



Managing conflicts of interest

In a small country like ours, conflicts of interest in our working lives are natural and unavoidable. Having a conflict of interest doesn't necessarily mean that someone has done something wrong, and it need not cause problems. It just needs to be identified and managed carefully.

Conflicts of interest arise all the time. Usually, they cannot be avoided, so need to be managed. A poorly managed conflict can create legal risks and reputation risks.

Managing conflicts of interest is a fundamental part of good public sector administration. There are rules to follow and expectations to meet. The rules are set out in a range of different statutory and common law rules, and the expectations are based on ethical behaviour.

People working in the public sector have to consider the legal and ethical aspects of any conflicts of interest. This means being familiar with policies, codes of conduct, and legislation that could apply to the organisation or the members of its governing body. There are, for example, specific rules in:

- Crown Entities Act 2004;
- New Zealand Public Health and Disability Act 2000;

Our guide on managing conflicts of interest contains a wealth of useful information. Published in 2007, it remains a highly valuable resource. It includes:

- Summary
- Part 1: Introduction
- Part 2: The nature of conflicts of interest
- Part 3: Policies and procedures
- Part 4: Dealing with conflicts of interest when they arise
- Part 5: Illustrative case studies

The information summarised here is drawn from the guide.

- Companies Act 1993;
- Local Authorities (Members' Interests) Act 1968; and
- Education Act 1989.



To cover the ethical aspects, it helps greatly if people take a principled approach to conflicts of interest.

In our view, decisions about conflicts of interest need to be guided with these principles in mind:

- integrity;
- honesty;
- transparency;
- openness;
- independence;
- good faith; and
- service to the public.

Having a conflict of interest doesn't necessarily mean that someone has done something wrong, and it need not cause problems. It just needs to be identified and managed carefully.

The importance of public perception

Public perceptions are important. It is not enough that an official is honest, they must be seen to be so. Despite careful management, some actions just might look bad.

Our guidance is not just for senior managers and their advisors. It is relevant to all people who are members of, or who are employed by, a public organisation. Personnel at all levels of a public organisation might need to identify and disclose conflicts of interest, or help to manage conflicts of interest.

Is there something about you or someone close to you that could mean you might be seen as not being impartial or as having a closed mind on the decision?

Managing conflicts of interest is particularly important in maintaining the integrity of the public sector. Where activities are paid for by public funds or are carried out in the public interest, members of Parliament, the media, and the public will have high expectations. They expect people who work in the public sector to act impartially, without any possibility that they could be influenced by favouritism, or improper personal motives, or that public resources could be misused for private benefit.

The Auditor-General's role with conflicts of interest

We have a specific role in relation to financial conflicts of interest that are regulated by the Local Authorities (Members' Interest) Act 1968.

We strongly recommend that elected councillors and council staff read our good practice guide on the Local Authorities (Members' Interest) Act.

We have no formal role in administering non-financial conflicts of interest. However, as the auditor of all public entities, we have an interest in encouraging all public entities to carry out their activities lawfully and responsibly, and we can use our inquiries powers if need be.

The State Services Commission also has a role and has useful links and information in the Integrity and conduction section of its website.

Dealing with a conflict of interest

There is no universal set of rules, standards, or expectations when it comes to ethical behaviour.

There might be legal rules, either in common law or statutory provisions in a public organisation's governing legislation. They have to be followed first. Complying with the law is critical and overrides any other scope for discretionary judgement.

Secondly, there might be a relevant policy that would cover the situation, or the public organisation's code of conduct might have guidance or expectations about managing conflicts of interest.

Thirdly, if no relevant legal requirement or policy applies (or after any such rule has been complied with), there might be codes of practice for the profession that people work in – such as an ethical code for legal staff, or for accountants.

After all of those, people need to consider whether anything else needs to be done. In exercising this judgement, people need to assess carefully the seriousness of the conflict of interest and the range of possible mitigation options.

Mitigation options (listed roughly in order of lowest to highest severity) can include:

1. taking no action;
2. enquiring as to whether all affected parties will consent to the member's or official's involvement;
3. seeking a formal exemption to allow participation (if such a legal power applies);
4. imposing additional oversight or review over the official;
5. withdrawing from discussing or voting on a particular item of business at a meeting;
6. exclusion from a committee or working group dealing with the issue;
7. re-assigning certain tasks or duties to another person;
8. agreement or direction not to do something;
9. withholding certain confidential information, or placing restrictions on access to information;
10. transferring the official (temporarily or permanently) to another position or project;
11. relinquishing the private interest; or
12. resignation or dismissal from one or other position or entity.

It's rare for a conflict of interest to be so significant that the last two options are necessary. The most common response to a conflict of interest is to stay out of meetings or discussions on the matter (points 5-7 in the list above).

For more information, please read Part 4 of our good practice guide.

Information for councillors

If you're an elected member of a city or district council, then there are special rules for you under the Local Authorities (Members' Interests) Act 1968.

We strongly recommend our guide on the Local Authorities (Members' Interests) Act 1968.

The Local Authorities (Members' Interest) Act 1968 (the Act) helps protect the integrity of local authority decision-making by ensuring that people are not affected by personal motives when they participate in local authority decision-making and cannot use their position to obtain preferential access to contracts.

Under the Act, you cannot:

- enter into contracts with your local authority worth more than \$25,000 in a financial year; or
- discuss or vote on matters before your authority in which you have a direct or indirect pecuniary interest, other than an interest in common with the public.

The role of the Auditor-General under the Act

We have the power to grant approvals and exemptions for the bullet points above.

The Act is a small subset of the law about conflicts of interest generally and applies to local authority members when they are making decisions. We have a specific role only in relation to financial conflicts of interest that are regulated by the Act.

We have no formal decision-making role in relation to non-financial conflicts of interest. Only the courts can determine whether the law has been breached in any particular instance and what the consequence should be. However, we can inquire into matters of probity involving a member of an authority, which could include examining whether a member failed to declare a conflict of interest.

There's more information and more good practice resources – including on this topic – on our website.

