.
  - 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 organisations have 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.

8.10.2 What should be declared?

- The organisation 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.

## **8.11 Clinical private practice**

- 8.11.1 Clinical staff should declare all private practice on appointment, and/or any new private practice when it arises<sup>3</sup> including:
- Where they practise (name of private facility).

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<sup>3</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)

- What they practise (specialty, major procedures).
- When they practise (identified sessions/time commitment).

- 8.11.2 Clinical staff should (unless existing contractual provisions require otherwise or unless emergency treatment for private patients is needed):
- Seek prior approval of their organisation 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>4</sup>
  - Regarding private practice, appropriate employees must apply the terms of the Consultant Contract 2003, concerning Doctors' engagement in private practice.
  - The Code of Conduct for Private Practice – Guidance for NHS Medical Staff highlights what is expected and an extract is attached at Appendix 1.
  - For the avoidance of doubt, attached at Appendix 2 is a longer extract from the Terms and Conditions – Consultants (England) 2003.
  - 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)
- 8.11.3 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.
- 8.11.4 What should be declared?
- Staff name and their role with the organisation.
  - A description of the nature of the private practice (e.g. what, where and when staff practise, sessional activity, etc).
  - Relevant dates.
  - 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)

## 9. MANAGEMENT OF INTERESTS: ADVICE IN SPECIFIC CONTEXTS

### 9.1 Strategic decision making groups

- 9.1.1 In common with other NHS bodies QVH NHS FT uses a variety of

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<sup>4</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))

different groups to make key strategic decisions about things such as:

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

9.1.2 The interests of those who are involved in these groups should be well known so that they can be managed effectively. At QVH these groups are the Board of Directors, committees of the Board of Directors, and the Hospital Management Team.

9.1.3 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 organisation'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.

9.1.4 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.
- Removing the member from the group or process altogether.

9.1.5 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.

## **9.2 Procurement**

9.2.1 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.

- 9.2.2 Those involved in procurement exercises for and on behalf of the organisation 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.
- 9.2.3 Cross reference to existing procurement policies operated at QVH? If you require additional advice in this respect, please contact the Trust's Procurement manager.

## **10. 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'.

### **10.1 Identifying and reporting breaches**

- 10.1.1 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 Freedom to Speak up Guardian (FTSU) or via the Local Counter Fraud Service (LCFS), in line with current processes.
- 10.1.2 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 via the related policies listed at the front of this document, in particular Raising concerns (Whistleblowing Policy) and the Counter-Fraud Policy
- 10.1.3 The organisation 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.
- 10.1.4 Following investigation the organisation will:
- Decide if there has been or is potential for a breach and if so what the 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 organisation should be

made aware

- Take appropriate action as set out in the next section.

## **10.2 Taking action in response to breaches**

- 10.2.1 Action taken in response to breaches of this policy will be in accordance with the disciplinary procedures of the organisation and could involve organisational leads for staff support (e.g. Human Resources), fraud (e.g. Local Counter Fraud Specialists), members of the management or executive teams and organisational auditors.
- 10.2.2 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.
- Consideration being given to escalation to external parties. This might include referral of matters to external auditors, NHS Protect, the Police, statutory health bodies (such as NHS England, NHS Improvement or the CQC), and/or health professional regulatory bodies.
- 10.2.3 Inappropriate or ineffective management of interests can have serious implications for the organisation and staff. There will be occasions where it is necessary to consider the imposition of sanctions for breaches.
- 10.2.4 Sanctions should not be considered until the circumstances surrounding breaches have been properly investigated. However, if such investigations establish wrong-doing or fault then the organisation 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 might include
    - Informal action (such as reprimand, or signposting to training and/or guidance).
    - Formal disciplinary action (such as 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 fraud, bribery and corruption legislation.

### **10.3 Learning and transparency concerning breaches**

- 10.3.1 Reports on breaches, the impact of these, and action taken will be considered by the Audit committee on a quarterly basis.
- 10.3.2 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 can be made available for inspection by the public upon request.

## **11. REVIEW**

This policy will be reviewed in three years' time. An earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation or guidance.

## **12. 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)

## **13. TRAINING AND IMPLEMENTATION**

Training on the policy will be delivered to all staff as part of corporate induction. The policy will be available on the trust's intranet site (Qnet).

## **14. EQUALITY**

This policy and protocol will be equality impact analysed in accordance with the Trust's Policy for the Development and Management of Procedural Documents, the results of which are published on our public website and monitored by the Equality and Diversity team.

## APPENDIX 1

### Extract from

### **CODE OF CONDUCT FOR PRIVATE PRACTICE – GUIDANCE FOR NHS MEDICAL STAFF**

- 4.1 Medical practitioners may only see patients privately within NHS facilities with the explicit agreement of the responsible NHS body. It is for NHS bodies to decide which, if any, of their facilities, staff and equipment may be used in the provision of private patient services, and to what extent. It is also their responsibility to ensure that any such private patient services do not interfere with the organisation's obligations to NHS patients.
- 4.2 Medical practitioners who practice privately within NHS facilities must comply with the responsible NHS body's policies and procedures for private practice. The NHS body should consult with such doctors when adopting or reviewing such policies.

#### **Use of NHS Facilities**

- 4.3 NHS staff may not use NHS facilities for the provision of private services without the agreement of their NHS employer. This applies whether private services are carried out in their own time, in annual or unpaid leave, or – subject to the criteria in paragraph 3.16 – alongside NHS duties.
- 4.4 Where the employer has agreed that a medical practitioner may use NHS facilities for the provision of private services:
- i) The employer will determine and make such charges for the use of its services, accommodation or facilities as it considers reasonable
  - ii) Any charge will be collected by the employer, either from the patient or a relevant third party
  - iii) A charge will take full account of any diagnostic procedures used, the cost of any laboratory staff that have been involved and the cost of any NHS equipment that might have been used.
- 4.5 Except in emergencies, practitioners should not initiate private patient services which involve the use of NHS staff or facilities unless an undertaking to pay for those facilities has been obtained from (or on behalf of) the patient, in accordance with the NHS body's procedures.
- 4.6 Subject to 3.14 above, private patients should normally be seen separately from scheduled NHS patients. Under no circumstances should a practitioner

cancel an NHS patient's appointment to make way for a private patient.

- 4.7 Further guidance about the use of NHS resources and facilities and the costs that should be employed for the use of NHS resources can be found in the "green book".

### **Use of NHS Staff**

- 4.8 If NHS staff are asked to assist a medical practitioner in providing private services, or to provide private services on behalf of a medical practitioner, it is the practitioner's responsibility to ensure that other staff are aware that the patient or service user, on whose behalf the service is being provided, has private status.

### **Identification of Private Patients**

- 4.9 Medical practitioners practising privately within NHS facilities must comply with the NHS body's policies and procedures for private practice. This includes a personal obligation on any medical practitioner responsible for admitting a private patient (usually a consultant) to NHS facilities to ensure, in accordance with local procedures, that they identify that patient as private and that the responsible manager is aware of that patient's status.

## APPENDIX 2

### Extract from

### TERMS AND CONDITIONS – CONSULTANTS (ENGLAND) 2003

#### Schedule 9 Provisions Governing the Relationship Between NHS Work, Private Practice and Fee Paying Services

- 1 This Schedule should be read in conjunction with the Code of Conduct for Private Practice which sets out standards of best practice governing the relationship between NHS work, private practice and fee paying services.
- 2 The consultant is responsible for ensuring that the provision of Private Professional Services or Fee Paying Services for other organisations does not:
  - Result in the detriment of NHS patients or services
  - Diminish the public resources that are available for the NHS

#### Disclosure of Information about Private Commitment

- 3 The consultant will inform his or her clinical manager of any regular commitments in respect of Private Professional Services or Fee Paying Services. This information will include the planned location, timing and broad type of work involved.
- 4 The consultant will disclose this information at least annually as part of the Job Plan Review. The consultant will provide information in advance about any significant changes to this information.

#### Scheduling of Work and Job Planning

- 5 Where there would otherwise be a conflict or potential conflict of interest, NHS commitments must take precedence over private work. Subject to paragraphs 10 and 11 below, the consultant is responsible for ensuring that private commitments do not conflict with Programmed Activities.
- 6 Regular private commitments must be noted in the Job Plan.
- 7 Circumstances may also arise in which a consultant needs to provide emergency treatment for private patients during time when he or she is scheduled to be undertaking Programmed Activities. The consultant will make alternative arrangements to provide cover if emergency work of this kind regularly impacts on the delivery of Programmed Activities.
- 8 The consultant should ensure that there are arrangements in place, such that there can be no significant risk of private commitments disrupting NHS

commitments, e.g. by causing NHS activities to begin late or to be cancelled. In particular where a consultant is providing private services that are likely to result in the occurrence of emergency work, he or she should ensure that there is sufficient time before the scheduled start of Programmed Activities for such emergency work to be carried out.

- 9 Where the employing organisation has proposed a change to the scheduling of a consultant's NHS work, it will allow the consultant a reasonable period in line with Schedule 6, paragraph 2 to rearrange any private commitments. The employing organisation will take into account any abiding commitments that the consultant may have entered into (e.g. leases). Should a consultant wish to reschedule private commitments to a time that would conflict with Programmed Activities, he or she should raise the matter with the clinical manager at the earliest opportunity.

### **Scheduling Private Commitments Whilst On-Call**

- 10 The consultant will comply with the provisions in Schedule 8, paragraph 5 of these Terms and Conditions.
- 11 In addition, where a consultant is asked to provide emergency cover for a colleague at short notice and the consultant has previously arranged private commitments at the same time, the consultant should only agree to do so if those commitments would not prevent him or her returning to the relevant NHS site at short notice to attend an emergency. If the consultant is unable to provide cover at short notice it will be the employing organisation's responsibility to make alternative arrangements.

### **Use of NHS Facilities and Staff**

- 12 Except with the employing organisation's prior agreement, a consultant may not use NHS facilities or NHS staff for the provision of Private Professional Services or Fee Paying Services for other organisations.
- 13 The employing organisation has discretion to allow the use of its facilities and will make it clear which facilities a consultant is permitted to use for private purposes and to what extent.
- 14 Should a consultant, with the employing organisation's permission, undertake Private Professional Services or Fee Paying Services in any of the employing organisation's facilities, the consultant should observe the relevant provisions in the Code of Conduct for Private Practice.
- 15 Where a patient pays privately for a procedure that takes place in the employing organisation's facilities, that procedure should take place at a time that does not impact on normal services for NHS patients. Except in emergencies, such procedures should occur only where the patient has given a signed undertaking to pay any charges (or an undertaking has been

given on the patient's behalf) in accordance with the employing organisation's procedures.

- 16 Private patients should normally be seen separately from scheduled NHS patients. Only in unforeseen and clinically justified circumstances should a consultant cancel or delay an NHS patient's treatment to make way for his or her private patient.
- 17 Where the employing organisation agrees that NHS staff may assist a consultant in providing Private Professional Services, or provide private services on the consultant's behalf, it is the consultant's responsibility to ensure that these staff are aware that the patient has private status.
- 18 The consultant has an obligation to ensure, in accordance with the employing organisation's procedures, that any patient whom the consultant admits to the employing organisation's facilities is identified as private and that the responsible manager is aware of that patient's status.
- 19 The consultant will comply with the employing organisation's policies and procedures for private practice.

#### **Patient Enquiries about Private Treatment**

- 20 Where, in the course of his or her duties, a consultant is approached by a patient and asked about the provision of Private Professional Services, the consultant may provide only such standard advice as has been agreed with the employing organisation for such circumstances.
- 21 The consultant will not during the course of his or her Programmed Activities make arrangements to provide Private Professional Services, nor ask any other member of staff to make such arrangements on his or her behalf, unless the patient is to be treated as a private patient of the employing organisation.
- 22 In the course of his/her Programmed Activities, a consultant should not initiate discussions about providing Private Professional Services for NHS patients, nor should the consultant ask other staff to initiate such discussions on his or her behalf.
- 23 Where a NHS patient seeks information about the availability, or waiting times, for NHS services and/or Private Professional Services, the consultant is responsible for ensuring that any information he or she provides, or arranges for other staff to provide on his or her behalf is accurate and up-to-date.

#### **Promoting Improve Patient Access to NHS Care**

- 24 Subject to clinical considerations, the consultant is expected to contribute

as fully as possible to reducing waiting times and improving access and choice for NHS patients. This should include ensuring that patients are given the opportunity to be treated by other NHS colleagues or by other providers where this will reduce their waiting time and facilitate the transfer of such patients.

### **Increasing NHS Capacity**

- 25 The consultant will make all reasonable efforts to support initiatives to increase NHS capacity, including the appointment of additional medical staff and changes to ways of working.

### **Schedule 11 Principles Governing Receipt of Additional Fees**

- 1 In the case of the following services, the consultant will not be paid an additional fee, or – if paid a fee – the consultant must remit the fee to the employing organisation:
- Any work in relation to the consultant's Contractual and Consequential Services
  - Duties which are included in the consultant's Job Plan, including any additional Programmed Activities which have been agreed with the employing organisation
  - Fee paying work for other organisations carried out during the consultant's Programmed Activities, unless the work involves minimal disruption and the employing organisation agrees that the work can be done in NHS time without the employer collecting the fee
  - Domiciliary consultations carried out during the consultant's Programmed Activities
  - Lectures and teaching during the course of the consultant's clinical duties
  - Lectures and teaching that are not part of the consultant's clinical duties, but are undertaken during the consultant's Programmed Activities

This list is not exhaustive and as a general principle, work undertaken during Programmed Activities will not attract additional fees.

- 2 Services for which the consultant can retain any fee that is paid:
- Fee Paying Services carried out in the consultant's own time, or during annual or unpaid leave
  - Fee Paying Services carried out during the consultant's Programmed Activities that involve minimal disruption to NHS work and which the employing organisation agrees can be done in NHS time without the employer collecting the fee
  - Domiciliary consultations undertaken in the consultant's own time though it is expected that such consultations will normally be scheduled as part of Programmed Activities
  - Private Professional Services undertaken in the employing organisation's

facilities and with the employing organisation's agreement during the consultant's own time or during annual or unpaid leave

- Private professional Services undertaken in other facilities during the consultant's own time, or during annual or unpaid leave
- Lectures and teaching that are not part of the consultant's clinical duties and are undertaken in the consultant's own time or during annual or unpaid leave.

This list is not exhaustive but as a general principle the consultant is entitled to the fees for work done in his or her own time, or during annual or unpaid leave.

And only for a visit to the patient's home at the request of a general practitioner and normally in his or her company to advise on the diagnosis or treatment of a patient who on medical grounds cannot attend hospital.