



Managing Conflicts of Interest: Guidance for Members and Staff

Introduction

1. Conflicts of interest are an inevitable occurrence in legal work. They are particularly common in smaller jurisdictions such as Scotland. Members of the Commission's Board and its staff will inevitably have ties to external organisations, familial connections, friendships and professional relationships that may render it inappropriate for them to participate in certain items of Commission business.
2. One of the Commission's corporate aims is to increase the confidence of the public in the ability of the justice system to correct miscarriages of justice. This goal would be significantly undermined by any question about the probity of the Commission's decision-making. It is of paramount importance to the Commission to avoid the development of any such doubt.
3. The purpose of this document is to provide guidance, approved by the Commission's Board, to members and staff. This guidance is intended to assist with the management of issues arising from conflict of interest and potential conflict of interest. The guidance will discuss the regulatory and policy frameworks in place, set out processes to follow in the event that a conflict or potential conflict is discovered and provide a digest of relevant past decisions of the Board on the subject.

Measures Preventing Conflict of Interest

4. Three broad, overlapping frameworks act to control the risk that conflicts of interest will arise. Two of these come in the form of codes of personal conduct applicable to all members and staff (the Commission's own code) or to subsets thereof (professional codes). The third is the body of *ad hoc* policy decisions and procedures that the Commission itself has made or developed relative to allocation of work among staff and members. For reference, these are briefly set out below.

The Commission's Codes of Conduct

5. The Code of Conduct for Board Members ("the Code") is, in terms of section 3 of the Ethical Standards in Public Life etc (Scotland) Act 2000, developed by the Commission itself and approved by Scottish Ministers. In terms of Part 2 of that Act, adherence to the Code is regulated by the Standards Commission for Scotland.

6. Section 4 of the Code obliges members to register a variety of interests, of both pecuniary and non-pecuniary nature. Section 5 of the Code requires members to consider, in relation to “each particular matter” in which they are involved to consider whether they have a “connection” to it. “Connection”, which may include a matter registered as an interest, is defined as:

“...any link between the matter being considered and [the member], or a person or body [the member] is associated with.”
7. A member is required to declare any such connection as an interest where:

“...a member of the public with knowledge of the relevant facts would reasonably regard my connection to a particular matter as being so significant that it would be considered as being likely to influence the discussion or decision-making.”
8. Where they consider that they have such an interest, members are required to declare it as early as possible in any meeting. They must not remain in that meeting or participate in it. Where a member has a connection that they consider does not amount to an interest, they should consider whether it is appropriate to state this publicly in the meeting.
9. The rules relative to members on interest are imported, *mutatis mutandis*, into the Code of Conduct for Staff. There is thus, in effect, a single set of rules applicable to all.

Professional Codes of Conduct

10. Individual Board and staff members may be subject to regulation by virtue of memberships of a professional body. For legal professionals, the relevant bodies are the Faculty of Advocates and the Law Society of Scotland. Non-legal members may be regulated by diverse bodies, including the General Medical Council and the Scottish Social Services Council. Members and staff should at all times adhere to any standards established by their regulator. An individual subject to such regimes may determine that professional obligations prevent them from participating in aspects of the Commission’s work. This is a matter primarily between the individual and their regulator. Any such determination on the part of an individual subject to such a regulatory regime ought not generally to be interrogated.

Policy Determinations

11. Responsibility for adherence to the various codes of conduct falls in the first instance upon the individual affected. In addition, the Commission may (and indeed does) itself adopt measures designed to control the risk of conflict of interest. A digest of relevant Board decisions is appended to this document.

Recording Conflicts of Interest

12. The Commission relies primarily upon its members and staff to identify cases in which they may have a conflict of interest. In approaching this task, members and staff should be conscious of the importance to the Commission of avoiding conflict as well as the perception of conflict. Accordingly, members and staff should adopt a risk-averse posture in their assessment of any potential conflict. Where any doubt exists, members and staff should raise the matter with their line manager, regulator or the Board, as appropriate to the situation.

Members

13. A member who considers that they have a conflict of interest in relation to any case-related matter should notify the relevant legal officer and the administration officers (AdminTeam@sccrc.org.uk) by email at the earliest opportunity. Administrative staff will note the conflict of interest on the case management system and ensure that the member is not copied in to any further documentation pertaining to the relevant case.

14. In accordance with the Board's Terms of Reference, a member who considers that they have a conflict of interest in relation to any matter (whether or not case-related) should notify the Board at the beginning of its next meeting.

Staff

15. A staff member who considers that they have a conflict of interest in relation to any case-related matter should notify their line manager and the administration officers by email at the earliest opportunity. Administrative staff will note the conflict of interest on the case management system.

16. A staff member who considers that they have a conflict on interest in relation to any non-case-related matter should notify their line manager at the earliest opportunity.

17. A staff member who becomes aware (eg through review of case papers) that a Board member or close family member of a Board member has had some prior involvement in a case-related matter should notify the administration officers by email at the earliest opportunity. Administrative staff will note the conflict of interest on the case management system and ensure that the member is not copied in to any further documentation pertaining to the relevant case.

Appendix: Policy Determinations

The following appendix discusses specific situations in which the Commission may require a Board or staff member to recuse themselves notwithstanding the view that the individual may take about the existence of a conflict of interest.

Prior Professional Involvement

1. No Board or staff member should participate in any case-related work if they have themselves been involved in the case in any professional or personal capacity at any point.

Familial Ties

2. No Board or staff member should participate in any case-related work if a close family member (spouse, parent, grandparent, child, grandchild) has been personally involved in the case in any capacity.
3. No Board or staff member should participate in any case-related work if any other known relative not in the class of close relatives mentioned in the foregoing paragraph has been personally involved in the case in any capacity *and* there is any prospect that the participation of the relative in the case may become a significant focus of the Commission's review (eg through a claim of defective representation).
4. Personal involvement in a case does not include membership of or employment by a firm of solicitors who have been involved in the case provided that the involvement of the firm is primarily administrative in character (eg acting as Edinburgh agents) *and* the family member has not worked on the file themselves.
5. Personal involvement in a case does not include employment by the Crown Office and Procurator Fiscal Service, the Public Defence Solicitors' Office, Police Scotland or any similar large criminal justice organisation, provided that the individual has not worked on the file.

Involvement in Commission Investigation

6. No Board member who has been actively involved in the Commission's investigation in case-related work (eg by interviewing a witness or providing an expert report) should participate in the decision-making process in that case at a Board meeting. They may brief Board members on the subject of their involvement in the investigation process but should absent themselves when it comes to take a decision.