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NEWS

More than a third of GPs on commissioning groups have conflicts of interest, *BMJ* investigation shows

On the eve of one of the biggest upheavals in the history of the NHS, **Gareth Iacobucci** looks at the conflicts at the heart of clinical commissioning groups

Gareth Iacobucci

BMJ

More than a third of GPs on the boards of the new clinical commissioning groups (CCGs) in England have a conflict of interest resulting from directorships or shares held in private companies, a new analysis by the *BMJ* has shown.

An examination of the registered interests of almost 2500 board members across 176 CCGs provides the clearest evidence to date of the conflicts that many doctors will have to manage from 1 April, when the GP led groups are handed statutory responsibility for commissioning around £60bn (€70bn; $90bn) of NHS healthcare services.

Our investigation shows that conflicts of interest are rife on CCG governing bodies, with 426 (36%) of the 1179 GPs in executive positions having a financial interest in a for-profit private provider beyond their own general practice—a provider from which their CCG could potentially commission services.

The interests range from senior directorships in local for-profit firms set up to provide services such as diagnostics, minor surgery, out of hours GP services, and pharmacy to shareholdings in large private sector health firms that provide care in conjunction with local doctors, such as Harmoni and Circle Health.

In some cases most of the GPs on the CCG governing body have financial interests in the same private healthcare provider.

Some doctors have relinquished interests in private enterprises because of their new roles as commissioners. These include GPs linked to Richard Branson's Virgin Care, which announced in October 2012 that it planned to end its joint venture partnerships with over 300 GPs in England,[1] after admitting that many were becoming "increasingly worried about the perception of potential conflicts of interest."

Calls for doctors with interests to step down

But our analysis found that, in total, 555 (23%) of 2426 clinical, lay, and managerial members of CCG governing bodies had a financial stake in a for-profit company.

Leading GPs, including a senior government adviser on commissioning, have called for doctors with conflicts that were "too great" to step down and have urged the NHS Commissioning Board to offer tougher guidance to those with multiple interests. Last week the BMA's UK consultants' conference passed a motion expressing concern at "the clear conflict of interest of GP commissioners who run their own private companies" and called on GP commissioners to "be barred from being involved in companies that they are giving contracts to."[2]

But others have said that conflicts are an inevitable by-product of allowing more clinicians into management positions and said that focusing too much on the issue may prevent commissioners redesigning services effectively.

The *BMJ* analysed the registered interests of 176 of the 211 commissioning group boards, obtained through requests made under freedom of information legislation and from CCG websites. The remaining groups were not able to disclose their lists, though they must maintain and publish them from 1 April under NHS Commissioning Board rules.[3]

Our analysis also showed that 4% of GPs on CCG boards were consultants to or advised private health or pharmaceutical companies, while 5% were employed by a private health company as well as working as a GP.

Some 12% of GPs declared links with not for profit voluntary or social enterprise providers that represented a conflict of interest with their commissioning role, while 9% of GPs declared a conflict of interest through a family member.

The NHS Commissioning Board has issued a code of conduct to CCGs stating that board members must remove themselves from decisions from which they could materially benefit.[4]

Some CCGs have responded to this by including a provision to co-opt additional members if doctors on the governing body have to remove themselves from decisions. Others have increased the number of lay members on boards to try to alleviate potential conflicts.

But doctors' leaders have expressed concern that clinical input into commissioning decisions might become diluted if too many doctors were forced to remove themselves from particular decisions.

CCGs with notable conflicts

Governing bodies with notable conflicts include NHS Leicester City CCG, where seven GPs on the board have a financial interest in the LLR (Leicester, Leicestershire and Rutland) GP

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Provider Company; NHS Oldham CCG, where five of the eight GPs have an interest in the provider Primary Care Oldham LLP; and NHS Blackpool CCG, where six of the eight GPs have an interest in the local out of hours provider Fylde Coast Medical Services and five still list interests in Virgin Care.

In NHS Chiltern CCG, in Buckinghamshire, two of the three GPs on the governing body hold shares in the for-profit provider Chiltern Health, while in NHS Aylesbury Vale CCG, also in Buckinghamshire, both GP voting members of the board have interests in the private provider Vale Health. In NHS Southwark CCG, in London, five of nine GPs on the governing body have a stake in various for-profit provider companies.

All these CCGs told the *BMJ* that they had robust systems in place for managing potential conflicts, including publishing their policies on conflicts of interest and regularly updating members' declarations of interest.

Amanda Doyle, a GP and chief clinical officer at NHS Blackpool CCG, told the *BMJ* that her CCG had sought to tackle potential conflicts by opting to double the number of lay members on its governing body from the minimum set by the government, including a lay chairperson (box).

Doyle acknowledged that most of the GPs on the board would have to "step away" if the local out of hours service were to be retendered. But she warned that the benefits of having doctors leading commissioning might be lost if conflicts of interest gained too much attention.

Ian Wilkinson, a GP and chief clinical officer at NHS Oldham CCG, who does not have a financial stake in a private provider company, said that the CCG's board had also recruited additional lay and clinical members to ensure that decisions could be made if members needed to remove themselves. He added that so far no voting members had removed themselves from governing body or committee proceedings.

Richard Gibbs, a lay board member at NHS Southwark CCG, told the *BMJ* that his CCG had attempted to deal with conflicts by appointing him as a "guardian" who would judge when it might be appropriate for members to remove themselves from decisions (box).

A spokeswoman for Leicester City CCG said that a significant proportion of its local general practices were members of the LLR GP Provider Company and said that it would co-opt members from neighbouring CCGs if its governing body were conflicted.

She said, "They have to remain neutral, so we would bring in members from our fellow CCGs—East Leicestershire and Rutland/West Leicestershire—or bring in a GP member from a neighbouring county such as Northamptonshire."

A spokesman for NHS Chiltern CCG said that the group had co-opted additional members to a decision making panel for the recent procurement of a GP led minor illness and injury unit where there was "potential for perceived conflict of interest," while NHS Aylesbury Vale CCG said that it had written the ability to co-opt members into its constitution but had not yet had to enact the clause.

Declaring an interest "not enough"

However, despite the measures being taken, James Kingsland, the government's national clinical lead for NHS clinical commissioning and a GP on Merseyside, said that he believed some doctors on local commissioning boards should step down from one of their roles if they had a substantial stake in a local private healthcare company, because their conflicts were too acute.

He said, "If it is somebody who has got a major stake in some of the provider services which the CCG commissions, I don't think excluding [himself or herself] or declaring an interest is enough—not for the public. I think they have got to step down."

Kingsland said that his stance had been criticised by some doctors, who were concerned that forcing people to step down could lead to a shortage of clinicians willing to sit on CCG boards.

But he said, "That isn't an excuse to allow conflict to go. If they are enthusiasts as both senior provider and senior commissioner, my answer would be: make your choice and be accountable for that choice.

"If you can justify a marginal amount of conflict that can be declared and managed, then fine. If you can't marginalise a conflict, and you are excluding yourself from the board week in, week out because you've got an interest, ultimately it becomes unaccountable. Where you draw the line is difficult; if somebody is going to be the arbiter of that, it should be the public."

The "local newspaper test"

Michael Dixon, chairman of the NHS Alliance, which represents organisations and individual professionals in primary care, and who is also interim president of NHS Clinical Commissioners, has previously called for "more leniency" in handling conflicts of interest in the new system.[5] He warned that placing too much emphasis on the issue might prevent clinical commissioners from bringing more care into community settings.

He said, "The priority is to move services out of hospital and into primary care. The reason this hasn't happened to date is because of blocks in the system. It's more important to remove those blocks than be preoccupied with conflicts of interest.

Dixon said that he believed that "transparency is all you need" to handle conflicts and urged doctors to use "the local newspaper test" when assessing their own interests: "You have got to be happy for everything you do as a GP and a commissioner to appear on the front page."

Chaand Nagpaul, the BMA's lead GP negotiator on commissioning and a GP in Harrow, called for the NHS Commissioning Board to issue more robust guidance on handling conflicts.

"The Commissioning Board's guidance has not gone far enough. Their guidance is all about declaring and managing conflicts, rather than recognising that some conflicts of interest are too great."

Nagpaul said that he supported the idea of CCGs co-opting additional members to help make decisions where conflicts existed, but he said that it was crucial that this extra help did not just focus on lay members, as it could "dilute" clinical commissioning.

"It would undermine the whole concept of clinically led commissioning to not have clinical input," he warned.

A spokeswoman for the NHS Commissioning Board said that it had already published "comprehensive guidance" on managing conflicts of interest, which "clearly sets out that the decision on whether an individual's conflicts of interest are likely to be so great as to preclude them from taking a role on the governing body should be made by the CCG."

But she said that the board was reviewing its existing guidance and would shortly be publishing "final, comprehensive guidance on managing conflict of interest."

Strengthening the rules

The Department of Health acknowledged in its response to its consultation "Securing the Best Value for Patients" that concerns about conflicts needed to be answered, and it pledged to strengthen the power of the healthcare regulator Monitor to act where conflicts "may affect the integrity of a commissioner's decision."[6]

The department said that this would mean that "Monitor is able to take action where conflicts have not been managed appropriately in awarding a contract, and not only where Monitor is able to establish that the decision to award a contract was the result of an interest in the provider—which may have set the bar too high to allow action to be taken."

Niall Dickson, chief executive of the General Medical Council, said that there were "no new principles involved" as far as doctors' ethical conduct was concerned. He added, "The considerable additional responsibilities about to be undertaken by GPs does mean that some face conflicts of interests more often than in the past. This is all about honesty and integrity—we expect doctors to be open about any financial and commercial interests linked to their work."

For an interactive timeline of events concerning CCGs and conflicts of interest go to http://bit.ly/ZzAgav

1 Kmietowicz Z. GPs end partnerships with Virgin over conflicts of interest. *BMJ* 2012;345:e7227.
2 White C. Consultants "robbed of place at heart of commissioning." *BMJ Careers* 12 Mar 2013. http://careers.bmj.com/careers/advice/view-article.html?id=20011205.
3 NHS Commissioning Board. Towards establishment: creating responsive and accountable clinical commissioning groups. www.commissioningboard.nhs.uk/files/2012/09/towards-establishment.pdf.
4 NHS Commissioning Board. Code of conduct: managing conflicts of interest where GP practices are potential providers of CCG-commissioned services. www.commissioningboard.nhs.uk/files/2012/09/c-of-c-conflicts-of-interest.pdf.
5 Iacobucci G. GPs' pleas for their conflict of interests to be treated with leniency are rejected by commissioning board. *BMJ* 2012;345:e7967.
6 Department of Health. Securing the best value for patients: consultation response. https://www.wp.dh.gov.uk/publications/files/2013/02/securing-the-best-value-for-patients-consultation-response.pdf.

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How two CCGs are tackling the issue of conflicts of interest

NHS Blackpool CCG

Amanda Doyle, chief clinical officer at NHS Blackpool CCG, who has declared an interest in the local provider of out of hours services, said that her CCG had sought to deal with potential conflicts by opting to have four lay members on its governing body—double the minimum set by the government—including a lay chairperson.

"We were very conscious of the need to demonstrate that we were not letting conflicts interfere with our decisions," she explained.

But Doyle added that it was important to strike a "balance" between managing conflicts appropriately and "ensuring that we get a full range of clinical input into service redesign and commissioning decisions."

She warned, "There is a risk of getting so tied up with worrying about conflicts of interest that you don't go ahead and reap the benefits of having clinicians leading commissioning."

Doyle acknowledged that most GPs on the board would have to step away if the local out of hours service were to be retendered. She said that it was "unlikely" that the board would co-opt additional clinicians on to the board in such a case but said that it may take "clinical input and advice" from outside the area if this was needed.

NHS Southwark CCG

Richard Gibbs, lay member of the board of the NHS Southwark CCG, said that his group had tried to tackle potential conflicts by appointing him as a "guardian"—with the remit of exercising judgment on when it might be appropriate for members to remove themselves from decisions.

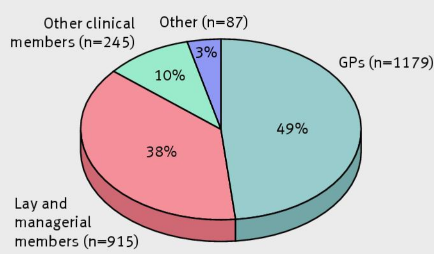
Gibbs, who has no financial interests in any private providers, said that the CCG had also set up a three person evaluation panel, comprising himself, the chief officer, and the director of public health, to arbitrate on commissioning decisions where two or more members have to remove themselves from decisions because of conflicts.

"We have convened the panel on three or four occasions," Gibbs said. "If we needed to get additional expertise then we would co-opt in someone who isn't conflicted, presumably from outside Southwark."

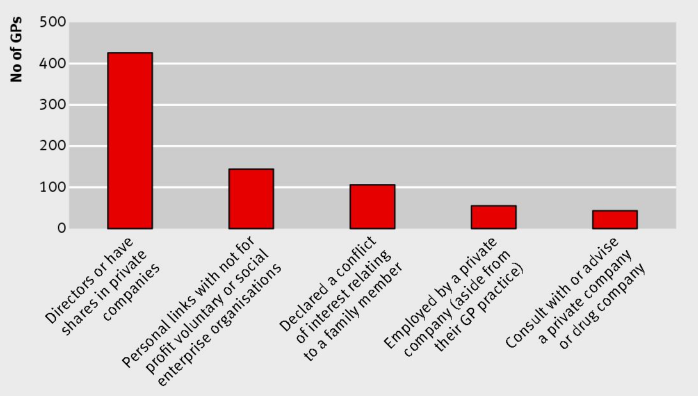
Figures

Membership of CCG governing bodies

Total number of board members in 176 CCGs analysed (n=2426)



Types of interests registered by GPs on CCG boards



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