National Institute for Health and Care Excellence

Policy on declaring and managing interests for board members and employees

This report seeks the Board's approval for an updated policy on declaring and managing interests for board members and employees. The policy has been reviewed and a number of amendments are proposed, including in relation to the links board members may have with the "commercial sector".

The Board is asked to:

Approve the updated policy on declaring and managing interests for board members and employees

Approve the proposed accompanying amendments to the policy on declaring and managing interests for advisory committees as set out in paragraphs 11 and 12 of this paper

Confirm these amendments should take immediate effect

Professor Gill Leng

Chief Executive

March 2021

Introduction

NICE has 2 policies on declaring and managing interests. One for board members and employees, and the other for the advisory committees. Both are reviewed every 3 years, with the scope for an earlier review if necessary.

In readiness for the appointment of the new Non-Executive Directors (NEDs) the Chairman requested that the planned review of the board and employee policy was brought forward to ensure the provisions are sufficiently clear and enables the Board to access expertise in the areas of NICE's work, while managing the risks of any conflicts of interest. To inform the review, the relevant policies from the Department of Health and Social Care and MHRA were considered.

Proposed changes

The changes are summarised in the table below together with the rationale. The full amended policy is attached.

Given the impact on staff, the proposed policy was shared with Unison for comment who were supportive of the amendments.

| Section | Change | Rationale |
| --- | --- | --- |
| Para 11 | Currently the policy states that living with a disease or condition relevant to any NICE guidance an individual may be working on, or who has a family member with that condition, is not seen as an interest and this does not need to be declared.  In the amended policy there remains no requirement for those covered by the policy to declare such circumstances. However, new text has been added to state that given their strategic decision-making role, if a board or Executive Team member feels such circumstances might, or might reasonably be perceived to, affect their impartiality they are encouraged to alert the Chief Executive or Chairman in confidence. In discussion with the Chief Executive or Chairman they may choose to recuse themselves from a discussion on these grounds but would not need to provide further details. | To note there may be some (rare) circumstances where it may be appropriate for a board or ET member to recuse themselves from a discussion due their health situation (or that of a close family member). The wording does not compel such interest to be declared, and details are not required to publicly disclosed. |
| Para 15 | Clarification of the term “commercial sector” to now refer to “businesses and trade associations who could be affected by NICE’s recommendations and commercial decisions. These include private health and social care providers, life sciences (including pharmaceuticals, medical technology, genomics, diagnostics and digital health) companies, alcohol and tobacco organisations, and companies currently, or seeking to be in, a commercial relationship with NICE.”  Food companies have been removed from the scope of this definition given the limited intersection of this sector with NICE’s work, and the definition now includes reference to companies currently, or seeking to be in, a commercial relationship with NICE. | To give greater clarity on what needs to be declared. |
| Para 15 | Addition of a statement to clarify that “membership of a pension scheme from past employment does not constitute an interest that needs to be declared.” | To give greater clarity on what needs to be declared. |
| Para 21 | Additional text added to confirm responsibility for reviewing NEDs’ and Chairman’s interests | For clarity |
| Para 26 | Additional text added to clarify how “a company whose products are subject to review by NICE” is defined. | For clarity |
| Para 27 | Less restrictive arrangements around shareholdings. Previously no shareholdings could be held in the “commercial sector” which included “companies involved in products that might affect the public’s health such as food, alcohol and tobacco industries”.  New provisions only prevent shareholdings in the “life sciences” sector.  As currently, the restrictions only apply to shareholdings that can be managed at the individual company level.  The proposed policy also provides the opportunity to place shares in a blind trust. | To provide a more pragmatic approach that focuses the restrictions on the life sciences sector where there is greatest scope for a conflict of interest. Blind trusts have been used before, so are now explicitly referenced for transparency and clarity. |
| Para 29 | Additional text added to clarify that a potential conflict of interest on an agenda item should be notified to chair and secretariat in advance of a Board, Executive Team or Guidance Executive meeting. | For clarity and reaffirm good practice |
| Para 32 | Removal of footnote | As required by NICE style guide |
| Para 36 | Clarification that the Chairman is the point of contact for NEDs who want to make the case that their interests should not be published | For clarity |
| Para 36 | Additional text added to justify interests not being published if this could compromise the confidentiality of another person | For general clarity in the context of data protection |
| Para 43 | Additional text added to confirm that any breaches involving a board member will be reported to the NICE Chairman | For clarity |
| Appendix A: DOI form | Form amended to include information on whether a role is remunerated, whether shares have been placed in a blind trust, and whether a company relating to the interest has products currently, or likely to be, subject to review by NICE. Additional guidance added on third party interests to be declared. | For clarity |
| Appendix B: | Additional text added to clarify who is responsible for reviewing the board members’ interests | For clarity |

Implications for the advisory committee policy

The policy for board members and employees is currently aligned where appropriate to the [policy on declaring and managing interests for advisory committees](https://www.nice.org.uk/Media/Default/About/Who-we-are/Policies-and-procedures/Declaring-managing-interests-for-advisory-committees.docx), but with changes to reflect the different roles of the two groups, and therefore the types of interests it may be appropriate to have.

The Executive Team have therefore considered the implications of the changes to the board and employee policy and whether these need to be applied to the advisory committee policy.

Given that committee members are often explicitly sought with experience of the condition or treatment under review, it is proposed to leave the current wording in the advisory committee policy unchanged so that it reads:

*“For the avoidance of doubt, a person living with a disease or condition relevant to the matter under discussion, or who has a family member in that position, is not seen as an interest and this does not need to be declared.”*

If approved by the Board, it is proposed that the amended definition of the commercial sector in the board and employee policy, is added to the advisory committee policy along with the clarification that membership of a pension scheme from past employment does not constitute an interest that needs to be declared.

Likewise, if the Board approves the additional text shown in bold below in the board and employee policy it is proposed to also add this to the advisory committee policy:

*“If people have substantial grounds for believing that publishing their interests should not take place, they should contact the relevant Director or Chief Executive to explain why (or NICE Chairman in the case of Non-Executive Directors). In exceptional circumstances, for instance where publication of information might put an individual at risk of harm* ***or compromise the confidentiality of another person****, information may be withheld or redacted. However, this would be the exception and information will not be withheld or redacted merely because of a personal preference.”*

Conclusion

The Board is asked to:

* 1. Approve the updated policy on declaring and managing interests for board members and employees
  2. Approve the proposed accompanying amendments to the policy on declaring and managing interests for advisory committees as set out in paragraphs 11 and 12 of this paper
  3. Confirm these amendments should take immediate effect

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