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**Date:** 1 February 2016

**Ref:** Cons 01 01/16

Dear Mr Daly,

### **Amendment to CCG Constitution**

We are seeking to make a technical amendment to our CCG Constitution. This amendment will clarify the circumstances under which we will exclude bidders from a procurement process.

Our Constitution is based on the national model and includes a provision that explains the circumstances under which we would exclude bidders from any procurement process. This wording was highlighted during a recent procurement and we took legal advice about our position. We were advised that the wording in the provision can be interpreted in different ways and could result in challenges to our decisions. It is important that the CCG discharges its functions, taking actions to avoid challenges which would delay our commissioning plans and add unnecessary costs to the CCG and the NHS.

Our Constitution contains, at appendix E – Prime Financial Policies, section 14, Commissioning, the following statement:

“The Group will.... in each procurement and consistently with relevant EU and international law, ensure that contractual provisions, procurements procedures and selection and award criteria prohibit or restrict contractors’ use of offshore jurisdictions and/or improper tax avoidance schemes or arrangements and/or exclude companies which use such jurisdictions and/or such schemes or arrangements.”

We have been advised that the wording at this section is ambiguous and potentially unlawful. There is a legal obligation placed on organisations to treat all bidders equally and in a non-discriminatory way in their contracting processes. If bidders comply with tax law and are not in breach of any obligations to pay taxes or social security contributions then we should not exclude them from procurement processes as this would be discriminatory.

We are proposing to our member practices that we change the current wording in the Constitution at Section 14 and replace it with the wording below:

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"the CCG may exclude an economic operator from participation in a procurement procedure where it can demonstrate by any appropriate means that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions"

This makes it clear that we will not enter into contracts with organisations who act unlawfully regarding the payment of taxes and adds providers who do not make their lawful social security contributions.

We are required to discuss and agree proposed amendments to our Constitution with CCG member practices and consult with stakeholders. We will also seek the views of patients and the public. We will report back the comments we receive to our member practices in March 2016. I would be grateful if you could share your views about our proposed amendments with us by 24 February 2016 emailing them to our Corporate Secretary; contact details below. Our member practices will be asked to approve the amendment in March and we will submit the final amendment to NHS England for 1 June 2016.

For further information about our proposed amendment please contact Sarah Carr, CCG Corporate Secretary, 0117 900 2632, [sarah.carr@bristolccg.nhs.uk](mailto:sarah.carr@bristolccg.nhs.uk)

Yours sincerely,



**Dr Martin Jones**  
**Chair**  
**NHS Bristol CCG**  
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Chair: Dr Martin Jones  
Bristol CCG pledges to help make Bristol a place where health inequalities are reducing.  
We will do this through our directors and staff spending time in the community with local groups and at local services listening to what patients need.

Chief Officer: Jill Shepherd

