Policy and guidance on the handling of conflicts of interest in the NHS LA

NO.CG06

| This policy and guidance applies to: | 1. All those who work for the NHSLA including its employees, officers, advisers, in house solicitors and (collectively termed “NHS LA staff”).  
2. Contractors, assessors, legal panel members and other external providers of services (collectively termed “external providers”). |
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<td>08 June 2016</td>
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<td>Date of JNC Consideration</td>
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<td>Date of Board Approval</td>
<td>06 July 2016</td>
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| Prepared by:                        | Tinku Mitra  
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Hill Dickinson |
1. **INTRODUCTION**

1.1. The purpose of this policy is to provide overarching guidance to all NHS LA staff, and external providers on how the NHS LA will identify, monitor and manage conflicts of interest in its activities. Non-staff members of the NHS LA Board are required to adhere to the NHS Board members codes of conduct. Where the code applies to this policy, all members of the Board must declare their interests in the NHS LA’s Register of Interests and/or declare where there is any interest that preclude them from consideration of any specific NHS LA business.

1.2. This policy and allied guidance will help protect the NHS LA and its staff by ensuring that conflicts of interest do not affect, or appear to affect, the integrity of the NHS LA’s functions. It will ensure that the NHS LA as a Public Body acts and can be seen to act fairly, reasonably and rationally.

1.3. In addition to this policy and its allied guidance all NHS LA staff should be aware of and comply with its policies and guidance on Confidentiality and the Receipt of Hospitality. Guidance on these is contained in RM18 Data Protection Policy, ITAF02 Guidance for working with sensitive or confidential information and HR04 Hospitality and Gifts Policy and Procedure, and FINP05, Procurement Policy.

2. **AIMS**

2.1. The aims of this policy are to:

2.1.1. Provide overarching guidance on what a conflict of interest is and how it will be managed within the NHS LA

2.1.2. Set out the NHS LA’s position in respect of conflicts of Interest

2.1.3. Identify the risks conflicts of interest pose to the NHS LA

2.1.4. Identify the duties which the NHS LA’s in house lawyers must comply with in order to comply with the Solicitors Regulatory Authority (SRA) Code of Conduct

2.1.5. Identify the duties which the NHS LA’s external contractors must comply with in respect of the identification and notification of conflicts of interest
3. **CONFLICTS OF INTEREST**

3.1. A Conflict of Interest occurs where an individual’s ability to exercise judgement, or act in a role, is or could be impaired or otherwise influenced by his or her involvement in another role or relationship. The individual does not need to exploit his or her position or obtain an actual benefit, financial or otherwise, for a conflict of interest to occur. A perception that an individual’s ability to exercise their judgement could be impaired or otherwise influenced is sufficient for a potential conflict of interest to arise.

3.2. As well as direct financial interests, conflicts of interest can arise from an indirect financial interest or non-financial interest. Conflicts of loyalty may also arise for example in respect of an organisation of which the individual is a member or with which they have an affiliation. Conflicts can arise from personal or professional relationships with others, e.g where the role or interest of a family member, friend or acquaintance may influence an individual’s judgement or actions or could be apparent to do so.

3.3. The NHS LA recognises that as a result of the nature of its work there will be instances where its staff have professional associations and networks with those who make use of its services and that these would not normally be regarded as a conflict.

4. **NHS LA POSITION ON CONFLICTS OF INTEREST**

4.1. The NHS LA recognises that across all of its functions it must act in a way that is and can be seen to be fair and reasonable.

4.2. The NHS LA recognises that its ability to act and to be seen to act fairly and reasonably can be prejudiced in circumstances where there is a conflict of interest either actual or apparent.

4.3. The NHS LA recognises that where there is an actual or apparent conflict of interest it should take steps to manage the conflict which are fair, reasonable and proportionate.

4.4. This policy and attached guidance sets out how conflicts of interest should be managed across the NHSLA’s functions, to include casework and claims case handling.

4.5. The guidance includes:

4.5.1. Function specific examples of conflicts of interest.
4.5.2. Guidance on the duties of NHS LA staff

4.5.3. Guidance on the identification, reporting and handling of conflicts of interest

4.5.4. Guidance on what steps can be taken to manage a conflict.

4.6. The NHS LA will endeavour to act swiftly and transparently in its identification and management of conflicts.

4.7. For employees of the NHS LA, a breach of this policy or its underlying guidance may result in disciplinary action being taken in accordance with the NHSLA’s [HR 10] Disciplinary Policy and Procedure.

5. RISKS TO THE NHS LA

5.1. The NHS LA recognises that a failure to properly manage conflicts of interest could lead to its functions being challenged by way of legal proceedings, including judicial review proceedings. Any successful challenge may also result in both financial loss and reputational damage to the NHSLA.

6. IN HOUSE SOLICITORS

6.1. The NHS LA employs a number of in house solicitors which are authorised to undertake reserved legal activities within the permitted framework set out in the SRA Practice Framework Rules 2011.

6.2. All in house solicitors are required to comply with the SRA Code of Conduct as they apply to in house practice.

6.3. In respect of conflicts of interest in house lawyers are specifically required to note and comply with Chapters 3 and 4 of the SRA Code of Conduct as they apply to in house lawyers.

7. EXTERNAL PROVIDERS

7.1. External providers are required to have in place a Conflict of Interest policy in order to ensure that all actual and potential conflicts of interest are identified and managed appropriately.

7.2. Where an external provider becomes aware of a conflict of interest which will or may affect their ongoing work with the NHS LA they are required to notify the relevant function Head as soon as possible.
8. CONCLUSION

The NHS LA wishes to ensure that any conflicts of interest are identified and managed in a consistent, fair and proportionate manner and its staff should ensure that they are aware of this policy and the guidance relevant to their work. Induction for new staff members will include awareness of this policy and guidance.
Guidance on managing conflicts of interest

1. INTRODUCTION

1.1 This guidance sets out the NHS LA’s approach to identifying and managing conflicts of interest in its casework and claims work function. It is designed to ensure that conflicts of interest do not affect or appear to affect the integrity of the NHS LA’s functions.

2 EXAMPLES OF WHERE CONFLICTS OF INTEREST MAY ARISE

2.1 Below are a number of non-exclusive examples of where a conflict of interest may arise including specific examples within claims and casework functions:

Claims

2.1.1 A claims handler has a personal acquaintance with a claimant whose case he has been allocated.

2.1.2 The case manager has previously been employed by a solicitor’s firm who is acting for a claimant in a case he has been allocated.

2.1.3 A case handler has a close connection with a person or body (not directly involved in a case) that has an interest in the outcome of a case he has been allocated.

2.1.4 An expert has a personal prejudice about a case which influences the way they manage it and record their rationale for so doing.

2.1.5 An NHS LA solicitor has previously worked at a law firm which is now acting for a claimant whose case they have been allocated.

2.1.6 The NHSLA recognises that it often advises multiple scheme members in individual cases and that in normal circumstances this does not give rise to a conflict. If however an NHSLA officer has any concern that a conflict has arisen they should follow the procedures set out in this guidance.

FHSAU

2.1.7 An FHSAU Officer has a personal acquaintance with one of the parties in a dispute.

2.1.8 An FHSAU Officer lives in close proximity to an area in which there is an application to join the Pharmaceutical List.
2.1.9 An FHSAU Officer has by some reason a connection with a person or body (directly involved in a case) that has a financial interest in the outcome of a case s/he has been allocated.

2.1.10 An FHSAU Officer is a patient of a practice involved in a dispute.

NCAS

2.1.11 An NCAS case adviser or assessor has a close connection with a Trust or Medical Practice involved in a case. Examples of this connection include where an assessor has recently worked at the Trust and/or are a patient of the Trust.

2.1.12 An NCAS clinical reviewer has a personal acquaintance with a practitioner whose case he has been asked to advise upon.

2.1.13 An NCAS officer stands to gain personally from the outcome of a case. An NCAS officer has a close connection with a person or body (not directly involved in a case) that has an interest in the outcome of a case.

2.1.14 An NCAS officer has a personal perception about a service provider which influences their decision to utilise the provider.

2.1.15 An NCAS assessor becomes aware of a conflict of interest during an assessment visit.

2.1.16 An NCAS officer has a personal prejudice about a case which could influence the way they manage the case and record their rationale for so doing.

Procurement decisions

2.1.17 An NHS LA officer could influence the tender procedure to allow a relative, friend or commercial or financial partner to increase their chances of success. They could leak information on the tendering procedure, bias the selection criteria or influence the final evaluation.

Recruitment and selection of staff

2.1.18 An NHS LA officer on an interview panel fails to disclose their connections to a prospective candidate thereby potentially invalidating any appointment due to a potentially flawed process.
3. DUTIES OF NHS LA STAFF

3.1 All those who work for the NHS LA must:

3.1.1 ensure that they are aware of and comply with this guidance and the
NHS LA’s overarching policy statement on conflicts of interest;

3.1.2 ensure that they understand what a conflict of interest is (actual or
apparent) and how it might arise in the course of their duties for the
NHS LA;

3.1.3 ensure before commencing work on a case they consider whether
there is a conflict of interest or risk of one arising;

3.1.4 ensure when working on a case they continue to consider whether
there is a conflict of interest or risk of one arising;

3.1.5 declare in accordance with the procedures set out in this guidance any
conflict of interest or potential conflict of interest as soon as possible
after they become aware of one;

3.1.6 ensure that they do not undertake any substantive steps in a case
whilst awaiting the outcome of a determination as to whether a conflict
exists and if so the steps which the NHS LA will take to manage the
conflict; and

3.1.7 ensure they abide by any steps that the NHS LA determine should be
taken to manage a conflict of interest or potential conflict of interest.

4. IDENTIFICATION AND HANDLING OF CONFLICTS OF INTEREST

4.1 The NHS LA wishes to ensure that it actively seeks to develop good practice
in the way it handles conflicts of interest. Below are the steps which NHS LA
Staff must take when a conflict of interest or potential conflict of interest is
identified.

4.1.1 An NHS LA Officer who becomes aware of a conflict of interest or
potential conflict of interest must report this as soon as reasonably
practicable to the respective NHS LA lead in accordance with the
escalation process set out in Appendix 1.

4.1.2 An NHS LA Officer who becomes aware of a conflict of interest of
another Officer will ensure that this person reports the interest as soon
as reasonably practicable in accordance with Appendix 1. If the NHS
LA Officer is not satisfied that this has been done the Officer should
report the matter themselves in accordance with Appendix 1.

4.1.3 As soon as possible after receipt of a report concerning a conflict of
interest or potential conflict of interest the appropriate NHS LA lead will
be responsible for noting with clear reasons included, details of the
information reviewed and the judgment criteria applied as to whether a
conflict of interest exists and if so what steps the NHS LA will take to manage the conflict.

4.1.4 The steps which the NHLSA lead may advise include:

4.1.4.1 the removal of the NHS LA Officer from any further involvement in a case;

4.1.4.2 the removal of the NHS LA Officer from specific case duties. These may include decision making duties;

4.1.4.3 the transfer of a case to another NHS LA Officer;

4.1.4.4 notification of the conflict and the steps the NHS LA is taking to manage the conflict to the scheme member and/or other parties;

4.1.4.5 the obtaining of independent advice in relation to possible conflicts between scheme members; or

4.1.4.6 any other actions that are deemed appropriate to manage the conflict.

4.1.5 The NHS LA lead’s note of the decision (with reasons) as set out above will be reviewed by another lead (as identified in Appendix 1) who in the event they consider it necessary will arrange for it to be approved by a member of the NHS LA’s senior management team. In cases involving the Chief Executive, this will be escalated to the Chair.

4.1.6 A copy of the NHS LA’s lead’s note will be kept in the NHS LA case record.

4.1.7 The NHS LA’s case management system will be updated as necessary to include details of the conflict.

5. AFTER A CONFLICT OF INTEREST HAS BEEN IDENTIFIED

5.1 All NHS LA Staff must ensure they comply with the steps which the NHS LA has determined should be taken to manage a conflict.

5.2 In cases where a decision has been made that on NHS LA Officer should take no further steps in a case, they should ensure that they do not:

5.2.1 undertake any further work in the case;

5.2.2 access or review any case information; or

5.2.3 discuss the case (other than to confirm their exclusion from the case) with any party apart from where absolutely necessary with the prior permission of the relevant NHS LA lead.
6. **IN-HOUSE SOLICITORS**

6.1 All in-house solicitors are required to comply with the Solicitors Regulatory Authority (SRA) Code of Conduct as they apply to in-house practice.

6.2 In respect of conflicts of interest, in-house lawyers are specifically required to note and comply with Chapters 3 and 4 of the SRA Code of Conduct.

7. **CONCLUSION**

The NHS LA must ensure that it has robust procedures in place in order to identify and manage conflicts of interest. The identification and management of conflicts will ensure that all NHS LA cases are and can be seen to be dealt with impartiality and objectively.

June 2016
## Appendix 1

### Corporate Functions

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### FHSAU

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<td>Advisor (on premises disputes)</td>
<td>Royal Institute of Chartered Surveyors and Head of FHSAU</td>
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