



National Audit Office

BRIEFING

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Contribution to Bank of England Review

Managing potential conflicts of interest

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Introduction

Aim and scope of this briefing

The primary purpose of this paper is to provide the Bank of England with information relating to the management of conflicts of interest and some of the approaches we have encountered in other organisations. This does not constitute guidance, but has been provided to assist the Bank when it conducts its own internal review.

MANAGING POTENTIAL CONFLICTS OF INTEREST

This paper has been prepared at the request of the Bank of England. It is intended as a contribution to the Bank's own review of its approach to Managing Conflicts of Interest announced in March 2017. The paper draws upon work published by the Comptroller and Auditor General, in particular the report on *Conflicts of Interest*¹ (HC907, January 2015, Session 2014-15). It sets out some of the approaches we have encountered in a variety of organisations and sectors.

This paper should not be construed as providing guidance. It is a matter for the Bank to determine how it defines the standards to which its staff must adhere and the processes by which it is assured standards are met.

The paper is arranged under the following headings:

- What is a conflict of interest?
- Declaration and management of potential conflicts.
- Ensuring compliance.

What is a conflict of interest?

Our 2015 report, *Conflicts of interest*, defined a conflict of interest as “a set of circumstances that creates a risk that an individual's ability to apply judgement or act in one role is, or could be, impaired or influenced by a secondary interest. The perception of competing interests, impaired judgement or undue influence can also be a conflict of interest”.

Principles-based approach

The UK public sector tends to take a principles-based approach to managing conflicts of interest. Sources of guidance for public bodies on the key principles include:

- The Committee on Standards in Public Life's “Nolan principles”², and the *Civil Service Code of Conduct*³, refer to “integrity” and the need to put obligations of public service above personal interests.
- The Cabinet Office's *Civil Service management code*⁴ sets out principles and rules for departments and agencies on terms and conditions of service – it includes sections on standards and propriety, including a requirement for civil servants to disclose business interests.
- HM Treasury's *Managing public money*⁵ outlines measures that heads of departments and board members could take if they encounter a potential conflict.

In framing its approach the Bank will need to bear in mind its position not only as a public body but also its role as a central bank - where its independence is particularly crucial to the discharge of its responsibilities - and its standing as an overseer of the banking and financial services sector. It may therefore also need to draw upon principles and leading-edge practices in the private sector, the professions and internationally amongst central banks.

¹ <https://www.nao.org.uk/wp-content/uploads/2015/01/Conflicts-of-interest.pdf>

² <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

³ <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>

⁴ <https://www.gov.uk/government/publications/civil-servants-terms-and-conditions>

⁵

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf

Sources of potential conflicts of interest

It is a matter for individual institutions to decide how they frame their policies and guidance. Some institutions rely on a statement of the main principles with limited interpretation. Most institutions, however, provide a listing of the most likely areas where conflicts might arise. Policy statements examined by us covered:

Pecuniary interest: this can include either a direct or indirect financial interest or a financial interest held by a commercial undertaking by which the individual has connections. An individual, for example, may hold shares in an entity that could be affected by a policy issue they are working on.

Procurement: in most public organisations, staff are required to declare any relationships with companies who have or may bid for work. Published guidance, for example, for Clinical Commissioning Groups in the NHS⁶ sets out in some detail the variety of situations that might give rise to a conflict.

Personal relationships: conflict of interest policies usually include a requirement to declare any close family member or other close relationships where a potential conflict of interest might occur. Many individuals will have relationships with others who engage in some way with the institution they work for, potentially as suppliers of services to the institution, recipients of services or subject to regulatory oversight by the institution. There may be instances where information could flow between parties to a relationship and this could be perceived to be unfair.

Acceptance of hospitality: registers of gifts and hospitality are in place at most public sector organisations. The general principle is that gifts of a token amount can be accepted, however others should be declined. If not possible to decline, gifts can be accepted and recorded with the gift going to charity. Additionally hospitality, such as tickets to sporting events, are not related to the business needs and carry a clear reputational risk as well as creating the potential for a conflict of interest. In some organisations staff are required to register any offers of hospitality which they have declined in addition to those accepted.

Political interests: Public sector organisations tend to include this as a separate section within their code of conduct, rather than list it as a potential conflict of interest. The key focus is to ensure that the institution is politically neutral, and perceived to be so. Organisations place varying requirements on staff wishing to participate in political activities in a personal capacity.

Employment interest: Potential conflicts can arise when recruiting and selecting staff.

Any additional employment outside the organisation will often be subject to restrictions depending on the nature of the work carried out, whilst roles as non-executive directors of other organisations will similarly be reviewed in relation to actual or perceived conflicts.

The prospect of future employment, or previous employment, with a supplier/customer may also create a conflict of interest for individuals. Public bodies often have requirements that require staff to declare job applications in situations where a conflict might arise. Senior civil servants may, for example, need to seek approval from the Advisory Committee on Business Appointments⁷ on their future employment plans.

⁶ <https://www.england.nhs.uk/commissioning/pc-co-comms/coi/>

⁷ <https://www.gov.uk/government/organisations/advisory-committee-on-business-appointments>

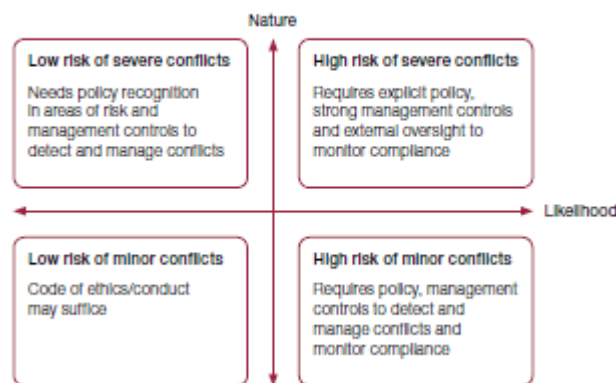
Organisations need to also consider the possibility of conflicts arising as a result of their inward and outward secondment programmes, for example staff taking significant responsibilities whilst out on secondment to regulated entities or entities which regulate the organisation. Procedures for considering potential secondments should explicitly consider the risk of creating an actual or perceived conflict.

Declaration and management of potential conflicts

Conflicts of interest are a common and unavoidable part of management that can arise in a range of situations and environments. It is not reasonable or desirable to completely eliminate the risk of conflicts of interest. It is better to recognise the associated risks and put measures in place to identify and manage conflicts when they do arise. Institutions may decide to adopt a proportionate approach that reflects the nature and scale of conflicts that they are exposed to and their risk appetite (**Figure 1**).

The development and framing of policies should include consideration of what a reasonable lay person might perceive to be a conflict. Non-executives, or other lay people, can have an important role in shaping what is proportionate in the context of the particular organisation.

Figure 1
Taking a proportionate approach to managing conflicts



The aim of the conflict of interest policies should be to make everyone aware of what to do if they suspect a conflict and ensure decision-making is efficient, transparent and fair. Rules should be clear and robust but not overly prescriptive or complex.

Organisations usually have a designated responsibility at Board level for the overall policy and its implementation. The operation and effectiveness of the policy should be reviewed by the Board, or a committee of the Board, at frequent intervals. Often, the organisation will have some form of ethics committee, or other arrangement, to consider specific conflict issues. The latter may include non-executive or other lay input.

Declaration process

Public institutions require declarations to be made by all individuals employed and inward secondees whenever a conflict, or perceived conflict, is likely to arise. There are usually three main stages where individuals are expected to confirm compliance with conflict of interest policies:

- On joining – standard practice is for individuals to confirm acceptance of the institution's code of conduct, which is often inclusive of a conflict of interest policy.
- Annually – An annual return is then expected to be completed. This confirms an individual's compliance since the last return and also gives the opportunity for the individual to re-consider or highlight any new potential conflicts. This could be done at more frequent intervals if deemed particularly high-risk.
- When changes arise – Importantly, conflict of interest policies should outline that the individual is responsible for raising conflicts if new changes arise. This could either be an external change (such as a new relationship or financial investment) or internal change (change to individual's role, clients etc.). This is reliant on individuals being pro-active in making declarations. An institution needs to ensure that there is a high awareness among staff on the need to do this in good time.

Institutions may require significantly enhanced disclosure from individuals working at senior levels, including non-executives. Enhanced disclosure may also be required on individuals working in areas of activity where the risk of potential conflict, or perception of conflict, is judged to be particularly serious. In some private institutions, for example, senior individuals involved in advising private clients on commercial deals may be required to inform their employer of all their shareholdings and other investments and allow the employer access to records to verify ongoing compliance. The associated assurance processes will include use of third party checks to test the completeness of such disclosures.

Some public institutions use transparency to enhance public confidence in the disclosure process. Most commonly, a conflict of interest policy will be published. Some organisations go further and publish details of disclosable interests of senior staff, for example Ofcom publishes a listing⁸ as do Clinical Commissioning Groups in the NHS⁹.

Institutions may also want to consider to what extent conflict of interest policies are required for 3rd parties and advisors who are engaged by the institution. For example, while not requiring declarations, many organisations require those firms conducting work on behalf of an organisation to agree to comply with the conflict of interest policy.

How?

In most entities, declarations are recorded on an internal electronic system. Employees are asked to confirm in a series of questions whether they have declared all conflicts. These conflicts are recorded in a register and reviewed. There may also be separate registers, for example for senior leadership or individual committees.

⁸ <https://www.ofcom.org.uk/about-ofcom/how-ofcom-is-run/register-disclosable-interests>

⁹ E.g. <http://www.boltonccg.nhs.uk/about-us/declarations-of-interest>

Individuals remain responsible for avoiding situations where they might have a conflict of interest. Declaring a potential interest in a central record is not enough, it is usually incumbent on the individual to make a further declaration should that potential conflict risk becoming an actual conflict.

Management of conflicts

Where potential conflicts are declared, there should be a clear process for considering the declaration and recording whether any action needs to be taken to manage the conflict. In most instances this may just involve the individual's manager and someone with wider responsibility for monitoring the organisation's adherence to the policies. However, where more sensitive or significant issues arise the declaration may need to be considered by the organisation's ethics committee or similar such committee.

Compliance

Organisations need to gain assurance that their policies are understood, are adhered to and are effective in protecting the propriety and integrity of the organisation's decision-making.

Raising awareness of the policies

Organisations need to be assured that their policies are well understood. The guidance accompanying the conflict of interest declaration at the start of a period of employment, and subsequent updates, should be easily available and clear. This could include an on-line training package to be completed annually or a more formal training session completed as part of induction. Specific case examples may help staff understand the potential risks and how the policies are intended to work. The NHS, for example, has published case studies¹⁰ to help staff working in clinical commissioning groups understand their responsibilities.

The organisation may also decide to designate individuals to whom staff can go to discuss informally potential conflict of interest issues.

Adherence to policies

The organisation should obtain sufficient assurance that its policies and processes are being adhered to. The organisation's Audit Committee would normally be the recipient of such assurance.

Online declaration processes should enable organisations to check whether they are achieving 100 per cent compliance on the declarations submitted by new entrants and the required renewals by existing staff.

Appropriate assurance may also include, for example, review at intervals by internal audit of the declaration registers to determine whether the declaration process is operating as expected, that declarations are receiving appropriate attention and any issues arising are being managed appropriately across all parts of the organisation.

¹⁰ <https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/06/coi-case-studies-jun16.pdf>

For individuals working at senior levels, or working in areas where the risks may be particularly high, the checks may need to go further. Some institutions in the private sector, for example, may commission third party checks to ensure that policies on the declaration of investments and directorships are being followed and to test that declarations are complete. In institutions where the perception and exercise of independence is crucial to the discharge of responsibilities it is not enough to assume that disclosure by individuals is complete.

Whistle-blowing policies should cover situations where an individual has concerns about a potential conflict of interest within their organisation.

Deterrents

As part of ensuring compliance, institutions should have in place mechanisms in place to ensure appropriate disciplinary action can be taken if staff members do not comply. This is usually included within a more general code of conduct policy staff are obliged to sign. Disciplinary actions are not usually prescriptive, but are usually written to incorporate a range of disciplinary actions up to and including dismissal.

Review of policies

Organisations should have a regular mechanism for considering whether their policies remain up to date and relevant, possibly as part of its review of adherence. This should take account of the latest developments in governance and be alert to changing expectations amongst parliamentary and other stakeholders of what effective policies should look like.