

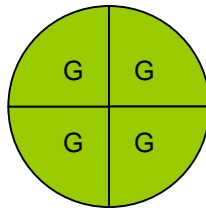
# Internal Audit



## Compliance with Standards of Business Conduct

June 2016

### Report Assessment



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## **Introduction**

Scottish NHS bodies must comply with standards of business conduct, accountability and openness that require all staff to be able to demonstrate fairness, impartiality and openness in decisions and activities undertaken in performing their duties.

To aid with compliance of Standards of Business Conduct, NHS Lothian should take cognisance of legislation such as the Ethical Standards in Public Life (Scotland) Act 2000, the Bribery Act 2010 and guidance within the Scottish Public Finance Manual. There should be robust policies in place which outline business conduct behaviour required by all staff who potentially may benefit as the recipient of gifts or hospitality. Staff should also know their obligations in respect of declaration of business interests. These controls serve as an important defence against unethical conduct or any actions brought under the 2010 Bribery Act.

NHS Lothian has set out 'Applying the Principles of Good Business Conduct – Procedure and Guidance for all Employees' which provides direction and procedures to support the application of the standards of conduct. In addition staff who are registered professionals are required to comply with their professional standards in performing their duties.

### **Scope**

To confirm staff compliance with public sector standards of good conduct, including requirements of the Bribery Act 2010.

### **Acknowledgements**

We would like to thank all staff consulted during this review, for their assistance and cooperation.

## Executive Summary

### Conclusion

In general, the policies and procedures NHS Lothian has in place to confirm compliance with public sector standards of good conduct are adequate and operating effectively. However, we noted some areas in which the application of controls could be enhanced through more formal documentation to improve the transparency of decision making across the organisation.

### Summary of Findings

The table below summarises our assessment of the adequacy and effectiveness of the controls in place to meet each of the objectives agreed for this audit. Definitions of the ratings applied to each action are set out in Appendix 1.

No.	Control Objective	Control objective assessment	Number of actions by action rating			
			Critical	Significant	Important	Minor
1	Policies and procedures exist that provide clear direction on the achievement of compliance with good conduct standards, and are subject to regular review	Green	-	-	-	1
2	There are registers of interest, gifts and hospitality in place which are updated by staff on a regular basis	Green	-	-	1	1
3	Management have performed a risk assessment to determine how business conduct issues may present themselves in their area and have put mitigating actions in place to reduce the potential for a business conduct issue to occur	Green	-	-	1	1
4	There is a process in place for monitoring the effectiveness of the Applying the Principles of Good Business Conduct procedure, escalating any instances of non-compliance, and for providing assurance to the Board	Green	-	-	1	

## Control Objective Ratings

Action Ratings	Definition
Red	Fundamental absence or failure of controls requiring immediate attention (60 points and above).
Amber	Control objective not achieved - controls in place are inadequate or ineffective (21 – 59 points).
Green	Control objective achieved – no major weaknesses in controls but may be scope for improvement (20 points or less).

## Main Findings

Compliance with public sector standards of good conduct is achieved through the communication of NHS Lothian's procedures 'Applying the Principles of Good Business Conduct' ('the Procedure') to staff. Applying the Procedure is included in NHS Lothian's core level one policy pack, which contains mandatory policies and procedures which are applicable to all staff.

Awareness training is provided to new staff during corporate and local induction. The Procedure provides comprehensive guidance to staff about how they should conduct themselves when offered gifts or hospitality in relation to their work. The Procedure also gives clear guidance on situations in which staff members must declare a conflict of interest. The Procedure is currently being reviewed and made more user and intranet friendly with the inclusion of hyperlinks which is now available on the Finance Online intranet page.

The Corporate Services Manager maintains a central register of interests that is used to record financial and non-financial interests held by a Board Member or Senior Manager, which may be perceived as leading to a potential conflict of interest. A central register of gifts and hospitality is also maintained and is updated when a Board Member or Senior Manager submits notification that they have received either.

The Pharmacy Area Drugs and Therapeutics Committee (ADTC) have policy statements in place to ensure that ADTC and its subcommittees, members and those submitting to the committees are aware of the Procedure. The ADTC maintains their own register of interest which is updated annually and when declarations of interest are made.

We identified three important areas for improvement during the review:

- Staff members involved in the recruitment of staff and selection process are required to complete a declaration of interest form if they consider that they have a potential financial or non-financial interest in the appointment of a specific individual. It was noted that this process is not being formally recorded;
- The Procedure states that managers should conduct an assessment of how business conduct issues are likely to present themselves in the activities undertaken in their areas. The sample of senior managers we spoke to advised that they were aware of areas with the potential for business conduct issues but had not carried out a formal assessment; and

- Board and Committee members are reminded by the Chair at the start of each meeting that they must declare any actual or potential conflicts of interest relating to any of the agenda items. The Board receives the minutes of the meetings of its sub committees which also include the declaration of interests made by members. In addition the Board receives the minutes of the Corporate Management Team and Risk Management Group; however declaration of interests are currently not being declared and recorded at these meetings.

Further details of each of these points, in addition to three minor points, are set out in the Management Action Plan, at page five of this report.

## Management Action Plan

<b>Control objective 1: Policies and procedures exist that provide clear direction on the achievement of compliance with good conduct standards, and are subject to regular review</b>	
<b>1.1: Not all staff contracts highlight conditions of employment relating to expected standards of conduct.</b>	<b>Minor</b>
<p><b>Observation and risk:</b></p> <p>Medical and dental staff must comply with their relevant professional body code of conduct which includes expected behaviours surrounding conflicts of interest. In addition, staff contracts of employment contain a number of clauses which highlight the conditions which must be met during their employment. We noted that non-medical contracts contain clauses that make specific reference to the acceptance of gifts and/or hospitality and conflict/declaration of interests.</p> <p>However, our inspection of a sample of twelve medical and dental contract templates identified that only two (Specialty Doctor and Dental) contained clauses relating to the acceptance of gifts and/or hospitality and conflict/declaration of interests.</p> <p>Without the inclusion of the gifts/hospitality or conflict/declaration of interests clause in all medical and dental contracts there is a risk that NHS Lothian is perceived to have not taken all reasonable steps to prevent unethical behaviour/ensure compliance with good conduct standards.</p>	
<p><b>Recommendation:</b></p> <p>The Head of Resourcing should liaise with the Local Negotiating Committee with a view to updating medical contract templates to include clauses which highlight contractual requirements around the declaration of interests and acceptance of gifts and or hospitality.</p>	
<p><b>Management Response:</b></p> <p>The Medical &amp; Dental Contracts are nationally agreed templates which is the reason for not currently carrying the declaration clause similar to the AFC Contract template. A declaration clause will be now be added to the Medical &amp; Dental contract templates. Adding the clause does not change existing contractual terms and conditions, and as such does not require to go to the Local Negotiating Committee.</p> <p><b>Management Action:</b></p> <p>A clause on the declaration of interests and acceptance of gifts and or hospitality, mirroring that contained in the AFC employment contract template, will be added to Medical and Dental contract templates.</p>	
<p><b>Responsibility:</b> Head of Resourcing</p>	<p><b>Target date:</b> 30<sup>th</sup> August 2016</p>

**Control Objective 2: There are registers of interest, gifts and hospitality in place which are updated by staff on a regular basis**

**2.1 Declaration of interests by staff involved in the recruitment of staff are not being formally declared and recorded.**

**Important**

**Observation and risk:**

The Procedure requires that anyone involved in the recruitment and appointment of an individual must declare any financial or non financial interest they may have using a Declaration of Interest form. The potential for conflict of interest should then be considered by the recruitment manager and actions taken as required.

The current HR Online guidance states that staff members who may be involved in the recruitment process for a member of staff whom they supervise are required to declare a conflict of interest. This does not fully reflect the requirements of the Procedure.

Where an interest has been declared but not documented there is a risk of an absence of transparency and any related challenge to an appointment may be difficult to defend.

**Recommendation:**

The Head of Resourcing should introduce guidance to those involved in the recruitment process. The recruitment documentation should be used to record confirmation that no panel member had a financial interest in the outcome.

Where a conflict of interest is identified in the recruitment process, a Declaration of Interest Form should be completed. This form should be kept with the candidate record for one year, in line with HR documentation retention policy.

**Management Response:**

The following guidance currently exists;

NHS Lothian's Recruitment & Selection Policy

(<http://hronline.lothian.scot.nhs.uk/HRPolicy/RecruitmentandSelection/Pages/RecruitmentandSelection.aspx>)

**4.2 personal relationships at work**

When participating in the NHS Lothian recruitment process, managers will be expected to work within the requirements of the Recruitment Policy and Procedure as well as within the Standards of Business Conduct and Guidance. As such, members of staff in a line management/supervisory role should not be involved in the selection or appointment of any applicant with whom they have a personal relationship. This means that in certain circumstances alternative management arrangements may require to be made.

Any such known interest should be declared at the earliest possible opportunity by staff involved in the recruitment process.

Interview Panel guidance on HR Online

(<http://hronline.lothian.scot.nhs.uk/About/OurServices/generalrecruitment/generalrecruitmentinterview/Pages/InterviewPanel.aspx> )



**Personal relationships at work**

*Members of staff in a line management or supervisory role should not be involved in the selection or appointment of any applicant with whom they have a personal relationship. This means that in certain circumstances alternative management arrangements may require to be made.*

*Any such known interest should be declared at the earliest possible opportunity by staff involved in the recruitment process.*

Due to the number of internal applicants through recruitment process, it is highly likely that interview panellists will know one or more interview candidates in advance and already have a pre-existing business and friendship relationship. As such, this level of risk is accepted and panellists would not be required to formally declare this. However, a panellist who has a close personal relationship (ie a family member (spouse/partner, parent, child, grandparents, uncles, aunts, cousins, step-relatives, in-laws) is required to declare this.

Interview Panel Chair guidance will be updated to check and confirm if any interests are to be declared. Rather than completing a separate declaration form, it would be preferable to incorporate the appropriate declaration statement into existing interview paperwork for completion.

**Management Action:**

Head of Resourcing to agree with the Corporate Governance Manager, appropriate declaration of interests wording for incorporating into existing Interview documentation for completion and held on record for one year.

Review Recruitment & Selection training include reference to the Declaration of Interest requirements during the recruitment & selection process.

**Responsibility:**

Head of Resourcing

**Target date:**

31<sup>st</sup> December 2016

<p><b>2.2 Procurement are not notified of hospitality and entertainment accepted by non-Board members and do not maintain a database of declaration of interests.</b></p>	<p><b>Minor</b></p>
<p><b>Observation and risk:</b></p> <p>NHS Lothian’s Applying Business Conduct Procedure requires that non-Board members submit an appropriately authorised Hospitality and Entertainment Form to the Procurement Department, for instances where the scale of hospitality is above that which would be offered by the NHS as an employer. Procurement should record this information so that it can be reviewed to identify any potential conflicts of interest prior to forming a procurement panel.</p> <p>The Procurement department advised that it does not receive any forms relating to hospitality and entertainment from NHS Lothian non- Board members. However, Procurement does maintain a register for gifts and hospitality received or refused by its own team members. Inspection of the 2016 register identified only one recorded instance.</p> <p>The Procedure also requires that completed declaration of interests forms (including nil returns) made by any employee involved in a specific procurement exercise (e.g. evaluating, short listing of bids and award of contract) should be retained. The forms should be held in a database and reviewed, along with the register of hospitality and entertainment, to avoid any possibility of conflict of interest when setting up procurement panels.</p> <p>Our review identified that declarations of interest, including nil returns, were made during meetings for procurement tenders and the documentation was retained with the procurement paper work. However no central database is maintained of all those staff members with a declaration of interest.</p> <p>Where there is no central database of hospitality and entertainment received and staff conflict of interests with a potential supplier there is a risk that a procurement contract is awarded to a supplier where there is a conflict of interest. This could result in a delayed procurement tendering process where the process has to be re-performed or could lead to negative publicity where a conflict of interest is noted by the public</p>	
<p><b>Recommendation:</b></p> <p>The Head of Procurement should establish a database to record the receipt of hospitality, entertainment and declaration of interests as described in the Procedure for non-Board members.</p> <p>The Head of Procurement should also communicate the requirement for the Procurement team to be notified about the acceptance of hospitality &amp; entertainment across the organisation and the requirement for the completion of declaration of interest forms by all staff involved in specific procurement exercises.</p>	
<p><b>Management Response:</b></p> <p>Accepted</p>	

**Management Action:**

The Associate Director of Procurement will establish a database to record the receipt of hospitality, entertainment and declaration of interests as described in the Procedure for non-Board members.

The Associate Director of Procurement will communicate the existing requirement for the Procurement team to be notified about the acceptance of hospitality & entertainment across the organisation and the requirement for the completion of declaration of interest forms by all staff involved in specific procurement exercises.

**Responsibility:** Procurement Planning  
Manager.

**Target date:** December 2016

**Control Objective 3: Management have performed a risk assessment to determine how business conduct issues may present themselves in their area and have put mitigating actions in place to reduce the potential for a business conduct issue to occur.**

**3.1 Managers have not carried out assessments of their areas to identify activities which may present business conduct issues.**

**Important**

**Observation and risk:**

The Procedure states that managers should conduct an assessment of how business conduct issues are likely to present themselves in the activities undertaken in their areas. Managers have authority to decide whether to introduce a local register to record potential conflicts of interest and the receipt of gifts /hospitality.

The sample of senior managers we spoke to advised that they were aware of areas with the potential for business conduct issues but had not carried out a formal assessment. Managers believed that staff knew the boundaries of what is acceptable business conduct in relation to the acceptance of gifts or hospitality/entertainment and would seek advice and/or approval prior to acceptance. For example, if a staff member was being sponsored by a company to speak at a conference then this would be discussed; however the discussion or approval would not be recorded.

There is a risk of negative public perception of a potential conflict of interests, even where no conflicts exists, when staff are in receipt of hospitality, entertainment or sponsorship and but there is a lack of evidence to confirm the potential for conflict was fully considered.

**Recommendation:**

Managers should be reminded of the requirement to assess how Business Conduct issues may arise in their area and should put processes in place which will evidence consideration of conflict of interest issues as they arise.

**Management Response:**

The recommendation is accepted. The executive summary of the business conduct procedure includes generic minimum implementation standards which apply to all policies. One of those standards is for managers to make an assessment as to the extent that the subject matter of the policy relates to their area. Consequently this point should be taken forward in the context of general risk management activity.

**Management Action:**

The finance directorate launched Finance Online in June 2016, which included an edited and represented version of the business conduct procedure and guidance in its own distinct section.

The Corporate Governance Manager will prepare a short note for management, highlighting this section along with factors to consider when making their local assessment. This note will then ask managers to capture and address any local issues and risks that they may have in their local risk register and risk management processes.

<b>Responsibility:</b> Corporate Governance Manager	<b>Target date:</b> 31 <sup>st</sup> August 2016
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<p><b>3.2 The Finance Risk Register entry relating to Business Conduct requires updating.</b></p>	<p><b>Minor</b></p>
<p><b>Observation and risk:</b></p> <p>The risk of an employee committing an offence under the Bribery Act 2010 is recorded on the Finance Risk Register. There are a number of controls identified within the register to reduce the likelihood of the risk materialising. Some of the controls have been assessed as inadequate and an action plan is in place to reduce the risk score (currently “medium” risk).</p> <p>We noted that 17 of the 27 actions on the action plan are overdue for implementation. However, the risk owner advised us that the action plan contains a number of actions which are no longer relevant or require resource input which is disproportionate to the corresponding reduction in risk.</p> <p>Without regular review and updating of the risk register there is a risk that the risk identified is not being correctly managed.</p>	
<p><b>Recommendation:</b></p> <p>Management should review the risk entry on the Finance Risk Register to confirm that the medium rating is still relevant. A review of the entries on the action plan should also be performed to ensure that only those actions that are relevant are included and appropriate action dates are updated.</p>	
<p><b>Management Response:</b></p> <p>The recommendation is accepted. This is an old entry on the risk register which should have been reviewed and removed earlier. Many of the actions are informed by Ministry of Justice guidance towards making a successful “adequate procedures” in the extremely unlikely circumstance that the Board is charged with the corporate offence of failing to prevent bribery carried out on its behalf. To date no organisation has even attempted to make that defence.</p> <p>There is already an action plan in place to improve how the organisation systematically implements all of its policies. This audit has concluded that the policies and procedures relating to business conduct are generally adequate and operating effectively. The effective application of key controls in areas such as procurement and recruitment &amp; selection are critical for good business conduct, and reducing the likelihood of the extreme event of an individual committing bribery offences.</p> <p><b>Management Action:</b></p> <p>Management have already reviewed the above risk entry and it has now been removed. The Corporate Governance Manager already has risks on the corporate governance risk register relating to the overall action plan on policies and procedures. Any specific emerging risks relating to business conduct will be added to the same risk register, in line with the requirements of the Board’s risk management policy and operational procedure.</p>	
<p><b>Responsibility:</b> Corporate Governance Manager</p>	<p><b>Target date:</b> Complete</p>

<p><b>Control Objective 4: There is a process in place for monitoring the effectiveness of the Applying the Principles of Good Business Conduct procedure, escalating any instances of non-compliance, and for providing assurance to the Board</b></p>	
<p><b>4.1 Not all formal meetings include the requirement for a prompt for members or attendees to declare any financial or non financial interests.</b></p>	<p><b>Important</b></p>
<p><b>Observation and Risk:</b></p> <p>Board and Committee members are reminded by the Chair at the start of each meeting that they must declare any actual or potential conflicts of interest relating to any of the agenda items. Our review of the minutes of a sample of Board and Committee meetings confirmed that all Board and Committee meetings noted whether interests were declared.</p> <p>The NHS Lothian Business Conduct Procedure recommends that the agenda of other formal meetings should also include a prompt to declare any financial or non-financial interests. We noted the inclusion of a declaration of interest item on the agendas of formal meetings such as the Area Drugs and Therapeutic Committee. However, the agendas for the Corporate Management Team and the Risk Management Group did not contain a prompt and the minutes of the meetings did not record any discussion of declarations of interest. As both groups feed into the Board, and decisions such as approving business cases are made at the Corporate Management Team meetings, a formal declaration should be required.</p> <p>Without a prompt by the Chair to declare any interests at the Corporate Management Team and Risk Management Group there is a risk that a conflict of interest may not be identified and recorded appropriately.</p>	
<p><b>Recommendation:</b></p> <p>The Corporate Governance Manager should consider whether the meetings of the Corporate Management Team and Risk Management Group should include a prompt by the Chair to declare any conflicts of interests at the start of the meeting.</p> <p>The Corporate Governance Manager should also consider whether an organisation wide communication should be issued stating that to improve transparency of decision making, all groups and sub-committees that feed in to formal groups and committees should include a prompt for members to declare any financial or non financial interests on their agendas.</p>	
<p><b>Management Response:</b></p> <p>The recommendations are accepted.</p> <p><b>Management Action:</b></p> <p>The Corporate Services Manager shall immediately include an appropriate prompt on the agendas for meetings of both the Corporate Management Team and the Risk Management Steering Group. The Corporate Services Manager will also identify other management meetings to which the Board or one of its committees has delegated to it authority to make</p>	

decisions on their behalf, or to provide advice to the Board or a committee. Once those meetings have been identified, an appropriate prompt will be included in their agendas.

The Corporate Governance Manager will include a prompt on meetings as part of the action taken in response to 3.1 above.

**Responsibility:**  
Corporate Services Manager

**Target date:**  
31<sup>st</sup> August 2016



## Appendix 1 - Definition of Ratings

### Management Action Ratings

Action Ratings	Definition
<b>Critical</b>	The issue has a material effect upon the wider organisation – 60 points
<b>Significant</b>	The issue is material for the subject under review – 20 points
<b>Important</b>	The issue is relevant for the subject under review – 10 points
<b>Minor</b>	This issue is a housekeeping point for the subject under review – 5 points

### Control Objective Ratings

Action Ratings	Definition
<b>Red</b>	Fundamental absence or failure of controls requiring immediate attention (60 points and above)
<b>Amber</b>	Control objective not achieved - controls in place are inadequate or ineffective (21 – 59 points)
<b>Green</b>	Control objective achieved – no major weaknesses in controls but may be scope for improvement (20 points or less)