

## The NHS Healthcare Market Handling Conflicts of Interest with Consultant Medical Staff

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This policy replaces any existing local policy and procedure.

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Name of originator/author:	Director of HR – Sandra Hatton
Lead Director:	Director of HR – Sandra Hatton
Name of responsible committee/individual:	Sandra Hatton/Nigel Henderson
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# **The NHS Healthcare Market Handling Conflicts of Interest with Consultant Medical Staff Policy Statement**

## **1. Introduction**

This policy statement sets out the Trust's position in respect to handling potential conflicts of interest with consultant medical staff which can arise out of competition within the NHS Healthcare marketplace.

## **2. Background**

The healthcare market is becoming increasingly competitive in terms of the work that is undertaken, and who carries out that work. NHS Trusts, foundation trusts, private healthcare providers, clinicians and general practitioners can all find themselves competing for the NHS healthcare work that is available. One particular problem that has arisen involves NHS employees who may find themselves, through their private interests, competing with their employer for NHS work. This has brought the issue of competition into sharp focus and it is essential that the Trust as an employer sets out its position in this respect.

## **3. Areas of Business Concern to the Trust**

The Trust's Clinical Services Executive has identified the following circumstances and areas of business where it would be concerned if consultants seek to undertake work in competition with the Trust. This does not cut across or interfere with existing arrangements whereby consultants undertake work in the private healthcare sector on non NHS work.

- Individual consultants and/or chambers of consultants responding to the PCT(s) invitations to bid for work which would have a material impact on the Trust, that is, a loss of income and business.
- Individual consultants/chambers of consultants working with an independent healthcare provider to bid for work which would have a material impact on the Trust, that is, a loss of income and business.

## **4. Guiding Principles**

The Trust recognises the need to work with primary care trusts to achieve the implementation of government reforms and is keen to do so in a way that enables the Trust to provide intermediate care through outreach and other innovative ways of using the Trust's highly skilled and trained workforce. Therefore, the Trust remains open to dialogue.

The Trust expects that:

- a) Consultants in any of the above circumstances will come forward and enter into discussions with the Trust before responding to any invitations to submit bids/tender for work. This should be raised with the Divisional Chair and the Divisional General Manager in the first instance but it is important that the Chief

Operating Officer and the Medical Director are kept fully informed by the Division because the level of decision-making may have to be taken at this level.

- b) In the event that approval is obtained The Trust expects that its consultants working on an individual basis, with chambers or with a private healthcare sector provider to bid for local NHS work will not use information which can be accessed solely because of local NHS employment in any bid in competition with the Trust.
- c) The Trust recognises there is a distinction between working up a bid in direct competition with the Trust on the one hand and subsequently accepting sessional work from a private healthcare provider that has already won the relevant work. In the latter case, the Trust as an employer would seek to act reasonably to enable consultants to undertake this private activity if it can be accommodated within existing job plans.
- d) There is the clear potential for conflict arising from consultants who set up and manage consultant chambers or a private company and who directly tender for NHS business in competition with the Trust. This would be deemed to be in breach of the duty of fidelity and consequently potentially incompatible with continued employment by the Trust.
- e) The Trust's managers will work with the consultants and services concerned to identify ways in which to work jointly to avoid conflict.
- f) Where the Trust's Managers have failed to reach an agreement with the consultants seeking to work in competition with the Trust there will be an opportunity for both sides to participate in a disputes resolution mechanism. This would be in the form of a Review Panel with Trust Board membership. The consultant(s) could be represented by a friend or colleague, or a professional body representative but not by a legal adviser. the Trust reserves the right to take appropriate action where it is facing a serious loss of business and income.
- g) The Review Panel would comprise two members of the Trust Board and be advised by the Director of Human Resources. The Management Team (Divisional Chair/GM) would present their case to the Panel as would the consultant(s). The Panel's decision would be binding and there would be no further recourse within the organisation. The potential outcomes might include:
  - The Panel accepting that the consultant(s) could bid for work that might have a detrimental impact on the Trust
  - The Panel concluding that the consultant(s) should not do so. If this were to be the case the consultant(s) would be informed of the Panel's decision and that if he/she proceeded to bid for the work the Trust would take action under its Disciplinary Procedures on the basis that a reasonable management instruction had been disregarded.

**Sandra Hatton**  
**Director of Human Resources & OD**

**Dr Graz Luzzi**  
**Medical Director**

Agreed by JCNC on 12 May 2008