



Policy Title: Conflict of Interest Policy	Policy Number: 021
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Introduction

The Commission has an obligation to conform with the requirements of the Ethical Standards in Public Life etc. (Scotland) Act 2000 and with the guidance issued by the Standards Commission for Scotland. These requirements include the need for high ethical standards, fairness and openness in the way we conduct Commission business. The Board Code of Conduct (Policy 017) adopted in April 2022 gives clear guidance on the definition of an interest (three step process of connection;interest;participation) and how to manage the interest to avoid conflicts. The Commission adopts these principles across all its work in relation to managing conflicts of interest.

The Commission would wish to adopt these principles, even in the absence of statutory obligations. A reputation for fairness and independence is the bedrock of our work and enhances the impact of our recommendations. Any impairment of this reputation could reduce our authority in investigating, advising on and criticising the care that individuals receive.

It is important to identify and minimise any conflicts of interest that could prevent Board members and staff, including secondees, from making fair and objective judgements, *or could be perceived as doing so by our stakeholders and the public*. The following principles are a guide to identifying and avoiding conflicts of interest when Board members or staff are engaged in Commission business.

Board members may but staff may not be members or employees of the Mental Health Tribunal for Scotland while working for the Commission as this is deemed to be an unmanageable conflict of interest. Wherever possible, DMP/Second Opinion safeguards will not be allocated to staff at the Commission who are eligible to undertake these functions. However, we recognise that there may be occasions where out of necessity or due to complexity, Commission staff may be required to undertake these visits. If this is the case, then the Commission Consultant Psychiatrist (Safeguarded Treatments) should be notified as soon as possible.

In addition to this policy, Board members and staff have an obligation to observe other relevant Commission policies: they should register any financial and general interests under the Staff Code of Conduct (Policy 009) and the Board Members Code of Conduct (Policy 017).

Principles

Identification of conflicts of interest

1. It is up to the individual to be aware of possible conflicts of interest which could be perceived as influencing his or her judgement. *The key issue is whether, in respect of any particular decision, the relevant service user/carer/service provider, or another member of the public, would regard the Commission's judgement as impartial, if he or she knew of the interests of the Board members and staff who were involved in the decision making process.*
2. Although it is primarily the responsibility of the individual, other staff or Board members have a role in identifying conflicts. The chair of any particular meeting has a particular responsibility, as does a line manager or supervisor.
3. The following Board members or staff *could* be perceived as having a conflict of interest in relation to a particular person or service. This list is not exhaustive.
 - 3.1 Someone who has a social or family connection with a person being discussed.
 - 3.2 Someone currently employed by a NHS Board, local authority, voluntary agency or independent organisation which is directly involved in providing care in a particular case.
 - 3.3 Someone with a close family member in this position
 - 3.4 Someone who has been employed by such a care provider within the past two years
 - 3.5 Someone receiving similar care, him or herself, from such a provider or having a close relative or friend in this position. Clearly, whether this could be perceived as a conflict of interest will depend on the size of the service provider, and the type of care being provided.
 - 3.6 Someone with a financial interest in such a care provider. (This should be declared in the Commission's Register of Interests.)

Situations giving rise to conflicts of interest

4. Situations in which conflicts of interests may arise include the following. Again, this list is not exhaustive.
 - 4.1 Carrying out or considering reviews of guardianship
 - 4.2 Carrying out or considering deficiency in care investigations
 - 4.3 Consideration of suicides, death in detention, homicide reviews and adverse incidents
 - 4.4 Visits to individuals in hospitals, care homes or other services

4.5 Considering Commission action in relation to visits to individuals or to services

4.6 Dealing with case work active interventions, or discussing cases on the phone

Possible action in respect of conflicts of interest

5. If a Board member or member of staff suspects that he or she could be perceived as having a conflict of interest, it is safest to assume that this would be so and to take appropriate action.

The extent of the action required in respect of a possible conflict of interest depends on its significance in the context of the particular situation. Having a social or family relationship with a person whose case is being discussed raises significant issues of both conflict and confidentiality. It invariably requires that the Board member or staff member avoids all contact with the case. Being a senior employee of a NHS Board, local authority or other care provider which is the subject of a deficiency in care inquiry will also give rise to significant conflict and requires substantial avoidant action. On the other hand, receiving services from the same provider as an individual service user is unlikely to require action in relation to a discussion of his or her mental health.

Appropriate action may include:

- 5.1 Seeking advice on the appropriate course of action from the line manager, or the person chairing any relevant meeting, in advance of the meeting, or other relevant situation.
- 5.2 Declaring the conflict at the appropriate meeting. At formal meetings this should be noted in the minutes.
- 5.3 Taking no part in discussion of the relevant case or issue.
- 5.4 If an interest is declared, leaving the room whilst the case is being discussed. It may be necessary to adjourn the meeting briefly to seek the advice of the chair or the other members. It should be borne in mind that the individual's presence at a discussion may influence the other participants, even though he or she does not make any direct verbal contribution. Leaving is mandatory if there is a social or family relationship with any person involved in the case. If the meeting is a formal one, there should be a record of the action taken in respect of an identified conflict of interest.
- 5.5 If there is a social or family relationship with a service user or other person under discussion, avoiding other situations in which there might be access to information about that individual
- 5.6 Sometimes an individual may have a conflict of interest but also be the sole source of expertise or advice within the Commission. In reaching a decision about whether such an individual should take part in the

consideration of a particular case or issue, the following questions should be asked:

- How close is the relationship with the service-user/provider/carer in question?
- How recent is the relationship?
- How relevant is the relationship to the issue under discussion?
- If the service user/provider/carer in question were aware of the relationship, how would they perceive it?
- Are there alternative sources of advice, which the Commission could access?

It is normally safest to exclude the individual from discussion of the particular case or issue and to seek an alternative source of advice from outwith the Commission (e.g. from Scottish Government or an independent service provider).

- 5.7 When dealing with queries on telephone duty, a degree of flexibility should be adopted. Most calls are dealt with informally and it would not be appropriate for the individual on duty to refrain from dealing with the call. However, it may be appropriate to let the caller know if a significant conflict of interest exists and offer him or her the opportunity of speaking to another member of staff. If the call relates to a person with whom the individual on duty has a family or social relationship, then the call must be passed to a colleague to deal with.

