Managing Conflict of Interest in the Public Sector

A TOOLKIT

OECD

OECDPUBLISHING

Managing Conflict of Interest in the Public Sector

A TOOLKIT

OECD

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where the governments of 30 democracies work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The Commission of the European Communities takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Organisation or of the governments of its member countries.

Also available in French under the title:
Gérer les conflits d'intérêts dans le secteur public
MODE D'EMPLOI

© Illustrations: László Quitt

No reproduction, copy, transmission or translation of this publication may be made without written permission. Applications should be sent to OECD Publishing: *rights@oecd.org* or by fax (33 1) 45 24 13 91. Permission to photocopy a portion of this work should be addressed to the Centre français d'exploitation du droit de copie, 20, rue des Grands-Augustins, 75006 Paris, France (*contact@cfcopies.com*).

Foreword

Identifying and resolving conflict-of-interest situations is crucial to good governance and maintaining trust in public institutions. However, experience shows that this can be difficult to achieve in daily practice. In response to growing demand in the public sector, this Toolkit provides a set of practical solutions for developing and implementing ways to manage conflicts of interest in accordance with the OECD Guidelines for Managing Conflict of Interest in the Public Service.

This Toolkit was developed in co-operation with OECD member and non-member countries. Several international forums endorsed the Toolkit for use in various regions, including South East Europe (High level Forum on Implementing Conflict of Interest Policies in Government and the Public Sector, Prague, November 2003), the Asia-Pacific region (ADB/OECD 4th Regional Anti-Corruption Conference for Asia and the Pacific, Kuala Lumpur, December 2003) and Latin America (Forum on Implementing Conflict of Interest Policies in the Public Service, Rio de Janeiro, May 2004). Various tools have already been adapted in national contexts or tested by public organisations worldwide.

The Toolkit *was prepared by Howard Whitton in collaboration with János Bertók of the OECD Public Governance and Territorial Development Directorate, with illustrations by László Quitt. The author wishes to thank the OECD Expert Group on Conflict of Interest for the invaluable comments and suggestions, and Marie Murphy for her assistance in the preparation of the publication.*

Table of Contents

Introduction to Conflict of Interest Management 7

Conflict of Interest Management Tools: Listed by Application 11

Tool Specifications:

1. "Conflict of Interest" – Definition. 13
2. Conflict of Interest – Diagrams 1-6 14
3. Objective Tests for Identifying a Conflict of Interest. 22
4. Generic Checklist for Identifying "At-risk" Areas for Conflict of Interest 27
5. Generic Ethics Code Provisions Relevant to Conflict of Interest 32
6. Conflict of Interest – Self-test 35
7. Conflict of Interest – General Provisions for Compliance. 37
8. Gifts and Gratuities Checklist. 42
9. Gifts for Officials – Generic Law 44
10. Registration of Personal Interests and Assets – Procedure. 48
11. Registration of Interests and Assets – Generic Law. 55
12. Integrity Testing Policy 68
13. Public Interest Disclosure Policy and Procedure – "Whistleblower" Protection. 70
14. Training Cases. 75
15. OECD Guidelines for Managing Conflict of Interest in the Public Service. 94

Introduction to Conflict of Interest Management

In most countries there are increasing expectations from ordinary citizens, business leaders and civil society that governments should deliver higher standards of integrity in the civil service, public institutions, public services, government-controlled corporations, and government itself. In this context, conflict of interest in its various forms should become a significant consideration in the day to day work of those who occupy any position of trust. This Toolkit is intended to help to make those expectations a practical reality.

Conflicts of interest in the public sector are particularly important because, if they are not recognised and controlled appropriately, they can undermine the fundamental integrity of officials, decisions, agencies, and governments. "Integrity" is used in the public sector to refer to the proper use of funds, resources, assets, and powers, for the official purposes for which they are intended to be used. In this sense the opposite of "integrity" is "corruption", or "abuse".

Conflict of interest is both a straightforward and a complex matter: in principle easy to define – in the public sector a conflict of interest arises "*when a public official has private-capacity interests which* ***could*** *improperly influence the performance of their official duties and responsibilities*."* Establishing effective policy frameworks to control conflicts can be a complex task. To resolve a specific conflict, it is necessary to establish relevant facts, apply the relevant law and policy, and distinguish between "actual", "apparent", "real", and "potential" conflict situations. This requires technical skill and an understanding of the many issues which are usually involved.

Most people are uncertain about this area of public sector ethics, partly because the language itself can be confusing. "Having an interest" in, for example, the outcome of a decision is not the same as being "interested" in the outcome, *i.e.* curious. If officials could gain something personally from their decision they can be said to "have an interest" in it.

* *OECD Guidelines for Managing Conflict of Interest in the Public Service.*

A "conflict of interest" therefore involves a conflict between officials' personal interests (what they *could gain,* not necessarily financially) and their duty as a civil servant and is to be avoided as far as is reasonably possible. In general, the *appearance* of a conflict of interest is also to be avoided, to minimise the risk to the organisation's reputation (and officials' personal reputation) for integrity. As perceived conflicts of interest could be similarly harmful to the trust in public decision making, managers should also consider perception when they decide on specific cases.

There are costs attached to such avoidance, and costs in preventing, assessing and managing such risks. There are also costs involved in any actual harm that does in fact result from a particular conflict situation. As in most areas of public management, a realistic, contextually-appropriate and proportional response to each case is required.

New forms of partnership between government and the private sector and increasing engagement by governments with civil society, mean that conflicts of interest take new forms, presenting new challenges to policy-makers and public managers. Conflict-of-interest situations cannot be avoided by simply prohibiting all private-capacity interests on the part of public officials: instead, public officials must take personal responsibility for identifying and resolving problem situations, and public institutions must provide realistic policy frameworks, set enforceable compliance standards, and establish effective management systems. They must also provide training, and ensure that officials actually comply with the letter and the spirit of such standards.

This Toolkit, and the OECD *Guidelines for Managing Conflict of Interest* on which it is based, take the position that a conflict of interest is not necessarily corruption, which is understood as "*actual abuse of public office for private advantage*". But a conflict does have the *potential* for corrupt conduct. Conflicts between private interests and public duties of public officials must therefore be correctly identified, appropriately managed, and effectively resolved. Left unresolved, a conflict of interest can result in corrupt conduct, abuse of public office, misconduct, breach of trust, or unlawful action. More importantly, public confidence in the integrity of public institutions can also be seriously damaged.

The main focus of the Toolkit is on the actions of individuals, which can either compromise or reinforce the integrity of whole institutions. Where the focus is on systems, the Toolkit encourages users to consider specific tools as part of an "integrity system" which strengthens reliable government and public management. Some tools may be used for more than one purpose, supporting both individual and systemic integrity.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

This Toolkit is intended to provide generic examples of practical ideas and instruments for policy makers and managers to develop, adapt, and apply as suitable in their own political and administrative context. As a guide for users, each Tool specification contains a link to the relevant section(s) of the Guidelines, and the key ideas in the Guidelines are similarly cross-referenced to the Toolkit elements.

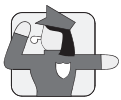
Conflict of Interest Management Tools: Listed by Application

Key Concepts **Tool 1, 2, 3, 5, 8, 15**

Transparency/accountability Application **Tool 7, 9, 10, 11, 13**

Basic Management Process or System **Tool 3, 4, 6, 10, 15**

Education/formation Application **Tool 3, 4, 6, 8, 14, 15**



Enforcement Application **Tool 5, 7, 8, 9, 10, 11**

Tool Specification No. 1

TOOL NAME: **"Conflict of Interest" – Definition**

TOOL TYPE: Definition of basic idea.

APPLICATIONS:

1. Inclusion in a rule/policy/law.
2. To provide objective test of conduct/facts.
3. To provide a clear factual basis for effective identification and management of individual cases, and for sanctions.
4. To provide a clear concept for teaching/training/information.

Comments. This basic definition conveys the three elements of "conflict of interest" in a simple way, and can be objectively tested. The fundamental idea is that where there is, in fact, an **unacceptable possibility of conflict** between a public official's **interests** as a private citizen (private-capacity interests) and their **duty** as a public or civil servant (official duty), a "conflict of interest" can be said to exist.

The basic definition can also be applied in order to test situations in which there **appears** to be a conflict of interest, but this is not in fact the case, or may not be the case. It is crucial to distinguish such a situation as an "apparent conflict of interest".

For a public official, having an "apparent conflict of interest" can be as serious as having an actual conflict, because of the potential for doubt to arise about the official's integrity, and the integrity of the official's organisation. Apparent conflicts of interest can be investigated using this definitional tool by asking: "Does Official X appear to have a conflict of interest?" [By contrast, a "potential conflict of interest" may exist where an official has private-capacity interests which could cause a conflict of interest to arise **at some time in the future.**]

The basic definition used here assumes that a reasonable person, knowing the relevant facts, would conclude that the official's "private-capacity interest" could improperly influence the official's conduct or decision-making.

It is usual for the meaning of "private interests" to be defined specifically. It may also be necessary to define the terms "public official" and "official duty" specifically, to remove the possibility of doubt in application.

LINK: See *Guidelines*, Preface, Section 1.1.

Definition: A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the official's private-capacity interest could improperly influence the performance of their official duties and responsibilities.

Tool Specification No. 2

TOOL NAME: **Conflict of Interest – Diagrams 1-6**

TOOL TYPE: Representational diagrams.

APPLICATIONS:

1. Concept clarification generally, in conjunction with Tool No. 1.
2. Training.

Comments. The various elements of the Diagrams 1 to 6 show the functional relationship between **public officials** (vertical axis) who exercise official power by making decisions or taking action on behalf of the State or an authority, and **private citizens** (horizontal axis) who seek to pursue their rights and interests.

The diagrams show how a **conflict of interest** involves a possible **breach of trust**, namely – a breach of the entrusted responsibility not to misuse his/her official position in order to obtain an improper **private-capacity advantage**, either for the official themselves or for another private interest.

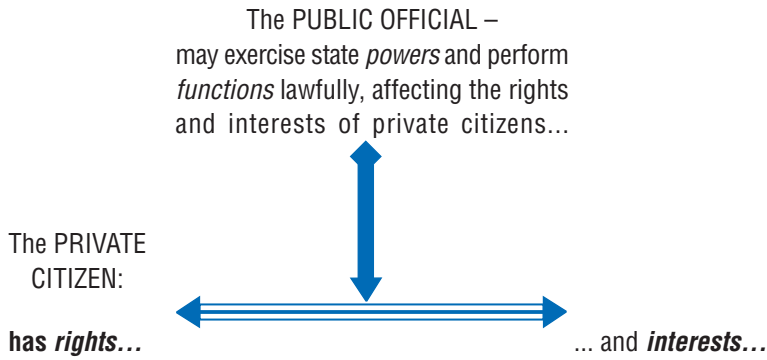
The diagrams represent the trust relationship which characterises public office. They show the difference between an official's two "roles", as public official and private citizen. The diagrams apply in general terms both to appointed officials and elected officials.

The essential features of corruption and abuse of office are also shown clearly as involving a "breach of trust".

LINK: See *Guidelines*, Preface, Sections 1.1; 1.2.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Diagram 2.1. **The *role* of the public official**

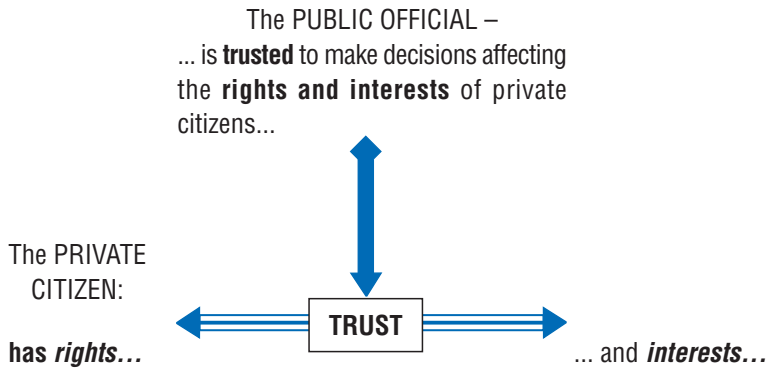


Notes: It is important to recognise that the term "public official" is being used here generically to refer to public servants, civil servants, public employees, or elected officials, or any other kind of official who performs **public functions** or duties on behalf of the State, a government, or a government organisation, where the exercise of lawful power is involved.

A public official can be concerned with the exercise of entrusted official power, with direct or indirect consequences for citizens. The functional responsibilities of public officials should therefore be the primary focus of:

- The organisation's conflict-of-interest policy.
- The relevant code of ethics/code of conduct, and
- The organisation's transparency and accountability mechanisms.

Diagram 2.2. **"Public office is a public trust"**



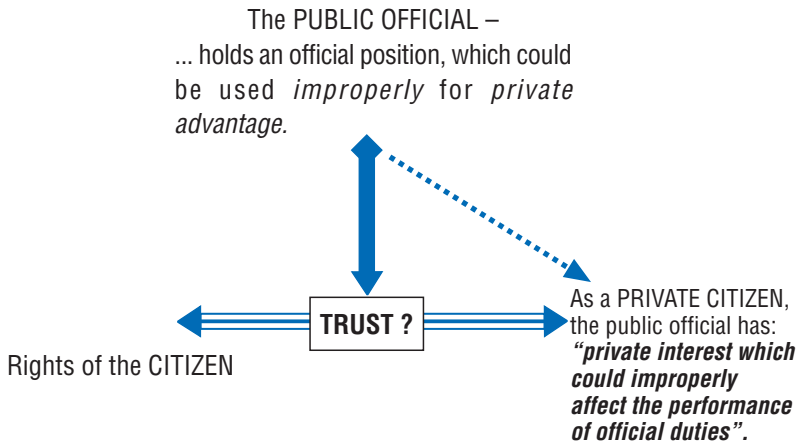
Notes: It is important to recognise that citizens and the State (as the ultimate employer of public officials) are **both** entitled to trust that officials will provide "professional' service, unaffected by personal or private interests.

Where this principle is not observed, trust in government and public institutions' reputation for integrity usually suffer.

This diagram makes it clear that maintaining trust is a central integrity issue for public organisations, governments and individual civil servants.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Diagram 2.3. **Conflict of interest**



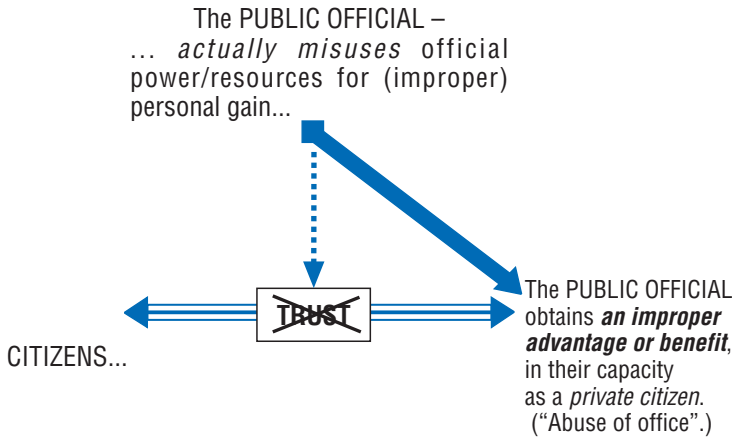
Notes: Trust in the "integrity" of the official and the organisation can be seriously damaged by suspicion that the public official's performance of official duties **could** be affected by a personal conflict of interest.

As all public officials have private interests of some kind in their **capacity** as private citizens, it is necessary to identify and manage conflicting interests whenever they arise, to maintain trust .

Trust can be protected and improved, by making sure that there is no improper connection between an official's official functions and their private interests, including the interests of related persons or organisations, for example, by making the official's relevant "private-capacity interests" known to their organisation, and, for high-level officials, to the public at large.

The situation represented above is also called an "actual" or "real" conflict of interests. In practice, the terms "conflict of interest" and "actual conflict of interest" have the same meaning in the Toolkit.

Diagram 2.4. **How a conflict of interest can become corruption**



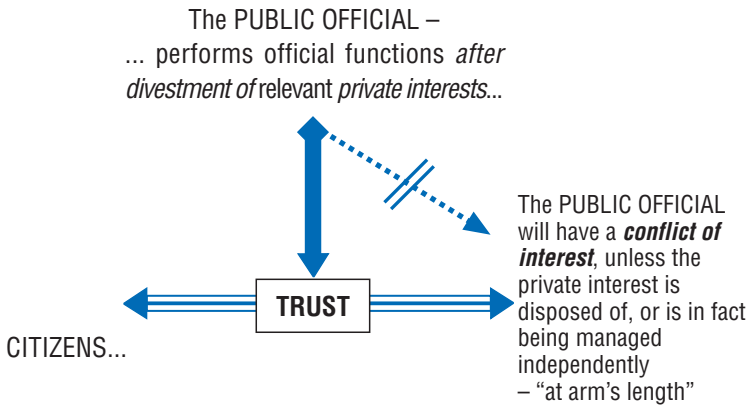
Notes: The diagram shows a situation in which an official's actual performance of official duties (exercise of state powers, etc.) **is in fact improperly affected** by conflict of interest: in this example, the official has taken advantage of their public position to give an improper advantage to themselves, or to some other private interest.

This diagram shows the "breach of trust" aspect of the definition of corruption.

In general, the breach of trust shown here could involve dishonesty (*e.g.* fraud, misrepresentation), breach of the law or regulations, misuse of funds or resources, abuse of position (*e.g.* to demand payment or impose a penalty unlawfully), failure to perform official duty adequately or correctly, etc., for reasons of personal advantage.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Diagram 2.5. **Managing a conflict of interest: divestment/blind trust arrangements**

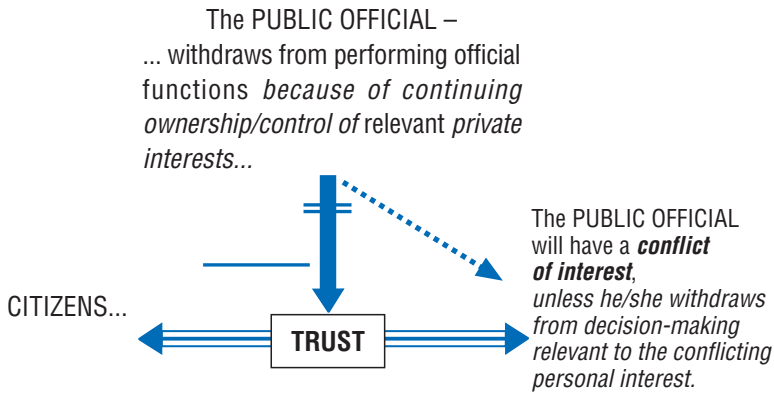


Notes: The conflict of interest shown here is being managed by divestment (removal, sale, etc.) of the official's ownership or control of the private interest (asset, etc.) in such a way as to prevent the official's private interest from affecting their official action.

Where it is feasible to do so in practice, and likely to be accepted by the world at large as adequate, another person may be given complete and independent control of the official's interest/asset. Such a "blind trust" assignment/delegation of responsibility must be genuinely independent of influence by the official in fact and in appearance.

The diagram shows that it is important that *both* the official *and* their organisation must be able to demonstrate publicly that the official's interests were in fact at arm's length from official decisions and actions in which they were involved, so that public trust is not put at risk.

Diagram 2.6. **Managing a conflict of interest: recusal arrangements**

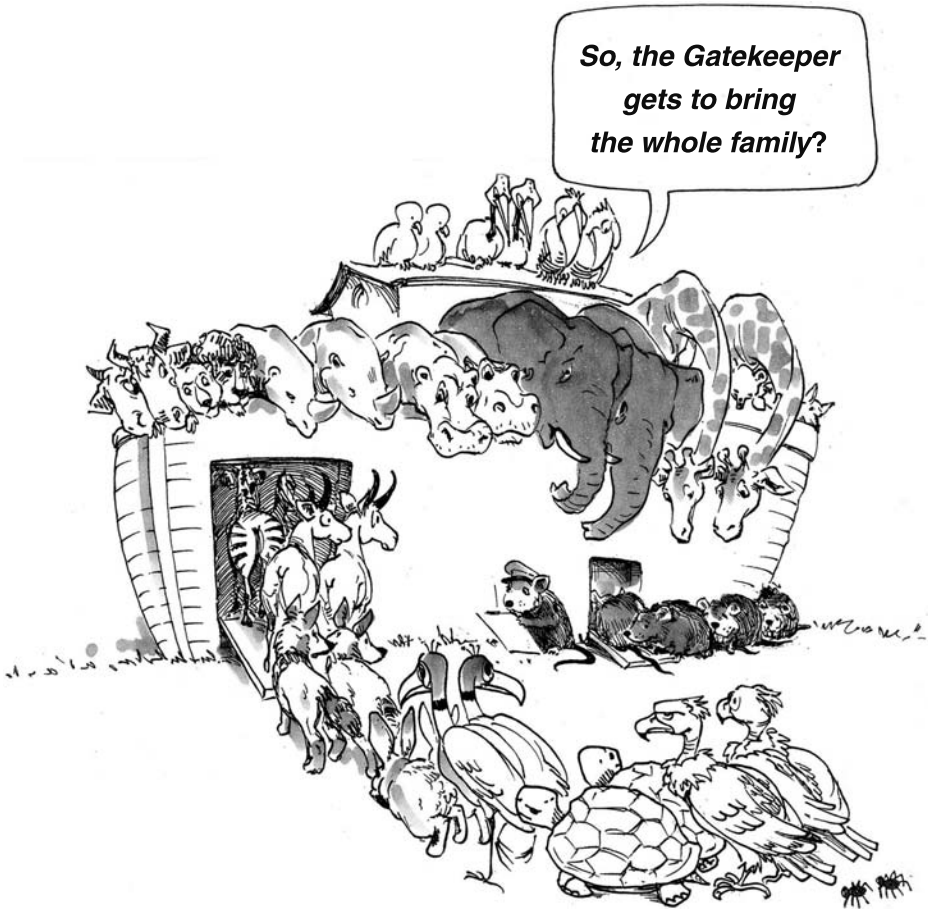


Notes: In this example, the conflict of interest is shown as being managed appropriately by recusal (withdrawal) – that is, by having another official *temporarily* perform the official's duties etc. that otherwise would be affected by the conflict.

This option may not always be available in practice, for example where the conflict of interest involves a family, ethnic or religious affiliation, or it may not be an efficient solution to a conflict (if the same conflict of interest is likely to occur often).

The recusal option may also be unconvincing to the world at large, unless the organisation and the individual official have established good administrative procedures to ensure that the recusal arrangement is effectively implemented, and have good reputations for integrity already.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005


So, the Gatekeeper gets to bring the whole family?

Tool Specification No. 3

TOOL NAME: **Objective Tests for Identifying a Conflict of Interest**

TOOL TYPE: Structured questionnaire.

APPLICATIONS:

1. Identification of conflict situations in specific detail.
2. To provide objective identification of relevant conduct/facts.
3. To provide a clear set of routines for teaching/training.
4. To provide objective evidence for management of conflict situation.

Comments. The following tests proved a simple questionnaire-style framework for identifying **the specifically relevant features** of conflict-of-interest situations in detail.

Every public official should understand the daily application of these tests, and every senior manager should be competent in applying them to actual situations in the organisations. Failure to do so will probably increase the probability that conflict of interest situations will escape attention.

These tests could be included in professional formation programmes, in conjunction with the definitional tools No. 1 and No. 2.

Civil society organisations could also use this tool for training, and for conducting courses, for example, for journalists.

LINK: See *Guidelines*, Sections 1.1; 1.2.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Tests for Identifying Conflicts of Interest

Instruction: In this test, ask and answer each question in order.

TEST 1

Conflict of Interest

Also referred to as an actual or real conflict of interest:

- **Question 1: What official functions or duties is Official X responsible for?** *[Refer to functional duty statement, position description, law, or contract of employment, etc., or statement of the functions of the official's organisation, etc.]*
- **Answer 1: *Official X is responsible for functions 1, 2, 3 (etc.) in ministry B.***
- **Question 2: Does Official X have private interests of a relevant kind?** *[See Comments on "relevant private interests", below.]*
- **Answer 2: Yes, Official X has job-relevant private interests.** *[The relevant facts are clear.]*

Conclusion: Official X has a*conflict of interest*.

Comments. Relevant interest in this context refers to a private interest which could be affected by the performance of the official's duties or functional responsibilities, and is:

1. Qualitatively, of such a kind that it would be reasonable to believe that the private interest could improperly influence Official X's performance of their official duties (for example, family or parental responsibilities, religious belief, professional or political affiliation, personal assets or investments, debts, etc.); or
2. Quantitatively, of such value that it would be reasonable to believe that the private interest could improperly influence Official X's performance of their official duties (for example, a significant family business interest, or an opportunity to make a large financial profit or avoid a large loss, etc.)

Tests for Identifying Conflicts of Interest *(cont.)*

Instruction: In this test, ask and answer each question in order.

TEST 2

Apparent Conflict of Interest

- **Question 1:What official functions or duties is Official X responsible for?** *[Refer to functional duty statement, position description, law, or contract of employment, etc., or statement of the functions of the official's organisation, etc.]*
- **Answer 1: *Official X has official responsibility for functions 1, 2, 3…, in ministry B.***
- **Question 2: Does Official X hold private interests of a relevant kind?** *[See Comments below.]*
- **Answer 2: It *appears to be the case* that Official X may have relevant private interests**. *[The relevant facts are not certain.]*

Conclusion: Official X has an *apparent* conflict of interest.

Comments. Relevant interest here means the same as in Test 1 above.

An apparent conflict-of-interest situation can be as seriously damaging to the public's confidence in a public official, or the official's agency, as an actual conflict. An apparent conflict of interest should therefore be treated as though it were an actual conflict, until such time as the doubt is removed and the matter is determined, after investigation of all the relevant facts.

In summary, an apparent conflict of interest requires further investigation: the relevant facts about Official X's private interests, and their official position/responsibilities, *must* be established accurately, so that a judgement can be made about whether Official X has a real conflict of interest, or not. This may in turn lead to a conclusion that Official X's actions also constituted actual corruption, for example, because the conduct of Official X satisfies a test of corruption provided by a relevant law, such as in relation to incompatible relationships or functions, or improper/dishonest conduct in an official capacity.

Until such time as the facts about Official X's relevant interests and official duties are made clear, Official X can be said to have a continuing *apparent* conflict of interest.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Tests for Identifying Conflicts of Interest *(cont.)*

Instruction: In this test, ask and answer each question in order.

TEST 3

Potential Conflict of Interest

- **Question 1: What official functions or duties is Official X responsible for?**
- **Answer 1: *Official X is responsible for functions X,Y, in ministry B***
- **Question 2: Does Official X hold private interests of a relevant kind?**
- **Answer 2: *No. at the present moment, Official X has interests which are not job-relevant, but it is reasonably foreseeable that in the future, X's personal interests could become relevant interests.***

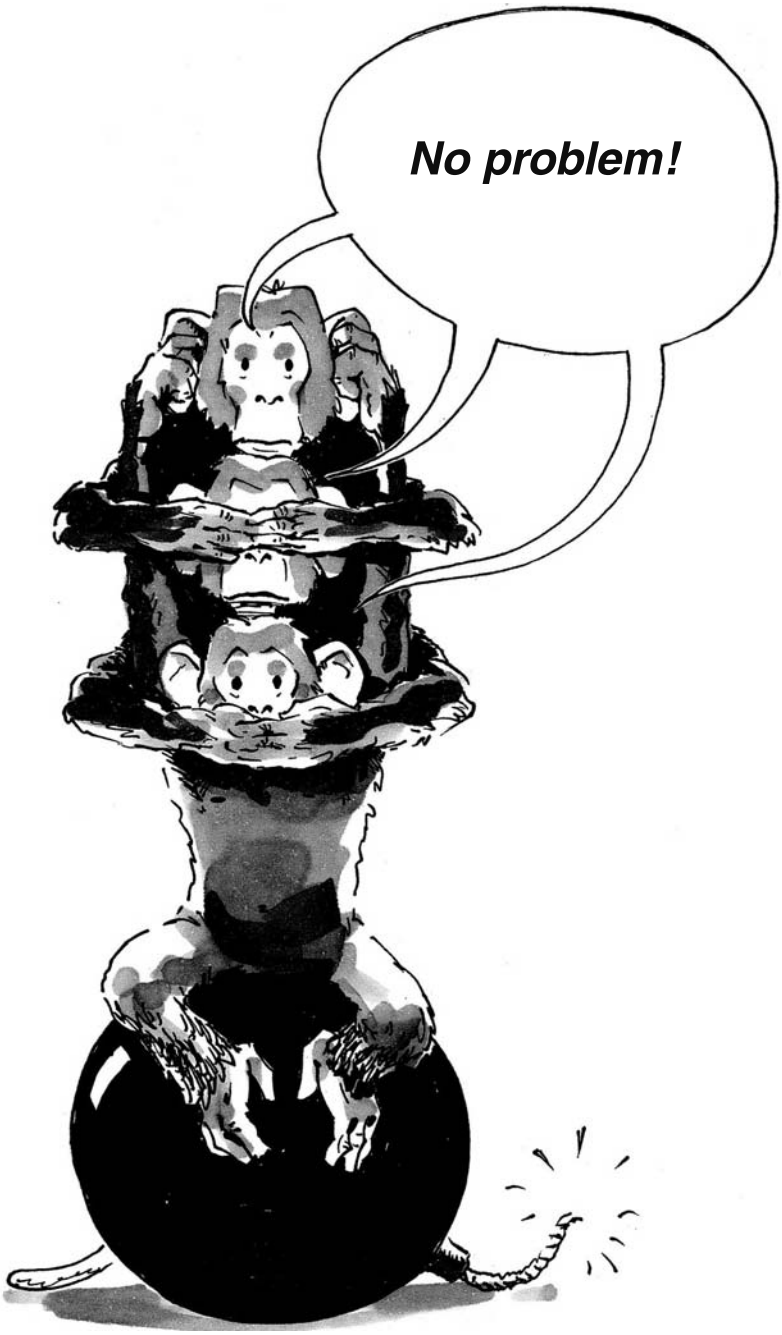
Conclusion: Official X has a *potential* conflict of interest.

Comments. Relevant interest here means the same as in the above tests.

The significant factor in this test is that Official X has private interests which are *currently not relevant interest*, because Official X's current official duties are currently **unrelated to his/her private interests.**

However, if it is likely or possible that Official X's official duties could change in such a way that their private interests could affect their performance of official duties, then those interests would become relevant interests. For example, a close relative works in the same ministry as X, but has no contact with X in any official role: however it is reasonably foreseeable in the circumstances that because X is a senior auditor with wide responsibilities, X could be asked to audit the work of their close relative.

As a result Official X could currently be considered as having a potential conflict of interest. This situation could continue indefinitely: it must be distinguished carefully from an "apparent conflict of interest" (see Test 2 above).


No problem!

Tool Specification No. 4

TOOL NAME: **Generic Checklist for Identifying "At-risk" Areas for Conflict of Interest**

TOOL TYPE: Checklist (Open-ended).

APPLICATIONS:

1. Management action.
2. Training applications.

Comments. The following generic checklist is intended to be used by managers to identify those areas of their responsibility where the organisation is at risk if conflict-of-interest situations occur.

In each case a "*yes*" answer is desirable.

For most questions, an effective administrative procedure is necessary, to enable the risk of conflict-of-interest situations to be identified and reduced, or, at a minimum, managed effectively.

Therefore, in the case of a "*yes*" answer, the user should go on to ask themselves "*What is the relevant administrative procedure, and is it effective?*"

In the case of a "*no*" answer, the user should go on to ask themselves "*Why is there no relevant administrative procedure, and what could be done to establish an effective process?*"

LINK: See *Guidelines*, Sections 1.1; 1.2; 1.3; 2.2.3.

Generic Checklist for Identifying "At-risk" Areas for Conflict of Interest

1 Additional ancillary employment

- Has the organisation defined a policy and related administrative procedure for approval of additional/ancillary employment?
- Is all the staff made aware of the existence of the policy and procedure?
- Does the policy identify potential conflict of interest arising from the proposed ancillary employment as an issue for managers to assess when considering applications for approval?
- Is there a formal authorisation procedure, under which staff may apply in advance for approval to engage in additional employment while retaining their official position?
- Is the policy applied consistently and responsibly, so as not to discourage staff from applying for approval?
- Are approvals reviewed from time to time to ensure that they are still appropriate?

2 Inside information

- Has the organisation defined a policy and administrative procedure for ensuring that inside information, especially privileged information which is obtained in confidence from private citizens or other officials in the course of official duties, is kept secure and is not misused by staff of the organisation? In particular:
  - Commercially sensitive business information.
  - Taxation and regulatory information.
  - Personally sensitive information.
  - Law enforcement and prosecution information.
  - Government economic policy and financial management information.
- Is all staff made aware of the existence of the policy and procedure?
- Are all managers made aware of their various responsibilities to enforce the policy?

3 Contracts

- Does the organisation ensure that any staff/employed official who is or may be involved in the preparation, negotiation, management, or enforcement

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

of a contract involving the organisation has notified the organisation of any private interest relevant to the contract?

- Does the organisation prohibit staff, etc. from participating in the preparation, negotiation, management or enforcement of a contract if they have a relevant interest, or require that they dispose or otherwise manage the relevant interest before participating in such a function?
- Does the organisation have the power to cancel or modify a contract for its benefit if it is proved that the contracting process was significantly compromised by a conflict of interest or corrupt conduct on the part of either an official or a contractor?
- Where a contract has been identified as compromised by a conflict of interest involving an official or former official of the organisation, does the organisation retrospectively assess other significant decisions made by the official in his/her official capacity to ensure that they were not also similarly compromised?

4. Official decision making

- Does the organisation ensure that any staff/employed official who makes official decisions of a significant kind involving the organisation, its resources, strategies, staff, functions, administrative or statutory responsibilities, (for example, a decision concerning a draft law, expenditure, purchase, budgetary allocation, implementation of a law or policy, granting or refusing a licence or permission to a citizen, appointment to a position, recruitment, promotion, discipline, performance assessment, etc.) has notified the organisation of any private interest relevant to a decision which could constitute a conflict of interest on the part of the person making the decision?
- Does the organisation prohibit staff, etc. from participating in the preparation, negotiation, management or enforcement of an official decision if they have a relevant interest, or require that they dispose or otherwise manage the relevant interest before participating in such a decision?
- Does the organisation have the power, either by law or by other means, to review and modify or cancel an official decision if it is proved that the decision-making process was significantly compromised by a conflict of interest or corrupt conduct on the part of a member of its staff/an official?

5 Policy advising

- Does the organisation ensure that any staff/employed official who provides advice to the government or to other public officials on any official matter

concerning any kind of policy measure, strategy, law, expenditure, purchase, the implementation of a policy or law, contract, privatisation, budget measure, appointment to a position, or administrative strategy, etc., has notified the organisation of any private interest relevant to that advice which could constitute a conflict of interest on the part of the person providing the advice?

- Does the organisation prohibit staff, etc. from participating in the preparation, negotiation, or advocacy of an official policy advice if they have a relevant interest, or require that they dispose or otherwise manage the relevant interest before participating in preparing or giving such policy advice?
- Does the organisation have the ability and processes to review and withdraw an official policy advice if it is proved that the advice-giving process was significantly compromised by a conflict of interest or corrupt conduct on the part of a member of its staff/an official?

6. Gifts and other forms of benefit

- Does the organisation's current policy deal with conflicts of interest arising from both traditional and new forms of gifts or benefits?
- Does the organisation have an established administrative process for controlling gifts, for example by defining acceptable and unacceptable gifts, for accepting specified types of gifts on behalf of the organisation, for disposing or returning unacceptable gifts, for advising recipients on how to decline gifts, and for declaring significant gifts offered to or received by officials?

7. Personal, family and community expectations and opportunities

- Does the organisation recognise the potential for conflict of interest to arise from expectations placed on individual public officials by their immediate family, or by their community, including religious or ethnic communities, especially in a multicultural context?
- Does the organisation recognise the potential for conflict of interest to arise from the employment or business activities of other members of an employed official's immediate family?

8. Outside concurrent appointments

- Does the organisation define the circumstances under which a public official may undertake a concurrent appointment on the board or controlling body of an *outside* organisation or body, especially where the

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

body is or may be involved in a contractual, regulatory, partnership or sponsorship arrangement with their employing organisation? For example:

- A community group or an NGO.
- A professional or political organisation.
- Another government organisation or body.
- A government-owned corporation or a commercial public organisation?

- Does the organisation, and/or a law, define specific conditions under which a public official may engage concurrently in the activities of, an *outside* organisation, including a privatised body, while still employed by the organisation?

9. Business or NGO activity after leaving public office

- Does the organisation, and/or a law, define specific conditions under which a former public official may, and may not, become employed by, or engage in the activities of, an *outside* organisation?
- Does the organisation actively maintain procedures which identify potential conflicts of interest where a public official who is about to leave public employment is negotiating a future appointment or employment, or other relevant activity, with an *outside* body?
- Where an official has left the organisation for employment in a non-government body or activity, does the organisation retrospectively assess the decisions made by the official in his/her official capacity to ensure that those decisions were not compromised by undeclared conflicts of interest?

Tool Specification No. 5

TOOL NAME: **Generic Ethics Code Provisions Relevant to Conflict of Interest**

TOOL TYPE: Draft model law/ethics code clauses, for adaptation.

APPLICATION: Incorporation (after adaptation/redrafting as appropriate to suit the local laws and legislative drafting practices) in new or revised ethics law, code, etc.

Comments. The Tool No. 5 consists of a suite of related draft clauses which reflect the approach taken by the fundamental definition of conflict of interest (Tool No. 1).

The draft clauses focus on the key principles of a modern code of ethics or anti-corruption law for the public sector. The terms "„civil servant„ and "public official„ are generic, and include for example "public servant„, etc.

With appropriate adaptation to suit the law and drafting conventions of the country concerned, these clauses could be used to give effect to the definition of conflict of interest advocated in the OECD *Guidelines* and this Toolkit, while at the same time making clear the relationship between the various forms of conflict of interest, corruption, integrity and ethics.

LINK: See *Guidelines* Sections 1.2.2; 2.2.1.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Basic Code of Ethics Provisions Relevant to Conflict of Interest

Serving the public interest

Civil servants and public officials are expected to maintain and strengthen the public's trust and confidence in public institutions, by demonstrating the highest standards of professional competence, efficiency and effectiveness, upholding the constitution and the laws, and seeking to advance the public good at all times.

Transparency and accountability

Civil servants and public officials are expected to use powers and resources for the public good, in accordance with the law and government policy. They should be prepared to be accountable for the decisions they make, and to justify their official decisions and actions to a relevant authority, or publicly, as appropriate in the circumstances.

Integrity

Civil servants and public officials are expected to make decisions and act without consideration of their private interests. Public service being a public trust, the improper use of a public service position for private advantage is regarded as a serious breach of professional integrity.

Legitimacy

Civil servants and public officials are required to administer the laws and government policy, and to exercise legitimate administrative authority under delegation. That power and authority should be exercised impartially and without fear or favour, for its proper public purpose as determined by the Parliament or the official's organisation as appropriate in the circumstances.

Fairness

Civil servants and public officials should make official decisions and take action in a fair and equitable manner, without being affected by bias or personal prejudice, taking into account only the merits of the matter, and respecting the rights of affected citizens.

Responsiveness

As agents and employees of the elected government, civil servants and public officials are required to serve the legitimate interests and needs of the government, public organisations, other civil servants, and citizens, in a timely manner, with appropriate care, respect and courtesy.

Efficiency and effectiveness

Civil servants and public officials are required to obtain best value in expenditure of public funds, and efficient use of assets deployed in or through public management, and to avoid waste and extravagance in the use of resources in public programmes and official activities.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Tool Specification No. 6

TOOL NAME: **Conflict of Interest – Self-test**

TOOL TYPE: Short questionnaire/memory-jogger for senior managers.

Comments. As a diagnostic measure, senior managers and heads of public organisations can use the following short questionnaire to remind themselves of the need for personal efforts, specifically targeted, to discourage the growth of conflict of interest, corruption and misconduct in the organisations for which they carry responsibility.

LINK: *Guidelines*, Sections 1.2.1; 2.1; 2.3.2.

Conflict of Interest – Self-Test

1. If a public survey on the incidence of conflict-of-interest cases were conducted in government ministries this week, I believe that the survey would show that the occurrence of serious conflict-of-interest cases in my ministry/agency is:
   a) Low.
   b) Moderate.
   c) High.
   d) No opinion.
2. In the course of my duties in the past six months, **what have I achieved** specifically with reference to reducing?
   a) Conflict of interest?
   b) Lack of transparency in the organisation?
   c) Lack of accountability in the organisation?
3. In the course of my duties in the past six months, how many times have I spoken with my **senior staff** with specific reference to:
   a) Managing conflict of interest?
   b) Increasing transparency in what we do as officials?
   c) Increasing accountability for what we do as officials?
4. In seeking to increase transparency and accountability in the organisation, what have I achieved to encourage **concerns by staff** about conflict-of-interest issues to be raised for discussion with me, or with an appropriate person in the organisation?
5. In seeking to increase transparency and accountability in the organisation, what have I achieved to encourage concerns about conflict-of-interest matters to be raised with me or with another appropriate person, by **clients, contractors and citizens who have dealings with the organisation?**
6. In the course of my duties in the next six months, **what do I plan to achieve** specifically with reference to reducing:
   a) Conflict of interest?
   b) Lack of transparency in the organisation?
   c) Lack of accountability in the organisation?

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Tool Specification No. 7

TOOL NAME: **Conflict of Interest – General Provisions for Compliance**

TOOL TYPE: Draft generic law, for adaptation.

APPLICATION: Incorporation of concept of "misconduct" (after adaptation/redrafting as appropriate) in new or revised ethics laws/codes.

Comments. The Tool No. 7 consists of two elements: 1) a suite of generic draft clauses which could be adapted for inclusion in a law for enforcing the fundamental definition of conflict of interest (Tool No. 1); and 2) a contract-based procedure for encouraging compliance with ethical standards by former officials.

The draft clauses focus on the key elements of a modern corruption/misconduct or anti-corruption law for the public sector.

The generic term "misconduct", as defined, includes the ideas of "breach of trust" and "dishonesty": this definition may therefore be used to provide a link to existing law and policy dealing with corruption and conflict of interest.

With **appropriate adaptation to suit the specific legal framework** and particular drafting practices of the country concerned, these clauses could be used to give effect to the definition of conflict of interest advocated in this package, while at the same time making clear the relationship between conflict of interest, corruption, integrity and ethics.

The contractual approach could be useful where voluntary compliance with standards may be an issue, for example in relation to employment or appointments after the official has left public office or the civil service.

LINK: See *Guidelines*, Sections 1.1; 1.2.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Conflict of Interest General Provisions for Compliance

A law on conflict of interest could adapt the following generic definition of "misconduct" for the purpose of defining an offence related to corrupt (etc.) conduct by an official or a private citizen.

Definitions

In this section, "**misconduct**" means:

a) For a person, regardless of whether the person is a public official, conduct, or a conspiracy or attempt to engage in conduct, of or by the person that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers of:

i) a public office or body, or

ii) any person holding a public office.

b) For a person who holds or held a public office – an act by the person, or an offer or attempt by the person to engage in an act that involves:

i) the performance of the person's functions or the exercise of the person's powers in a way that is **knowingly unlawful**, or is not **honest,** or is not **impartial**, or

ii) a **breach of the trust** placed in the person as the holder of a public office, or

iii) a **conflict of interest**, whether the conflict has been declared in accordance with the requirements of the person's public office or not, or

iv) a **misuse of information or material** acquired in or in connection with the performance of the person's functions as the holder of a public office, whether the misuse is for the person's benefit or the benefit of someone else, or

v) a **disciplinary breach** for which the penalty provided by law is termination of the person's appointment or service.

"**Person**" also includes a legal person.

Conduct happening over time may be misconduct

a) Conduct may be misconduct even though:

i) some of the effects or elements necessary to constitute misconduct happened before the commencement of this law, or

ii) a person involved in the conduct is no longer a public official.

b) Conduct engaged in by, or in relation to, a person at a time when the person is not a public official may be considered to be misconduct if the person becomes a public official.

Conduct outside the [country] may be misconduct

a) Conduct may be misconduct regardless of:

i) where the conduct happens, or

ii) whether the law relevant to the conduct is a law of the [country] or of another jurisdiction.

Misconduct not affected by time limitations

Conduct remains misconduct for the purposes of this law even if an action for an offence to which the conduct is relevant can no longer be brought or continued, or an action for termination of an official's appointment because of the conduct can no longer be taken.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Appointments and employment after leaving public office

If a specific law does not regulate the employment or appointments of senior officials after they leave public office, and where the relevant code of ethics is not enforceable on former officials, an alternative approach may be to encourage compliance with standards through a form of personal contract.

While different formal requirements might operate in different legal systems, in principle such an agreement should take the form of a letter of agreement which creates the legal relationship fundamental to a contract. The agreement would generally be between the proposed appointee (for example a person who is to be appointed as a minister, or as head of a public body, or any political appointee) and the person who has power to make the appointment (for example, the Prime Minister of the day, or the Head of State) in right of the State.

The essence of such a contract would be a written undertaking, made by the proposed appointee as a condition of the appointment being made, to comply with the specific requirements of the relevant code of ethics for a specified period after leaving public office. The person being proposed for appointment would be expected to sign the agreement on accepting the offer of appointment or nomination. The *proforma* agreement document could be published as an attachment to the relevant ethics code.

The contract mechanism is not readily open to abuse, as it would be for a court to decide as to whether a particular contract had been breached.

A suggested general outline of the proposed form of words is:

To: [Prime Minister/Head of State of . . . . . .].

I, [*name*], acknowledge that I have read and understood the [*Ethics Code*], and in particular undertake to comply in all respects with [*the Code's*] provisions [*clauses*…] governing appointments and employment after *[holding a public office/a term of Parliamentary office, etc.*].

In consideration of the offer of appointment/nomination for appointment as a [m*inister/etc.*], which I hereby accept, I acknowledge that the provisions of [*the Code/specific clause(s)*] will be legally enforceable in contract by virtue of my acceptance of the offer of appointment as a [*Minister/etc.*].

Signed . . . . . Date . . . . . .

Tool Specification No. 8

TOOL NAME: **Gifts and Gratuities Checklist**

TOOL TYPE: Open-ended prescriptive checklist.

APPLICATION: Decision making; training.

Comments. Codes of conduct/ethics in the public sector often give a lot of attention to the issue of gifts to officials – what gifts can be received, what is prohibited, and under what conditions.

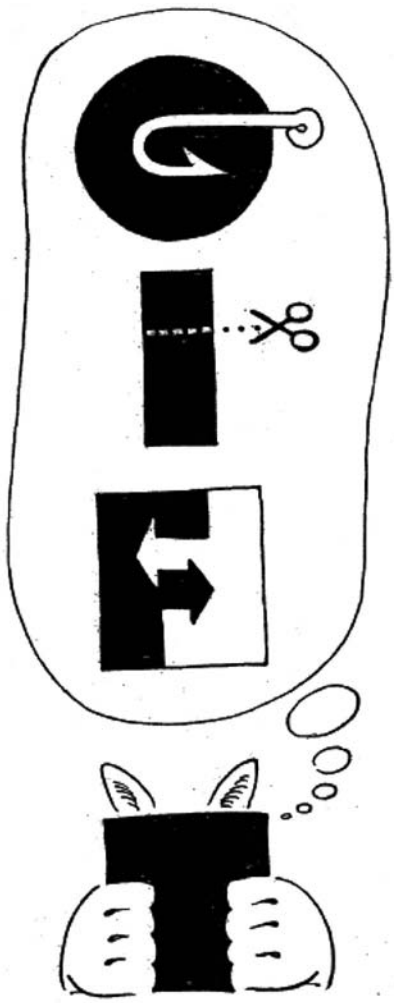
This prescriptive checklist reduces the potential for confusion to four simple tests, arranged under a mnemonic – ***GIFT*** – to make the tests easier to remember.

Each element of the ***GIFT*** mnemonic recalls one of the principles of public ethics, rather than a set of complex administrative definitions and criteria or processes.

LINK: See *Guidelines*, Sections 2.2.1; 2.2.2.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Gifts and Gratuities Checklist



***G*enuine**	is this gift **genuine**, in appreciation for something I have done in my role as a public official, and not requested or encouraged by me?
***I*ndependent**	If I accept this gift, would a reasonable person have any doubt that I could be **independent** in doing my job in the future, especially if the person responsible for this gift is involved or affected by a decision I might make?
***F*ree**	If I accept this gift, would I feel **free** of any obligation to do something in return for the person responsible for the gift, or for his/her family or friends/associates?
***T*ransparent**	Am I prepared to declare this gift and its source, **transparently**, to my organisation and its clients, to my professional colleagues, and to the media and the public generally?

Tool Specification No. 9

TOOL NAME: **Gifts for Officials – Generic Law**

TOOL TYPE: Model generic law, for adaptation.

APPLICATION: Incorporation (after adaptation/redrafting as appropriate) in new or revised ethics laws/codes.

Comments

1. "Reportable gifts" are distinguished from those gifts which are not required to be reported by the officials who receive them. What gifts are reportable is a policy decision to be made by each organisation.
2. An organisation's ethics manual or conflict-of-interest policy should outline situations which officials should avoid, and actions to be taken if a problematic situation does arise. Prohibitions, for example, a provision that monetary gifts should not be accepted in any circumstance, shuld be clearly stated.
3. In developing systems, an agency should consider other relevant matters, including, for example, the Criminal Code, and any law or policy about ethics, corruption, misconduct, and conflict of interest applicable in the public sector.
4. Because of the nature of the reportable gifts, the details and circumstances of the gift should be recorded and documented to form an official record of the gift. This should discourage officials from acting unethically.
5. Finally, it is not the value of the gift that is the main policy issue in most cases: it is the question of how to deal appropriately with the actual or presumed relationship between giver and receiver that matters most. Gifts to public officials in their private capacity (as opposed to official gifts to the official's organisation), should raise the question of whether there is a relationship between the giver and the receiver which could constitute a serious risk to the integrity of the individual official, or to the organisation.

LINK: See *Guidelines*, Sections 1.1; 1.2; 2.3.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Gifts for Officials – Generic Law

Definitions

"**Code of ethics**", of a public body, means the approved code of ethics of the ministry, department or agency concerned.

"**Current market value**", of a gift, means the real market value of the gift on the day it is received.

"**Gift**" includes:

a) a gift of entertainment, hospitality, travel or other form of benefit of significant value; and

b) a gift of any item of property of significant value, whether of a consumable nature or otherwise, including, for example, display item, watch, clocks, book, furniture, figurine, work of art, jewellery, equipment, clothing, wine/spirits, or personal item containing precious metal or stones.

Meaning of "reportable gift"

1. A "reportable gift" is:
   a) any gift made to an official by an organisation, agency or private sector entity, or
   b) any gift made to an official by a private individual.
   c) where the current market value of the gift exceeds the "reportable gift threshold"* as determined by regulation
2. A gift received by an official from a relative, personal friend, or family member in a private capacity and in accordance with normal social custom (such as at a birthday, marriage, religious festival, etc.), or a gift from any source in recognition of service, professional achievement, or retirement), is not a reportable gift. This does not limit the operation of the code of ethics of a public body to the extent the code provides for reporting a gift of a value less than the reportable gift threshold.
3. Where an official receives more than one gift from the same person in any financial year, and the current market value of all the gifts so received exceeds the reportable gift threshold applicable at the end of the year, each of the gifts so received are reportable gifts.

* Amount of limit to be selected according to policy intention.

4. If an agency makes more than one gift to the same official, etc. in a financial year, and the current market value of all gifts exceeds the reportable gift threshold, each of the gifts so received are reportable gifts.

Reportable gifts to be dealt with as a physical or material asset

5. A reportable gift received by the official must be dealt with as the public body's accountable asset.
6. A public body may dispose of reportable gifts, after registration, as it determines.

Reportable gift to be declared and accounted for

7. An official who receives a reportable gift must complete a declaration:
   a) within 14 days after the gift becomes a reportable gift because it exceeds the "reportable gift threshold", or
   b) for another reportable gift within 14 days after receiving the gift.
8. In the case of reportable gifts, the official must, as soon as practicable:
   a) Transfer the gift into the control of the official's public body; and by consent, may.
   b) Pay to the body:
      i) for gifts that are reportable gifts because they exceed the threshold, an amount equal to the difference between the total current market value of the gifts and the reportable gift threshold for each gift, or
      ii) for any other reportable gift an amount equal to the difference between the current market value of the gift and the reportable gift threshold.
9. Paragraph 1 above does not limit the operation of the code of ethics of a public body to the extent the code provides for reporting the receipt of a reportable gift within a period of less than 14 days.

Register of reportable gifts

10. The public body must keep a register of reportable gifts received by any official of the body.
11. The register must include information about each of the following matters:
   a) The date the reportable gift was received by the official.
   b) The persons and circumstances involved in making and receiving the gift.
   c) A detailed description of the gift, including its current market value and the basis for the valuation.
   d) The approval for receiving the gift, if relevant, and

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

e) The date the gift was transferred to the control of the body and the present location of the gift, or

f) If the official is permitted to retain the gift:

i) the date and amount of the payment made under paragraph 8 (b), for the gift.

g) If the gift is disposed of:

i) the authority for disposal;

ii) the date and method of disposal;

iii) the name and location of the beneficiary; and

iv) the proceeds, if any, arising from the disposal.

Tool Specification No. 10

TOOL NAME: **Registration of Personal Interests and Assets – Procedure**

TOOL TYPE: Basic administrative form (for completion by individuals).

APPLICATION: Incorporation (after adaptation/redrafting as appropriate) in new or revised administrative process, supported by ethics law/code.

Comments. This short form is intended to be used to identify the relevant personal assets and beneficial interests which are most likely to cause a conflict-of-interest situation.

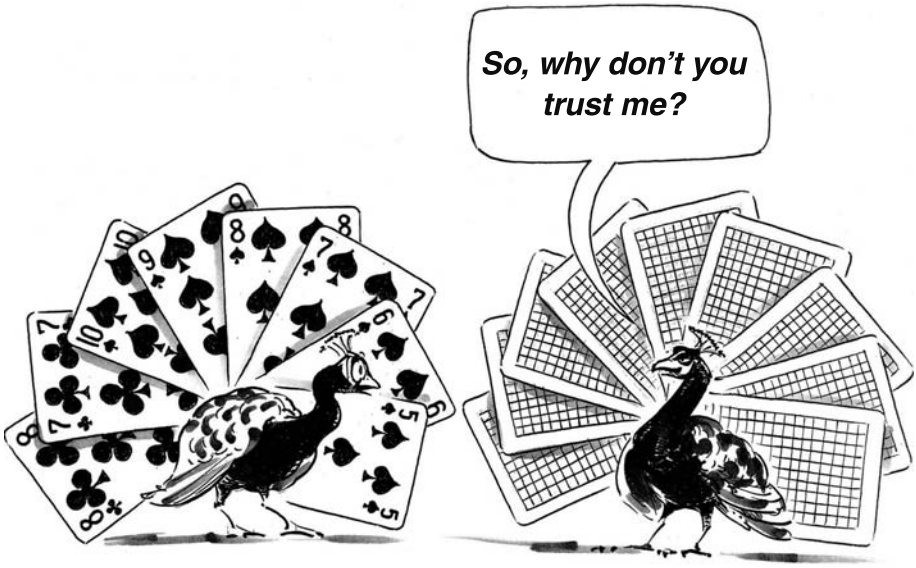
The administrative procedure would need to be supported by a law or government policy to be enforceable.

Failure to provide a complete return when required could be made the subject of sanctions (for example, disciplinary action or disqualification from public office for a public servant, or removal from elected office for an elected official), or criminal sanctions as appropriate.

The process does not require an official to identify assets disposed of during the reporting period. Optionally, a stronger form of this declaration process would do so, by means of a question (which could be inserted as a new item after Question 11) to identify any assets which were identified as owned on the previous declaration form, and which have since then been disposed of, their value on disposal, how they were disposed of, and to whom.

LINK: See *Guidelines*, Sections 1.1; 1.2.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005


So, why don't you trust me?

Registration of Personal Interests Procedure

To: [Head of agency/organisation]

Particulars of my private interests and those of my immediate family of which I am aware are set out in the attached form.

I hereby undertake to advise you should a situation arise where an interest of mine, or an interest of a member of my immediate family of which I am aware, conflicts, or may reasonably be thought to conflict, with my public duty, whether that interest is pecuniary or otherwise,

. . . . . (signature)

. . . . . date

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Registration of Private Interests for Public Official and Immediate Family

1. Real estate/immovable property

Real estate in which a beneficial interest is held (excluding the principal family home):

Owner:	***Location:***	***Nature of interest held:***	***Purpose (e.g. investment, domicile, etc.):***

2. Shareholdings

Indicate all holdings of shares and like instruments, including holding companies and subsidiary companies if applicable: exclude nominal shareholdings by way of qualification for membership of a credit union, building society or other co-operative society:

Name of company:	***Owner of shares:***

[Registrant to complete details.]

3. Trusts/nominee companies

a) Identify any ***beneficial interest*** *held in a family or business trust or a nominee company:*

Trust or nominee company:	***Nature of interest:***	***Nature of operations of trust or company:***

Name of person holding interest:	***Date commenced:***

b) Identify any interest held as a ***trustee*** *of a family or business trust established under a law:*

Trust name:	***Name of trustee:***	***Beneficiaries:***	***Type of activities commenced:***	***Date commenced:***
. . . . .				
. . . . .				

4. Directorships, appointments and ancillary employment in other enterprises:

Indicate all directorships currently held, whether a director's fee is paid or not:

Name(s) of directors:	***Name of company [whether public or private]:***	***Activities of company:***	***Date commenced:***
. . . . .			
. . . . .			

5. Partnerships, etc.

Identify all current business and professional partnerships and similar arrangements:

Person holding interest:	***Type of activities:***	***Type of business:***	***Date commenced:***
. . . . .			
. . . . .			

6. Investments

Identify all investments in bonds, debentures, savings or investment accounts with banks or other financial institutions. Where the cumulative value of such investments is less than the threshold [€x,000] no registration is required:

Person holding investment:	***Type of investment:***	***Body in which investment is held:***	***Date commenced:***
. . . . .			
. . . . .			

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

7. Other assets

Identify each asset valued at over [€x,000]: [principal family home, household contents, personal effects and motor vehicles for personal use could be excluded]:

Owner of asset:	***Type of asset:***	***Source:***	***Date obtained:***
. . . . .			
. . . . .			

8. Other significant sources of income

Identify current salary and income from all appointments/employment including those identified in Item 4: salary from primary public service/official position is to be excluded:

Person receiving income:	***Source/nature of income:***
. . . . .	
. . . . .	

9. Reportable gifts, (including substantial travel, hospitality or other forms of valuable benefit)

Identify all "reportable gifts" [see definition – such as provided in Tool No. 9] of current market value exceeding [€ 00], received in the past financial year:

Person receiving gift:	***Nature of gift:***	***Market value of gift:***	***Donor:***	***Date received:***
. . . . .				
. . . . .				

10. Liabilities

Identify current financial liabilities, loans, mortgages etc. (minor debts such as ordinary short term credit arrangements, charge cards, etc. are to be excluded):

Person liable:	***Nature of liability (loan, mortgage etc.):***	***Creditor:***
. . . . .		
. . . . .		

11. Other personal interests which could constitute a potential conflict-of-interest situation

Include for example, previous relevant employment or positions held, (for example in business ventures, professional bodies/unions, NGOs, or community organisations), continuing rights of return to previous employment or position, and standing offers or agreements about future employment, etc. (NOTE: political and religious affiliations, etc. are not required to be notified unless they could reasonably constitute a specific conflict-of-interest situation relevant to the position held by the person making this declaration.)

. . . . . .

. . . . . .

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Tool Specification No. 11

TOOL NAME: **Registration of Interests and Assets – Generic Law**

TOOL TYPE: Generic model rule/law.

APPLICATION: Incorporation (after adaptation as appropriate to local institutions) in new sor revised conflict-of-interest, ethics laws/codes.

Comments. This model law has been drafted to apply to elected officials. It can also be adapted for various classes of public official, including high-level appointed officials and civil servants.

As a policy issue, it may be preferred that elected officials and civil servants should not be permitted to engage in any business partnerships, or to hold positions as directors of boards of companies, because of the potential for various forms of conflict of interest to arise. If this is the case, clause 7(b), (e) or (n) of the model law can be modified accordingly.

While it is generally considered appropriate that declarations of assets and interests by elected officials should be open to public scrutiny, it may be considered better in the case of civil servants to provide instead for their declarations and disclosures to be available only to the relevant agency head, and/or their minister, or an independent authority, as appropriate to the case.

Note that Tool No. 9 also provides an alternative definition of "gift". An alternative approach to registering an official's relevant (prescribed) interests is given by Tool No. 10.

References in the following draft law to terms identified with an * are indicative of generic functions or offices/powers. These terms should be replaced with the specific terms and names of institutions, etc. which are appropriate to the actual legal and governance system of the particular country concerned.

LINKS: See *Guidelines*, Sections 1.2; 2.3

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Registration of Interests and Assets – Generic Law

*[Note: terms identified with an * should be defined as appropriate to the legal and governance system of the country concerned.]*

Part 1 – Preliminary

Definitions

1. In this resolution, unless the contrary intention appears:

"**Clerk**" means The Clerk of the Parliament.

"**Committee**" means the Parliamentary Ethics Committee..

"**Company**" means a company, whether a private company or a public company.

"**Debenture**" includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a company in respect of money that is deposited with or lent to the company.

"**Gift**" means:

a) The transfer of money, property or other benefit:

i) without payment, or

ii) for a consideration substantially less than full consideration, or

b) A loan of money or property made on a permanent, or an indefinite, basis; but does not include travel or accommodation provided under a commercial loyalty plan.

"**Joint venture**" means an undertaking carried on by 2 or more persons in common otherwise than as partners.

"**Member**" means a Member* of the Parliament*.

"**Nominee company**" means a company whose principal business is the business of holding marketable securities as a trustee or nominee.

"**Official**", in relation to a company, means:

a) director or secretary of the company, or

b) any other person who is concerned, or takes part, in the management of the company.

"**Partnership**" includes a joint venture.

"**Private company**" means a proprietary company incorporated under a law.

"**Public company**" means a company, other than a private company.

"**Register**" means:

a) the Register of Members' Interests, or

b) the Register of Related Persons' Interests.

"**Related person",** in relation to a Member, means:

a) the spouse of the Member,

b) a child of the Member who is wholly or substantially dependent on the Member, or

c) any other person:

i) who is wholly or substantially dependent on the Member, or

ii) whose affairs are so closely connected with the affairs of the Member that a benefit derived by the person, or a substantial part of it, could pass to the Member.

"**Share**" means:

a) a share in the share capital of a company;

b) stock;

c) a convertible note, or

d) an option.

"**Sitting day",** in relation to the Parliament,* means a day on which the Parliament* meets.

"**Supported travel or accommodation**" means any travel undertaken, or any accommodation benefit received, otherwise than in an official capacity, by the Member or a related person, in respect of which a part or the whole of the cost of the travel or the accommodation is paid or provided by a person other than the Member or a related person, or by an organisation other than the Parliament or the Member's political party.

"**Statement of interests**" means:

a) a statement of interests (Member), or

b) a statement of interests (Related Persons).

"**Statement of interests (Member)**" means the statement of a Member's interests required to be given by the Member to the [*Clerk*/Conflict of Interest Commissioner**]* under Clause 5.

"**Statement of interests (Related Persons)**" means the statement of the interests of a Member's related persons required to be given by the Member to the *Clerk*/Conflict of Interest Commissioner** under Clause 5.

"**Trade or professional organisation**" means a body established under a law, or otherwise, of:

a) employers or employees, or

b) persons engaged in a profession, trade or other occupation; being a body formed for the purpose of promoting its own professional, industrial or economic interests or those of any of its members.

Interpretation – terms relating to companies

2. A person is taken to have a controlling interest in shares in a company if the person is able:

a) to dispose of, or to exercise control over the disposal of, the shares, or

b) where the shares are voting shares – to exercise, or to control the exercise of, any voting powers attached to the shares.

Interpretation – forms

3. In this resolution, substantial compliance with a prescribed form of declaration, or such compliance as the circumstances of a particular case allow, is sufficient.

Custody of Members' Registrations of Interests

4. 1. The [*Clerk*/Conflict of Interest Commissioner**] is to be responsible for holding and secure custody of registrations of interests, and for providing access to Members' registrations as prescribed.

   2. Except as provided in Part 4, the [*Clerk*/Conflict of Interest Commissioner**] is not responsible for verifying the accuracy of the information provided by a Member in a declaration,

Part 2 – Statements of interests

Giving of statements

5. 1. In accordance with [*the relevant law or resolution of Parliament**] each Member shall within one month election as a Member*, or 30 June of each year, provide to the [*Clerk*/Conflict of Interest Commissioner**] in a form determined by the *Clerk*/Commissioner** from time to time, a statement of

   a) The Member's interests as at the date of the election, or 30 June of the year in question, as appropriate.

   b) The interests, of which the Member is aware, of related persons as at the date of the election, or 30 June of the year in question, as appropriate.

   2. A Member must notify the [*Clerk*/Conflict of Interest Commissioner**] in writing of any significant change [that is, by (00%) or more] in the total value of any of the forms of interest required to be declared by the

Member under clause 7, within one calendar month of becoming aware of the change.

3. Where in any year there is no change to the interests last declared by the Member, the Member is required to advise the [*Clerk*/Conflict of Interest Commissioner**] to this effect in writing within one month after 30 June each year.
4. A Member is required to include in a statement of interests of a related person, information about the person's interests which are known to the Member.
5. A Member is not required to give, in any year, more than one statement of interests.

Form of statements and notice of change of details

6. 1. A statement of interests:

a) must be in accordance with the documentation requirements specified by the [*Clerk*/Conflict of Interest Commissioner**], and

b) is to relate only to interests held by:

i) the Member alone, and

ii) the Member jointly or in common with a related person;

iii) related persons otherwise than jointly or in common with the Member.

2. The [*Clerk*/Conflict of Interest Commissioner**] may, in his or her sole discretion, prescribe the documentation requirements for statements of interests, and shall inform the Parliament concerning the prescribed requirements by 31 March each year.

Disclosure of interests

7. A statement of interests required to be given by a Member must contain the following information

a) In respect of any company in which the Member or a related person is a shareholder or has a controlling interest in shares:

i) The name of the company.

ii) Where the shareholding or interest constitutes a controlling interest in the company – details of the shareholdings of the company in any other company.

iii) Where the shareholding or interest is held in a private company, the details of the investments or beneficial interests of the company, but the value of those investments or beneficial interests need not be disclosed.

iv) The date of commencement of the interest.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

v) Where the shareholding or interest is held in a private company that is the holding company of another company.

vi) Details of the investments or beneficial interests of the holding company, but the value of those investments or beneficial interests need not be disclosed.

vii) The name of any company that is a subsidiary of the holding company.

viii) The name of any company that is a subsidiary of any company that is the holding company's subsidiary.

ix) The details of the investments or beneficial interests of those subsidiary companies, but the value of those investments or beneficial interests need not be disclosed.

b) In respect of any company of which the Member or a related person is an official:

i) The name of the company.

ii) The nature of the office held.

iii) The date of becoming an official of the company.

iv) The nature of the activities of the company.

c) In respect of any family or business trust or nominee company in which the Member or a related person holds a beneficial interest:

i) The name or a description of the trust, or the name of the company, as the case requires.

ii) The nature of the activities of the trust or company.

iii) The nature of the interest.

iv) The date of commencement of the interest.

v) Details of the investments and beneficial interest of the trust, but the value of those investments or beneficial interests need not be disclosed.

d) In respect of any family or business trust in which the Member or a related person is a trustee:

i) The name or a description of the trust.

ii) The date of commencement of the trust relationship.

iii) The nature of the activities of the trust.

e) In respect of any partnership in which the Member or a related person has an interest:

i) The name or a description of the partnership.

ii) The nature of the activities of the interest.

iii) The date of commencement of the partnership.

iv) The nature of the interest.

f) In respect of any real estate in which the Member or a related person has an interest:

i) The location of the relevant property (by reference to suburb or area).

ii) The approximate size of the property.

iii) The purpose(s) for which the property is used, and is intended to be used.

iv) The date of commencement of the interest.

v) The nature of the interest.

g) In respect of any liability (excluding department store and credit card accounts) of the Member or a related person or a trust of which a Member or a related person is a beneficiary or a private company of which a Member or a related person is a shareholder:

i) The nature of the liability.

ii) The date of commencement of the liability.

iii) The name of the creditor concerned.

Unless:

iv) It arises from the supply of goods or services supplied in the ordinary course of any occupation of the Member or business of the trust or private company in which the Member or related person has an interest which is not related to the Member's duties as a Member of the Legislative Assembly, or

v) The debt is for an amount of [€x,000] or less.

h) Details of any debenture or similar investment held by the Member or a related person.

i) In respect of any savings or investment account of the Member or a related person held with a bank, building society, credit union or other institution:

i) The nature of the account, and

ii) The name of the institution concerned.

j) Gifts valued at more than €x00 from one source, or where two or more gifts are made from one source during the return period exceed, in aggregate, [€x00], provided that a gift received by a Member, the Member's spouse or dependent children, from family members need not be registered unless the Member judges that a conflict of interest may be seen to exist.

k) In respect of any supported travel or accommodation received by the Member or a related person:

i) The source of the contribution concerned.

ii) The date(s) of the travel,and

iii) The purpose of the travel.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

l) Any other source of income over €x,000 per annum received by:

i) The Member or a related person, or

ii) A private company, or a trust, in which the Member or a related person holds an interest,, or where the income is under €x,000 and the Member judges that a conflict of interest may be seen to exist.

m) Details of any other asset of the Member or a related person the value of which exceeds €x,000 other than:

i) Household and personal effects.

ii) A motor vehicle used only or mainly for personal use, and

iii) Personal superannuation or similar entitlements.

n) The name of any political party, trade or professional organisation of which the Member or related person is a Member, or the name of any other organisation of which the Member is an officeholder or a financial contributor donating [€x,00] or more in any single calendar year to that organisation.

o) Any other interest (whether or not of a pecuniary nature) of the Member or a related person:

i) of which the Member is aware, and

ii) that causes, reasonably appears to cause, or could foreseeably cause, a conflict between the Member's private interest and his or her public duty as a Member.

p) In respect of any interest which the Member has declared in a previous statement and has disposed of in the reporting period:

i) the date of the disposal of the interest;

ii) the method of disposal of the interest, and

iii) the name of the person or entity which acquired the interest.

Questions concerning statements

8. If a question relating to whether a matter should or should not be included in a statement of interests is raised by a Member with the *Clerk*/ Conflict of Interest Commissioner**, the Clerk*/Commissioner* shall resolve the matter with the Member, taking into account any resolution of the Parliament affecting the matter.

Part 3 – Registers

Keeping of Registers

9. 1. The *Clerk*/Conflict of Interest Commissioner** must keep, in such form as the Clerk*/Commissioner* considers appropriate:

a) A Register of Members' Interests, and

b) A Register of Related Persons' Interests.

2. As soon as practicable after receiving a statement of interests from a Member, the Clerk*/Commissioner* must:

   a) In the case of a statement of interests by a Member – enter in the Register of Members' Interests the relevant details contained in the statement, and

   b) In the case of a statement of interests by a related person – enter in the Register of Related Persons' Interests the relevant details contained in the statement.

3. As soon as practicable after receiving a notice of change of information under clause 5(2), the Clerk*/Commissioner* must make such alteration to the information entered in the relevant Register as is necessary to reflect the change.

Custody of Registers

10. The Conflict of Interest Commissioner is to have the custody of:

   a) each Register;

   b) each statement of interests received under clause 5; and

   c) any notice of change of interests received by the Clerk*/Commissioner.*

Tabling of Register of Members' Interests

11. As soon as practicable after:

   a) The first sitting day of each Parliament, and

   b) The 30th day of June in each subsequent year during the life of that Parliament; the Speaker* must cause a copy of the current Register of Members' Interests to be laid before the Parliament.

Publishing of Register of Members' Interests

12. The Register tabled in accordance with 11(a) above shall be immediately published as a Parliamentary Paper.*

Inspection of Registers

13. 1. The [*Clerk*/Conflict of Interest Commissioner**]* must, at the request of a person, permit the person to inspect the Register of Members' Interests during normal business hours.

   2. The [*Clerk*/Conflict of Interest Commissioner**]* must, on request, make the Register of Related Persons' Interests available to:

      a) The Speaker.

      b) The Chief Minister* [Premier*/Prime Minister*, etc.].

      c) Any other Member of the Parliament*.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Part 4 – Compliance measures

Claims by Members

14. 1. A Member may make a claim against another Member that the other Member has failed to comply with the requirements relating to the disclosure of a relevant interest.

    2. The claim must be made in writing to the [*Clerk*/Conflict of Interest Commissioner**].

    3. The [*Clerk*/Conflict of Interest Commissioner**] must, as soon as practicable, give a copy of the claim to the Member to whom it refers.

Consideration of claims

15. 1. The Clerk*/Commissioner* must consider each claim made under clause 14, and, for that purpose, may:

    a) Give each Member concerned the opportunity to be heard, and

    b) Obtain information from such other persons, and make such inquiries, as the Clerk*/Commissioner* thinks fit.

    c) After which the Clerk*/Commissioner* may:

    d) Make a report to the Parliament, and

    e) With the report, recommend the action which, in the Clerk's/Commissioner's opinion, should be taken in relation to the matter.

    2. A report under clause 15(1) may not be made unless;

    a) The Clerk*/Commissioner*/ has given the Member against whom the claim has been made an opportunity:

    i) To be heard, and

    ii) To make written submissions, and

    b) The Clerk*/Commissioner* has given the persons that the Member nominates, the opportunity to provide information relevant to the claim.

    3. Parliamentary privilege applies to the making of a claim to the Clerk*/Commissioner* under clause 14, to information provided to the Clerk*/Commissioner* under clause 15(2)(b), and to a report made under clause 15(1).

Claims by the public

16. 1. A person may make a claim alleging that a Member has failed to comply with the requirements relating to the disclosure of a relevant interest.

2. The claim must be made in writing to the [*Clerk*/Conflict of Interest Commissioner**].
3. The Clerk*/Commissioner* must, before taking any action in relation to the claim, inform the person in writing of the extent to which qualified privilege*/parliamentary immunity* may apply.
4. The Clerk* or Commissioner* may require the person to provide:
   a) Details of their name and address.
   b) Details, or further details, of the claim, and
   c) Copies of any documents or other material in the possession of or reasonably available to the person which supports the claim.
5. The Clerk*/Commissioner* may refuse to take action or further action in relation to the claim if the person fails to comply with a requirement under sub clause (4).
6. If the Clerk*/Commissioner* considers on reasonable grounds that there is evidence to support a claim, the Clerk*/Commissioner* must give the details of the claim to the Member concerned.

Consideration of claims

17. 1. Where a claim is made under clause 16, the [*Clerk*/Conflict of Interest Commissioner**]
   a) Shall request the Member concerned to provide a response to the claim, and
      i) Give the Member the opportunity to be heard.
      ii) Give other persons nominated by Member the opportunity to provide information, and
      iii) Make such inquiries as the Clerk*/Commissioner* thinks fit.
   2. The [*Clerk*/Conflict of Interest Commissioner**] must make a report to the Parliament in respect of the claim:
      a) If the Member concerned disputes the claim – on completion of consideration of the claim by the Commissioner.
      b) If the Member confirms the substance of the claim – on receiving notice to that effect from the Member, and
      c) If the Member does not, within a reasonable period, respond to a request given to him or her under paragraph (1) (a) – on the expiration of the period.
   3. The [Clerk*/Conflict of Interest Commissioner*] must, with the report, recommend the action that should be taken.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

4. The [Clerk*/Conflict of Interest Commissioner*] may not, in the report, make a finding that is adverse to the Member concerned unless it has given the Member:

   a) A copy of the claim and an opportunity to be heard in relation to the claim, and

   b) A copy of the proposed report.

Explanation and public discussion

18. The [*Clerk*/Conflict of Interest Commissioner**] may produce and publish explanatory notes, and engage in public discussion, concerning the objectives and procedures relevant to the information to be included in the Registers.

Part 5 – Enforcement

Effect of failure to comply with requirements

19. A Member who knowingly:

   a) Fails to give a statement of interests to the [*Clerk*/Conflict of Interest Commissioner**] under sub clause 5(1).

   b) Fails to notify the [*Clerk*/Conflict of Interest Commissioner**] under sub clause 5(2) of a change of interests, or

   c) Gives to the [*Clerk*/Conflict of Interest Commissioner**] a statement of interests, or information, that is false, incomplete or misleading in a material particular,

   is guilty of contempt of the Parliament*.

Tool Specification No. 12

TOOL NAME: **Integrity Testing Policy**

TOOL TYPE: Generic description for policy purposes.

APPLICATION: Adoption after adaptation of necessary legal and policy instruments.

Comments. Integrity testing is a tool by which public officials are deliberately placed in potentially compromising positions without their knowledge, and tested, so that their resulting actions can be scrutinised and evaluated by their employer or an investigating authority.

For example, an official may be offered what appears to be a genuine bribe, in realistic circumstances, by a person acting as a member of the public, while under surveillance by the official's employer or a law-enforcement or anti-corruption agency. If the official accepts the "bribe", it may be reasonable to conclude that they were corrupt, at least on that occasion. However, unless the test is reasonable in the circumstances, especially the value of the "bribe", subsequent disciplinary or prosecution action could be overturned on the grounds that the test amounted to entrapment.

More complex tests could involve the tracking, surveillance and monitoring of target officials. The target official's movements, their associates, telephone calls, financial transactions, and other indicators of possible corrupt activity could be scrutinised, and the official could then be subjected to more complex tests, which are in effect undercover operations conducted against the organisation's own staff.

While the Integrity Test can be a powerful specialised corruption detection tool, organisations may need to exercise caution, because:

- It may need special legislation to permit it (for example, where a test would involve actually offering a „bribe„ to an official who is under suspicion).
- Special training may be needed to deploy the technique effectively.
- It may need special legislation to permit the use of any evidence obtained, in a prosecution.
- It risks alienating non-corrupt staff by creating fear of accidentally being targeted.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Integrity Testing Policy

1. Integrity testing will be applied randomly, testing any official in a particular unit or function, or it may be targeted at officials who are actually suspected of being corrupt. It is best understood as a proactive corruption detection technique.
2. Initially Integrity Tests will be applied to target officials who have been the subject of complaints or allegations of serious corruption or misconduct. A test must be contextualised to an area or field of work in which the suspect official is regularly engaged, and the situation must be set up so as to appear familiar to the targeted official as an opportunity available for corrupt exploitation without detection.
3. Evidence of corrupt conduct or official wrongdoing may be used to support disciplinary and/or criminal charges under the relevant of legal provision.

Tool Specification No. 13

TOOL NAME: **Public Interest Disclosure Policy and Procedure – "Whistleblower" Protection**

TOOL TYPE: Specific policy framework and information description of key features and process.

APPLICATION:

1. Incorporation (after adaptation/redrafting as appropriate) in new or revised ethics laws/codes/specific law for the purpose.
2. Training and public information.

Comments. Disclosure of administrative wrongdoing and corrupt conduct (also known as "whistleblowing") is regarded as a crucial instrument in fighting corruption. If wrongdoing is not identified, it is unlikely to be controlled. It is therefore crucial that *bona fide* disclosures, which are made in accordance with the policy, should be protected effectively.

The following tool is produced here in the form of a policy framework and general information advice to persons who may wish to make a "public interest disclosure" about wrongdoing by a public official.

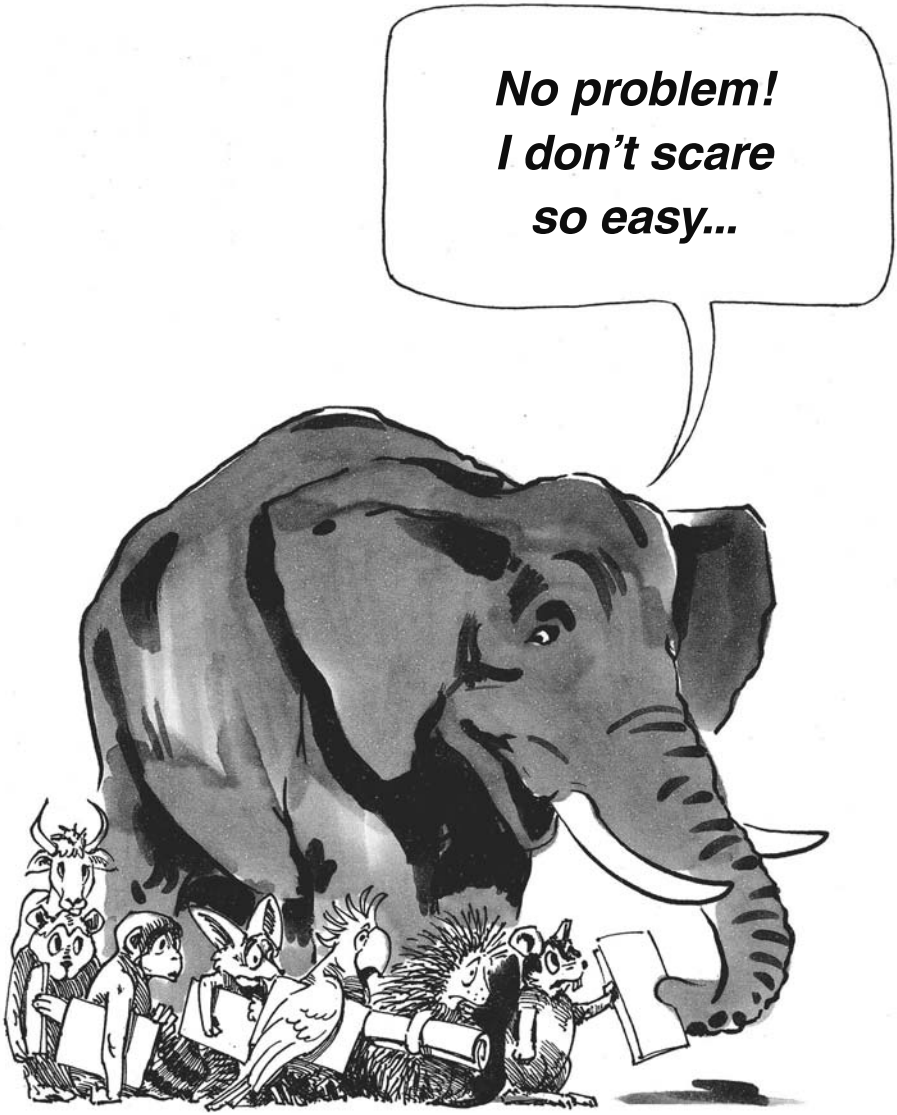
The tool refers to a law [a *Public Interest Disclosure Law*]: such a law or regulation could be developed from the information provided here. Key terms are identified and explained, and administrative processes are referred to. Disclosure of conflicts of interest could also be explicitly included among the matters that are protected.

It is important to ensure that the whistleblower should not control the process of investigation or the outcome of their disclosure: the important policy issue to focus on is the disclosure itself, and on the question of whether it is true.

This policy framework recognises clearly that it is also crucial for public trust in public institutions that public officials at all levels should be seen to be active and effective in ensuring that disclosures made in accordance with this policy are respected, and dealt with appropriately. Equally important, abuse of the protection offered should be the subject of sanctions, in the case for "disclosure" which is not made in good faith.

While "whistleblower" laws have been controversial in the past, a number of countries have developed and implemented different and workable approaches: examples may be found in the law of the United States, Australia, the United Kingdom, South Africa and Korea.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005


No problem!
I don't scare
so easy...

Public Interest Disclosure Policy and Procedure – "Whistleblower" Protection:

The [*Public Interest Disclosure Law*] provides a way for people to report wrongdoing in the public sector – this is called making a "public interest disclosure" (also known as "whistleblowing").

Who can make a disclosure?

- Anyone – whether the person works in the public sector or knows of conduct against the public interest.
- The person only needs to believe on reasonable grounds that the information tends to show some wrongdoing has occurred. They do not need to identify the people involved but they do need to give enough information to permit investigation. They can make a disclosure anonymously.

There are penalties for providing information that they know to be false or misleading. There are no rewards for making a public interest disclosure, even if the disclosure is proved to be true.

What can be disclosed?

The law covers reporting of different kinds of wrongdoing by public officials in the public sector such as:

- Unlawful, corrupt or dishonest conduct, "maladministration" or bias.
- Misuse of official information or abuse of public office.
- Negligent or improper management of government funds or property.
- Trying to influence a public official to act improperly, or
- Threatening or victimising a person because they have made, or may make, a public interest disclosure.

To whom can the disclosure be made?

- The agency where the conduct occurred.
- An appropriate agency that may have the power to investigate the matter.
- The ombudsman or supreme audit institution.

How can whistleblowers be protected if they make a disclosure?

- The law prohibits legal action being taken against whistleblowers because they have made a disclosure which is protected by the Law;
- Government employees at risk of victimisation can ask to be moved to another job.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

- If someone is victimised, they can go to court to take action to stop victimisation and/or to seek damages.

Whistleblowers may need to see a lawyer if they need legal advice about the case or about going to court. Whistleblowers are protected even if the disclosure cannot be proved, or is found not to be true, provided they can show that they had reasonable grounds to believe that some wrongdoing had occurred.

What must government agencies do under the law?

Agencies must:

- Receive disclosures.
- Treat disclosures confidentially.
- Consider the risk to the informant when referring the disclosure to another agency.
- Deal with disclosures that come under the law and involve that agency;
- Keep statistical records of disclosures received and report on this in annual reports.
- Give people who make disclosures adequate feedback about the investigation of the disclosure.
- Take appropriate action about complaints of victimisation and tell the complainant about the remedies available.

Is every disclosure required to be investigated?

No – agencies can decide not to investigate, but only for reasons set out in the law. These are:

- That agency is not the right body to deal with the disclosure – they may refer the disclosure to another public body or the ombudsman.
- The disclosure does not come under the law.
- Another government body, court or tribunal has already dealt with the matter.
- They think the disclosure has no basis, or
- There is a better way to deal with the disclosure.

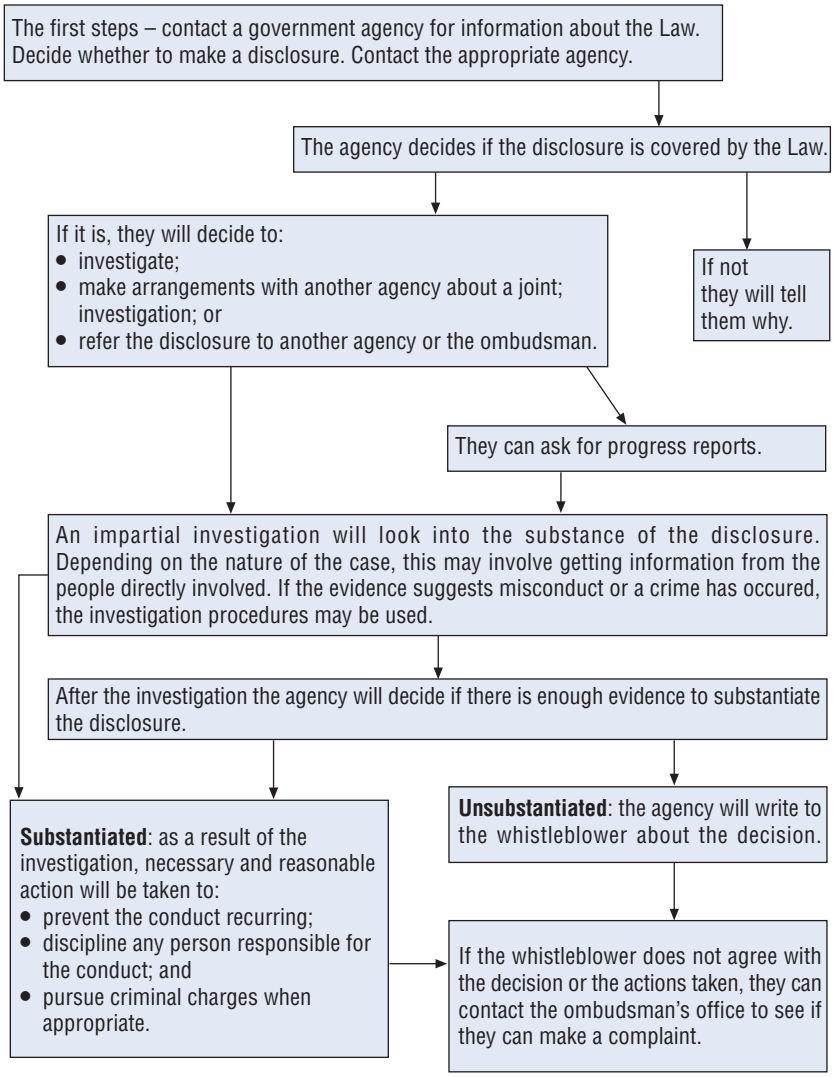
The agency must inform the whistleblowers which reason applies.

Other action available

If whistleblowers are not satisfied they may:

- Contact the ombudsman or supreme audit institution: there may be grounds for further action.
- Seek their own legal advice about their rights.
- Make the same disclosure to another appropriate agency.

Procedure: What happens when a whistleblower makes a Public Interest Disclosure



At any stage, an agency may decide not to take further action on the disclosure if: they think the disclosure has no basis; they think it has already been dealt with adequately; or if there is a more appropriate remedy reasonably available.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Tool Specification No. 14

TOOL NAME: **Training Cases**

TOOL TYPE: Training materials – short cases and discussion indicators on conflict of interest, for public officials at all levels.

APPLICATION: Incorporation (after adaptation/redrafting as appropriate) in training courses or sessions on professional formation, or for the specific purpose of developing understanding of conflict-of-interest matters.

Comments. The purpose of these case studies is to assist participants to develop practical skills in recognising conflict-of-interest problems, and in applying a sound decision-making procedure in a process of ethical reasoning.

They are also suitable for using with community groups or NGO staff to explain conflict of interest in the public sector context.

The cases can be difficult for many participants. Trainers will need to decide which cases to attempt. The more complex cases (marked *) are intended to be more appropriate to more experienced civil servants.

As a guide, each case should take no less than 10 minutes to discuss, if superficial answers are to be avoided.

"*Integrity*" comes from a Latin word originally meaning "whole", "undamaged", "undivided". By extension, it is clear that its use in the public sector applies to the proper use of funds, resources, assets, and powers, for the official purposes for which they are intended to be used.

In this sense the opposite of "integrity" is "*corruption*". Integrity is the most fundamental idea in the ethics principles.

"*Conflict of interest*" is a related idea. A conflict between an official's *personal interests*, (what they stand to gain, not necessarily limited to money), and their *duty as a civil servant* (what their duty requires them to do, or perhaps more broadly, what is in the public interest), is to be avoided as far as possible, at all times. Even the appearance of a conflict of interest is to be avoided, to minimise the risk to the organisation's reputation (and the official's personal reputation also) for integrity.

Most people are uncertain about this area of ethics, partly because the language itself can be confusing: "having an interest" in, say, the outcome of a decision is not the same as being "interested" in the outcome, *i.e.* curious. *If an official stands to gain something personally from the decision* they can be said to "have an interest" in it – for example, the outcome of a government tender process for which a member of their family's business is competing.

Note: In each case study the most appropriate responses are suggested in the text in block capitals which follows each case study question.

LINK: See *Guidelines*, Sections 2.2.1; 2.2.4; 2.4.3.

Which side
is he on?

Case Study 1

As manager of the Section, you are asked to act as Chair of the selection committee for a vacant permanent position in your Section. One of the applicants is from outside the ministry, and is socially a friend of yours as you are related to her husband. This is not known to the other members of the selection panel.

You decide that you will not allow this relationship to influence your judgment. You decide to tell the panel members that you will stand aside from the final assessment, because the applicant is a friend, but as Chair you insist that you will make the final decision in accordance with the views of the committee.

Question: Is this an appropriate solution?

A: NO: IT SHOULD BE SEEN AS AN APPARENT CONFLICT OF INTEREST WHICH COULD ACTUALLY COMPROMISE THE CREDIBILITY OF THE ENTIRE SELECTION PROCESS, BECAUSE OF THE FAMILY RELATIONSHIP. APPEARANCES ARE VERY IMPORTANT HERE.

YOU COULD COMPROMISE THE INTEGRITY OF THE SELECTION PANEL MEMBERS, AND YOUR FRIEND IF SHE IS SELECTED.

THE QUESTION IS: WHY ARE YOU NOT PREPARED TO TELL THE COMMITTEE THE WHOLE STORY, OR ALTERNATIVELY, TO WITHDRAW FROM THE PANEL?

Case Study 2

A minister who is responsible for the final decision in awarding the ministry's building maintenance contracts, awards a contract to a company which employs his son in a middle-level technical job. The procurement process leading to the decision was very minimal, allowing the minister considerable discretion in his choice of contractor for this work.

The minister did not mention the situation to anyone in the ministry when he decided on the contract as he did not believe it was a personal conflict of interest.

Question: Is this situation a serious apparent conflict of interest?

A: YES: THE MINISTER COULD BE SEEN TO BE ENSURING THAT HIS SON'S EMPLOYER HAD CONTINUING WORK.

THIS APPEARANCE WOULD BE MADE MORE SERIOUS IF THE SELECTION FOR THE CONTRACT WAS NOT ADMINISTRATIVELY TRANSPARENT, FAIR AND RIGOROUS. IN THIS CASE IT MIGHT BE IMPOSSIBLE FOR THE MINISTER TO DEMONSTRATE THAT HE/SHE DID ***NOT*** *HAVE AN ACTUAL CONFLICT OF INTEREST.*

Question: What would make it OK?

A: IF THERE HAD BEEN A RIGOROUS, INDEPENDENT, AND TRANSPARENT CONTRACT EVALUATION PROCESS BY AN EXPERT PANEL, AND THE MINISTER HAD BEEN INVOLVED ONLY IN THE FINAL DECISION AS NO MORE THAN A FORMAL APPROVAL FOLLOWING THE CONTRACT EVALUATION PANEL'S RECOMMENDATIONS, THE MINISTER'S DECISION MIGHT BE DEFENSIBLE.

THE MINISTER MIGHT THEN BE ABLE TO ARGUE THAT HIS SON'S EMPLOYMENT WAS IRRELEVANT TO HIS DECISION. MUCH WILL DEPEND IN THIS CASE ON THE MINISTER'S PERSONAL REPUTATION, THE ORGANISATION'S REPUTATION FOR INTEGRITY, AND THE QUALITY OF THE DECISION-MAKING PROCESS.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Case Study 3

You are a senior official in the Corporate Services Division of your ministry. A contractor who has serviced the ministry's computer equipment for the past two years offers you a computer to use at home – free of charge. Over the time this person has become a close friend of yours. You do a lot of work for the ministry at home, at the weekend especially, and the computer would also be very useful for writing assignments for your current studies at university. You cannot afford to buy a computer of your own.

Your friend the contractor says the computer is fairly old, and so is not worth much: he says you can keep it for as long as you want to. You accept the offer.

The ministry's computer equipment service contract is due for renewal in three months' time, and you normally be a member of the committee which will decide on the winning bid.

Question: Would you accept the offer from your friend? Why?/Why not?

A: YOU SHOULD NOT ACCEPT. YOUR ROLE ON THE SERVICE CONTRACT BID COMMITTEE WOULD GIVE YOU A SERIOUS CONFLICT OF INTEREST.

IN ADDITION THERE IS A PROBLEM WITH APPEARANCES – YOU SEEM TO BE GAINING A SIGNIFICANT PERSONAL ADVANTAGE FROM YOUR OFFICIAL POSITION.

Question: What is your responsibility as a civil servant in this case?

A: TO AVOID A CONFLICT OF INTEREST, AND MAINTAIN THE INTEGRITY OF THE ORGANISATION'S CONTRACT PROCESS

Case Study 4

You are the chief Anti-Corruption Officer for the Ministry of Justice. Your Deputy Minister has overall responsibility for the ministry's current major review of the national Criminal Code. A consultant from the company which is advising on the review project asks you whether it would "cause difficulties" if the company were to invite your Deputy Minister to attend the forthcoming Soccer World Cup finals in a neighbouring country.

The consultant says that the company would provide the airfares and accommodation, and the Deputy Minister would also be a guest in the company's corporate hospitality tent at the National Stadium. This would give the Deputy Minister a good opportunity to meet other ministers from neighbouring countries who will also be there. The Deputy Minister is very keen on soccer, and is a former President of your country's national Soccer Federation.

Question: Is a conflict of interest issue involved in this offer?

A: YES. THE GIFT FROM THE CONSULTANT RISKS BEING SEEN AS AN ATTEMPT TO COMPROMISE THE DEPUTY MINISTER'S INDEPENDENT DECISION ON THE REVIEW. THE GIFT MAY ALSO BE SEEN AS INTENDED TO INFLUENCE THE MINISTER'S DECISION-MAKING ON FURTHER PROJECTS IN WHICH THE COMPANY MAY BE INTERESTED.

Question: How would you advise the Minister if asked to?

A: TO REFUSE THE OFFER. THE EVENT IS UNRELATED TO THE MINISTER'S OFFICIAL RESPONSIBILITIES.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Case Study 5

You discover that, for the last two years, a close friend at work has been stealing small amounts of cash and altering official financial records to disguise the thefts, and taking office supplies from your ministry.

She has been selling the supplies at the market in the next town. Because of the ministry's extremely poor accounting systems, no-one suspects that anything is wrong. Your friend has a sick husband and a young family to support and her salary as a civil servant is too low for the family to live on comfortably.

Question: Is there a conflict of interest in this case?

A: YES: YOU HAVE A CONFLICT OVER WHETHER TO DO YOUR DUTY AND REPORT THE THEFTS, OR AVOID THE PROBLEM AND HAVE A QUIET LIFE.

YOUR FRIEND HAD A CONFLICT OF INTEREST AT ONE STAGE, WHEN SHE HAD A CONFLICT BETWEEN HER DUTY – NOT TO STEAL FROM HER EMPLOYER – AND HER PRIVATE INTEREST. [Note that the case says only that her family cannot live "comfortably" on her salary.]

BUT SHE HAS IN FACT STOLEN GOODS FROM HER EMPLOYER IN ABUSE OF HER POSITION, SO HER CASE IS **NOW** *BETTER REGARDED AS AN INSTANCE OF ACTUAL CORRUPTION ("ABUSE OF A PUBLIC OFFICIAL'S POSITION FOR PRIVATE GAIN"), RATHER THAN AS A CONFLICT OF INTERESTS.*

[See Tool No. 1 – definition]

Case Study 6

You are the complaints officer in the Bureau of Education. You are asked to investigate a complaint that the Bureau's contracting and tendering processes are corrupt.

The Bureau contracts for the supply of a lot of printed material every month. The three printing firms which have always done all of the Bureau's printing work in the past are well respected for the quality and cost-effectiveness of their work.

On investigation, you discover that a senior contracts officer in the Bureau has an uncle who has just purchased a local printing business. The contracts officer's job is to process all tenders for small to medium printing contracts.

Your enquiries reveal that on several occasions she has awarded the contract to her uncle's printing company, even though his tender price was the same as that of other competing companies. In each case she gave the reason that her uncle's company was more reliable and would do a better job.

Question: Is this a conflict of interests?

A: APPARENTLY – THROUGH HER FAMILY CONNECTION. BUT IT APPEARS THAT THE CONTRACTS OFFICER HAS DECIDED EACH CASE ARBITRARILY, BASED ONLY ON HER OPINION, AND EXCLUDED OTHER COMPANIES FROM COMPETING.

ON EXAMINATION, IT MAY TURN OUT TO BE OBJECTIVELY TRUE THAT HER UNCLE'S COMPANY IS THE BEST CONTRACTOR, AND SHE CAN DEMONSTRATE PROOF OF THAT THROUGH AN APPROPRIATE SELECTION PROCESS. THIS IS AN "APPARENT CONFLICT OF INTERESTS". [See tool No. 1 for explanation]

Question: Is there an "abuse of office' involved in this case?

A: APPARENTLY YES, BUT IT DEPENDS ON THE SPECIFIC FACTS OF THE CASE.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Case Study 7

Your ministry contracts for the supply of a lot of printed material every month. The three printing firms which have always done all of the ministry's printing work in the past are well respected for the quality and cost-effectiveness of their work.

Your father has just purchased a local printing business. Your job as contracts officer is to process all tenders for small to medium printing contracts.

You have access to the details of the other companies' tenders for printing contracts, and your father has asked if you can tell him the information in their bids so that he can submit quotes at a lower rate. Your ministry has just launched a major programme to cut costs.

You know that the ministry could save many thousands of dollars on printing costs over the year if you do as suggested by your father.

Question: Is this a conflict of interests, if the Ministry will benefit through substantial savings? Does the saving make the practice OK?

A: IT IS A CONFLICT OF INTERESTS. YOU CANNOT DECIDE THAT THE SAVINGS JUSTIFY CORRUPT PRACTICES. YOU WOULD GAIN PERSONALLY, ALSO, THROUGH YOUR FAMILY INTEREST.

Question: Are appearances important in this case? Why?

A: YES, BECAUSE OF THE NEED FOR PUBLIC TRUST IN THE INTEGRITY OF PUBLIC INSTITUTIONS AND PROCESSES. FAVORITISM, AND ABUSE OF OFFICIAL POSITION (IN THE FORM OF STEALING COMMERCIALLY SENSITIVE INFORMATION, AND GIVING IT TO A BUSINESS COMPETITOR, FOR PRIVATE ADVANTAGE), WOULD CONSTITUTE CORRUPTION IN THIS CASE, ***EVEN IF*** *THE MINISTRY WOULD SAVE MONEY IN THE PROCESS.*

THEREFORE, ANY APPEARANCE OF A LACK OF INTEGRITY IS TO BE AVOIDED.

Case Study 8

An elected Parliamentary Deputy operates a business in the town in which one of her closest friends is the wife of the Chief of Police. The Deputy claims to be owed quite a lot of money by a merchant who has a shop in the next town. The merchant has been very sick, and slow to pay his debt as a result.

The Deputy asks her friend whether her husband, the Chief of Police, can do anything to help her to obtain the money which, she says, is owed to her.

Later, the Chief of Police gives one of his Sergeants an instruction, unofficially, to "make life difficult" for the merchant, without giving any reason for the instruction. The merchant is not under any suspicion of wrongdoing, and has no criminal record. The Sergeant then telephones the merchant and suggests that he can expect a visit from police every day until he pays the debt.

Question: Is there a conflict of interest in this case? If yes, what is it?

A: YES – THE CONFLICT BETWEEN THE PUBLIC DUTY AND PRIVATE INTERESTS OF THE POLICE CHIEF – [KEEPING HIS WIFE AND THE ELECTED REPRESENTATIVE HAPPY, BY GIVING AN UNLAWFUL ("UNOFFICIAL") INSTRUCTION, WHICH IS LIKELY TO UNDERMINE PUBLIC CONFIDENCE IN INTEGRITY OF THE POLICE SERVICE.]

Question: Is there an "abuse of office" involved in this case?

A: YES: IN THIS CASE, THE USE OF AN OFFICIAL POWER FOR AN IMPROPER PURPOSE. THE PUBLIC'S CONFIDENCE IN THE "RULE OF LAW" IS LIKELY TO BE DAMAGED.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Case Study 9

On occasions, and often in their own time, the most senior officials of a government agency (the Ministry of Infrastructure Development) attend lunches or dinners with a wide range of business people, including representatives of schools, churches, the local newspapers and TV, property developers, consultants, manufacturers and construction companies. This has been an understood part of senior officials' activities in this ministry, and as there is no fee or other money involved. The activity has never been seen as a problem for the Ministry.

On one recent occasion, three of these officials attended what was reported in a newspaper the next day as a "lavish" lunch hosted by a prominent local construction company. This occurred a week before the ministry decided finally on awarding a number of major construction contracts. It was reported that the company which had hosted the lunch won the majority of the contracts.

Question: What are the integrity issues here?

A: WHILE SOME SOCIAL CONTACT BETWEEN OFFICIALS AND REPRESENTATIVES OF THE PRIVATE SECTOR IS INEVITABLE, AND MAY OFTEN BE DESIRABLE, THE PROVISION AND TIMING OF THE (REPORTEDLY) "LAVISH" LUNCH IS LIKELY TO RAISE SUSPICIONS ABOUT THE INTEGRITY OF THE OFFICIALS INVOLVED IN THE DECISION, AND THE INTEGRITY OF THE CONTRACT PROCESS OF THE MINISTRY. THE LUNCH ALSO CREATES, AT MINIMUM, AN APPARENT CONFLICT OF INTEREST FOR THE OFFICIALS. IN THIS EXAMPLE, IT IS IRRELEVANT THAT THE LUNCH OCCURRED DURING THE OFFICIALS' FREE TIME (THEY CANNOT CLAIM TO BE PRESENT IN A "PRIVATE CAPACITY").

THE MINISTRY MUST BE ABLE TO DEMONSTRATE THAT THE CONTRACTING PROCESS WAS APPROPRIATELY FREE OF IMPROPER OR CORRUPT INFLUENCES. IF IT CANNOT, THIS SITUATION MAY BE AN EXAMPLE OF A FORM OF "STATE CAPTURE" – OBTAINING A FAVORABLE OFFICIAL DECISION BY COVERT INFLUENCE OF OFFICIALS THROUGH CORRUPT METHODS, AND SHOULD BE INVESTIGATED.

*Case Study 10**

You overhear (in the wash-room) a conversation between two staff members from another Section in your organisation, in which one employee claims, laughing, how she had recently got her supervisor to give her a promotion. The employee claims that she had told her supervisor that she would not report him for taking bribes, from citizens who would otherwise have been investigated for various criminal offences.

As a senior official, you know that bribe-taking by officials is a serious criminal offence. Your ministry has recently introduced a strict policy to reduce bribe-taking by employees, which includes requiring its supervisors to set an example to other staff. You are also aware that the supervisor concerned is very popular among his staff and the senior management of the organisation.

Q: Is there a conflict of interest in this situation?

A: YES. YOU HAVE A PERSONAL INTEREST IN "NOT HEARING" THE STORY, WHICH WOULD AVOID A DIFFICULT SITUATION FOR YOU PERSONALLY.

THIS IS IN CONFLICT WITH YOUR DUTY AS A SUPERVISOR TO ENSURE THAT THE MATTER IS INVESTIGATED: NOT ONLY DOES IT SEEM THAT BRIBERY IS A CONTINUING PROBLEM, BUT IF THE STORY IS TRUE, THE PROMOTION PROCESS (WHICH SHOULD BE BASED ON MERIT), ALSO APPEARS TO HAVE BEEN CORRUPTED.

ALTERNATIVELY, IF THE STORY YOU HAVE OVERHEARD IS ***NOT*** *TRUE, THE REPUTATION OF THE SUPERVISOR IS AT SERIOUS RISK, AND CONFIDENCE IN THE HUMAN RESOURCE MANAGEMENT SYSTEM COULD BE COMPROMISED, AS STORIES OF THIS KIND USUALLY SPREAD, AND ARE DIFFICULT OR IMPOSSIBLE TO CORRECT. THE FACT THAT YOU ARE NOT THE SUPERVISOR OF THE SECTION CONCERNED IS NOT RELEVANT; AS A SENIOR OFFICIAL, YOUR DUTY IS TO ACT RESPONSIBLY TO ENSURE THAT THE STORY IS INVESTIGATED.*

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

*Case Study 11**

A middle-level manager employed by a public authority repeatedly refuses to recruit, or to select for training opportunities, staff from a particular religious and ethnic background, even when individuals are well qualified and skilled, because, as he says, "those people are nothing but trouble".

Question: Is there a serious conflict of interest here, or is it just a matter of personal preference?

A: THIS IS AN EXAMPLE OF A SERIOUS CONFLICT, AND ACTUAL ABUSE OF OFFICE, IN THE FORM OF SELF-DEALING. THE MANAGER INDULGES HIS/HER PERSONAL PREJUDICE AGAINST THE ETHNIC GROUP CONCERNED, AT THE EXPENSE OF THE EMPLOYER'S INTERESTS [IN OBTAINING TRAINED STAFF, AND IN HAVING A REPUTATION AS A GOOD EMPLOYER, FOR TREATING ALL STAFF EQUALLY AND FAIRLY].

OF COURSE, THE LEGITIMATE INTERESTS OF THOSE STAFF WHO ARE EXCLUDED FROM TRAINING ARE ALSO BEING DENIED.

THE COMMUNITY AT LARGE MAY ALSO BE SEEN AS DISADVANTAGED, IN THAT EQUAL ACCESS TO PUBLIC EMPLOYMENT OPPORTUNITIES FOR ALL QUALIFIED CITIZENS IS BEING PREVENTED BY THIS MANAGER'S CONDUCT. THE MANAGER'S CONDUCT MAY ALSO CAUSE THE ORGANISATION TO BREACH APPLICABLE ANTI-DISCRIMINATION/EQUAL OPPORTUNITY LAW(S), POTENTIALLY EXPOSING THE ORGANISATION (AND THE GOVERNMENT) TO PENALTIES, INCLUDING THE PAYMENT OF COMPENSATION.

*Case Study 12**

As part of his official duties, an official driver is required to use the ministry's vehicle to deliver messages and to carry out official errands. His job, which not well paid, requires him to be "on call" and away from the ministry for lengthy periods on most days, and he is trusted to carry out his duties with minimal supervision. The driver has been with the ministry for many years, and has never been any trouble.

Because of the flexibility of the driver's work arrangements, he finds it very useful to carry out personal business, such as shopping, or taking his children to school, during the working day.

Question: Is it acceptable for the driver to carry out his private business in the ministry's vehicle? Or is this a case of corruption?

A: THIS ARRANGEMENT MAY BE SEEN AS "REASONABLE" IF OTHER OFFICIAL BUSINESS IS NOT DELAYED, AND THERE IS NO SIGNIFICANT ADDITIONAL COST OR RISK TO THE ORGANISATION.

BUT IT MAY ALSO BE SEEN AS AN APPARENT CONFLICT OF INTEREST, AND FAVORITISM OF THE INDIVIDUAL CONCERNED: THE APPEARANCE OF A PUBLIC SERVANT USING A GOVERNMENT VEHICLE FOR PRIVATE PURPOSES MAY ALSO BE PROBLEMATIC.

USING THE MINISTRY VEHICLE FOR PRIVATE PURPOSES IS NOT "CORRUPT" PROVIDED THAT THE MINISTRY KNOWS OF, AND APPROVES OF, THE PRACTICE. BUT "PERSONAL" ARRANGEMENTS (e.g. TACIT APPROVAL BY A LOCAL MANAGER, WITHOUT FORMAL DOCUMENTATION) CAN BE MISUNDERSTOOD, AND MAY BE UNLAWFUL.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

Which side am I on? ...

*Case Study 13**

Your Office issues licenses to traders who have restaurants and food stalls in the town. Your job is to process the license applications. One day a popular food stall operator, Mr A, comes to your office to seek urgent renewal of his business license, which expires tomorrow. He says he has been away on urgent business and did not notice the renewal date.

It normally takes a week in total for your Office to process a license application through the various steps. Your Office has a strict policy of prosecuting unlicensed traders: if Mr A is caught trading without a license he could be disqualified from holding a license, and lose his place in the Market.

To show his appreciation for helping him, Mr A offers to provide you and your family with free meals for a month if you will agree to process his license renewal application today. This is a valuable offer, amounting to a week's salary for you. He will be very offended if you refuse his gift. The Office has a strict anti-bribery rule, but you know that the rule does not prohibit gifts of food.

If you agree to do as he asks, it is inevitable that approval of several other applications will be delayed by three days, as today is Friday and Monday is a religious holiday.

Question: What are the ethical issues here?

A: THE OFFER OF A VALUABLE GIFT IN THESE CIRCUMSTANCES CREATES A CONFLICT OF INTEREST.

UNWARRANTED DELAY IN PROCESSING THE APPLICATIONS OF THOSE TRADERS WHO HAD APPLIED IN TIME IS ALSO AN ISSUE.

THE CLAIM THAT THE TRADER WILL BE OFFENDED IF YOU REFUSE HIS "GIFT" IS IRRELEVANT. THE GIFT OFFERED IS ACTUALLY A BRIBE TO INFLUENCE YOU TO NOT APPLY THE OFFICE'S ADMINISTRATION PROCEDURES IN THIS CASE, THAT IS, TO TREAT HIM MORE FAVOURABLY THAN OTHER TRADERS.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

*Case Study 14**

A public servant is directed to summarise the public's responses to his ministry's recent survey on the Government's proposed changes to the laws regulating environmental protection in the forestry industry. The official secretly discards those survey responses which are in conflict with the official's well-considered personal beliefs about the need for stronger government protection of the environment, and forests in particular. The official is a well-qualified and experienced forestry scientist.

Question: Is the public servant acting wrongly in this example?

A: YES. THIS IS AN ACTUAL CONFLICT OF INTEREST.

Question: What is wrong with putting forward your own views, as long as you have a clear conscience that you are right?

A: AS A PUBLIC SERVANT, THE OFFICIAL IS NOT "PUTTING FORWARD HIS VIEWS" IN THIS EXAMPLE: HE IS SECRETLY DISTORTING THE SURVEY BY DESTROYING GOVERNMENT INFORMATION TO ADVANCE A PERSONAL OBJECTIVE. THIS IS IN A STRICT SENSE, CORRUPT CONDUCT – I.E. ACTING DISHONESTLY, OR IN BREACH OF TRUST, AS A PUBLIC OFFICIAL AND GAINING AN ADVANTAGE FOR A PRIVATE INTEREST IN SO DOING.

THE FACT THAT PROTECTING FORESTS GENERALLY MIGHT BE ARGUED TO BE "IN THE PUBLIC INTEREST" DOES NOT REMOVE THE CONFLICT OF INTEREST IN THIS CASE.

*Case Study 15**

An elected Councillor in the municipal council in a small community has voted in favour of a new, and controversial, road, which is to be built through an old forest which was a popular place for wilderness tourism. The road will benefit the Councillor's brother, by giving better access to his farm.

It is alleged by opponents that the road will drive away hikers, by reducing the remoteness of the area, and increasing pollution of local streams and rivers. Opponents have claimed that the Councillor had a conflict of interest, which should have been declared, as it was a breach of the Council's new code of ethics to vote on a Council matter in a way which secretly benefited a relative. In response, the Councillor used his influence with local newspapers to conduct a campaign to damage the reputations of those people who have complained about him.

When questioned, the Councillor said: "This is a small community and conflicts of interest don't mean anything here, as everyone knows everyone else and many people are related by family or marriage. Anyway, everyone knows what is being decided by the Council, and 'academic' codes of ethics and so on are unnecessary: that's just the way we do things here".

Q: What are the integrity issues here?

A: THE COUNCILOR HAS A CLEAR CONFLICT OF INTEREST IN THIS CASE, AS A RELATIVE IS INVOLVED IN THE DECISION. IN SOME COUNTRIES THIS FORM OF CONFLICT MAY BE PROHIBITED BY LAW AS AN "INCOMPATIBLE" RELATIONSHIP ("INCOMPATIBILITY").

IT IS NOT ACCEPTABLE FOR THE COUNCILOR TO DECIDE NOT TO OBSERVE THE CODE OF ETHICS SIMPLY BECAUSE HE ASSUMES THAT "EVERYONE KNOWS" ALL THE RELEVANT FACTS ABOUT WHO HAS AN INTEREST IN MATTERS BEFORE COUNCIL. CODES OF ETHICS FOR OFFICIALS SET IMPORTANT PUBLIC STANDARDS OR BENCHMARKS, AND CAN ESTABLISH A KIND OF CONTRACT WITH A RELEVANT COMMUNITY AS TO HOW POSITIONS OF TRUST WILL BE EXERCISED.

WHILE IT MAY BE A SMALL COMMUNITY, TRANSPARENCY AS A PROCESS HAS AN IMPORTANT VALUE IN KEEPING OFFICIALS ACCOUNTABLE. ENSURING EVERYONE IS INFORMED ABOUT IMPORTANT GOVERNANCE MATTERS CAN BE VERY IMPORTANT, EVEN AT THE LEVEL OF VERY SMALL COMMUNITIES.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

*Case Study 16**

The husband of a Parliamentary Deputy is involved in a business dispute over a contract with a private sector company to provide security services including armed guards. There has been considerable public debate in the national newspapers and TV recently, concerning the need for reform of the security service industry, involving allegations of connections with organised crime, using illegal immigrants as employees, failure to perform the services contracted for, tax evasion, and trafficking in drugs and illegal weapons.

The Parliamentary Deputy writes on parliamentary letterhead to the head of the ministry which licenses companies who provide security services: she complains about the conduct of the company, and asks for their business licence to be reviewed.

Question: What are the integrity issues here?

A: THIS IS A DIFFICULT CASE: ON THE ONE HAND, THE DEPUTY HAS A ROLE IN ADVOCATING ABOUT "PUBLIC INTEREST" CONCERNS, AND THE SPECIFIC CONCERNS OF A CONSTITUENT. THE DEPUTY CONCERNED APPEARS NOT TO BE A MINISTER OR TO HAVE A SPECIFIC RESPONSIBILITY FOR THE PUBLIC POLICY ISSUES INVOLVED.

ON THE OTHER HAND, THE DEPUTY'S HUSBAND'S INTERESTS ARE COMMERCIAL, AND APPARENTLY NOT CLOSELY RELATED TO THE MATTERS ABOUT WHICH THERE IS PUBLIC CONCERN. NOTHING IS KNOWN ABOUT THE FACTS OF THE DISPUTE: IT SHOULD NOT BE ASSUMED THAT THE DEPUTY'S HUSBAND HAS A JUSTIFIED CAUSE OF COMPLAINT.

THE DEPUTY'S HUSBAND MAY OR MAY NOT BE ENTITLED TO HAVE THIS PARTICULAR DEPUTY ADVOCATE ON HIS BEHALF: THIS MUST BE ESTABLISHED AS A QUESTION OF FACT.

IN THESE CIRCUMSTANCES, WRITING AS A PARLIAMENTARY DEPUTY, ON OFFICIAL PARLIAMENTARY LETTERHEAD, AND REQUESTING REVIEW OF THE COMPANY'S LICENCE TO OPERATE, COULD APPEAR TO BE AN IMPROPER USE OF PUBLIC OFFICE AND RESOURCES FOR PRIVATE ADVANTAGE.

THE DEPUTY HAS, AT MINIMUM, AN APPARENT CONFLICT OF INTEREST.

Tool Specification No. 15

TOOL NAME: **OECD Guidelines for Managing Conflict of Interest in the Public Service**

TOOL TYPE: ***Guidelines.***

APPLICATIONS: Comprehensive information as a basis for designing conflict of interest rules/policy/law/practice, and identifying and managing cases [generally applicable to any level of government, and to both elected and appointed public officials].

Comments. The Guidelines are based on the analysis of the experience of 30 countries reviewed by the OECD survey on conflict-of-interest issues.

The Guidelines can help governments to review existing and consider possible future conflict-of-interest policy and practice relating to public officials, with the objective of promoting integrity among public officials, and public trust in public institutions.

The Guidelines recognise that conflict-of-interest situations on the part of public officials, if unresolved, can undermine legitimate decision-making; distort the rule of law; compromise the development and application of policy; disrupt the functioning of markets, affect the allocation of public resources; encourage corruption; and thereby damage public confidence in public institutions.

Conflict-of-interest policy in the public sector may become more problematic because of changing approaches to public management, changes in the traditional roles of governments and government organisations, and changing community expectations. As a consequence, the Guidelines provide a definition of "conflict of interest" which is a simple, practical policy focus for the fundamental idea – an unacceptable conflict between a public official's private interests and their official duty.

The Guidelines put forward a suite of core principles, policy frameworks, institutional strategies, and practical management tools for managing conflict-of- interest matters, arranged in the following three sections:

- Managing conflicts of interest.
- Developing the policy framework, and
- Implementing the policy framework.

LINK: See *Guidelines*, pp 82-87.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

OECD Guidelines for Managing Conflict of Interest in the Public Service

Preface

A growing public concern

Serving the public interest is the fundamental mission of governments and public institutions. Citizens expect individual public officials to perform their duties with integrity, in a fair and unbiased way. Governments are increasingly expected to ensure that public officials do not allow their private interests and affiliations to compromise official decision-making and public management. In an increasingly demanding society, inadequately managed conflicts of interest on the part of public officials have the potential to weaken citizens' trust in public institutions.

Conflicts of interest in both the public and private sectors have become a major matter of public concern world-wide. In government and the public sector, conflict-of-interest situations have long been the focus of specific policy; legislation and management approaches intended to maintain integrity and disinterested decision-making in government and public institutions. In the private sector there has also been a long history of concern for integrity in business, and in particular for protecting the interests of shareholders and the public at large. Recent scandals have drawn attention to the importance of avoiding conflicts of interest which can become an issue when, for example, a public official leaves public office for employment in the business or NGO sector, or an accounting firm offers both auditing and consulting services to the same client, or a regulatory agency becomes too closely aligned to the business entities it is intended to supervise.

New forms of relationship have developed between the public sector and the business and non-profit sectors, giving rise for example to increasingly close forms of collaboration such as public/private partnerships, self-regulation, interchanges of personnel, and sponsorships. New forms of employment in the public sector have also emerged with potential for changes to traditional employment obligations and loyalties. In consequence, there is clearly an emerging potential for new forms of conflict of interest involving an individual official's private interests and public duties, and growing public concern has put pressure on governments to ensure that the integrity of official decision-making is not compromised.

While a conflict of interest is not *ipso facto* corruption, there is increasing recognition that conflicts between the private interests and public duties of public officials, if inadequately managed, can result in corruption. The proper objective of an effective conflict-of-interest policy is not the simple prohibition of all private-capacity interests on the part of public officials, even if such an approach were conceivable. The immediate objective should be to maintain the integrity of official policy and administrative decisions and of public management generally, recognising that an unresolved conflict of interest may result in abuse of public office.[1]

This objective can generally be achieved by ensuring that public bodies possess and implement relevant policy standards for promoting integrity, effective processes for identifying risk and dealing with emergent conflicts of interest, appropriate external and internal accountability mechanisms, and management approaches – including sanctions – that aim to ensure that public officials take personal responsibility for complying with both the letter and the spirit of such standards.

Traditionally, the different approaches to managing conflict-of-interest situations which have been taken by member countries have reflected their different historical, legal and public service traditions. Institutional measures such as positive external audit and verification, or other internal supervisory approaches, do have a place in the management of conflict situations. Other measures, such as limited or full publication of disclosed interests and/or the development of a strong management culture supporting integrity may also be effective.

Managing conflict of interest

In a rapidly changing public sector environment, conflicts of interest will always be an issue for concern. A too-strict approach to controlling the exercise of private interests may be conflict with other rights, or be unworkable or counter-productive in practice, or may deter some people from seeking public office altogether. Therefore a modern conflict-of-interest policy should seek to strike a balance, by identifying risks to the integrity of public organisations and public officials, prohibiting unacceptable forms of conflict, managing conflict situations appropriately, making public organisations and individual officials aware of the incidence of such conflicts, ensuring effective procedures are deployed for the identification, disclosure, management, and promotion of the appropriate resolution of conflict-of-interest situations.

Aims of the Guidelines

The primary aim of the Guidelines is to help member countries, at central government level, consider existing conflict-of-interest policy and practice

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

relating to public officials – including public servants/civil servants, employees, and holders of public office – who work in the national public administration. The Guidelines can also provide general guidance for other branches of government, sub-national level government, and state-owned corporations.

In particular, the Guidelines reflect policies and practices that have proved effective in OECD countries, and are intended to:

- Help government institutions and agencies to develop an effective conflict-of-interest policy that fosters public confidence in their integrity, and the integrity of public officials and public decision-making.
- Create a practical framework of reference for reviewing existing solutions and modernising mechanisms in line with good practices in OECD countries.
- Promote a public service culture where conflicts of interest are properly identified and resolved or managed, in an appropriately transparent and timely way, without unduly inhibiting the effectiveness and efficiency of the public organisations concerned.
- Support partnerships between the public sector and the business and non-profit sectors, in accordance with clear public standards defining the parties' responsibilities for integrity.

Defining a "conflict of interest"

Historically, defining the term "conflict of interest" has been the subject of many and varying approaches. As all public officials have legitimate interests which arise out of their capacity as private citizens, conflicts of interest cannot simply be avoided or prohibited, and must be defined, identified, and managed. These Guidelines adopt a definitional approach which is deliberately simple and practical to assist effective identification and management of conflict situations, as follows:

> *A "conflict of interest" involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.*[2]

Defined in this way, "conflict of interest" has the same meaning as "actual conflict of interest". A conflict-of-interest situation can thus be current, or it may be found to have existed at some time in the past.

By contrast, an *apparent* conflict of interest can be said to exist where it *appears* that a public official's private interests could improperly influence the performance of their duties *but this is not in fact the case*. A *potential* conflict arises where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (*i.e.* conflicting) official responsibilities in the future.

Where a private interest has *in fact* compromised the proper performance of a public official's duties, that specific situation is better regarded as an instance of misconduct or "abuse of office", or even an instance of corruption, rather than as a "conflict of interest".[3]

In this definition, "private interests" are not limited to financial or pecuniary interests, or those interests which generate a direct personal benefit to the public official. A conflict of interest may involve otherwise legitimate private-capacity activity, personal affiliations and associations, and family interests, if those interests could reasonably be considered likely to influence improperly the official's performance of their duties. A special case is constituted by the matter of post-public office employment for a public official: the negotiation of future employment by a public official prior to leaving public office is widely regarded as a conflict-of-interest situation.

Defined in this way, conflict of interest is the focus of these Guidelines because, if not managed or resolved appropriately, it has the potential to undermine the proper functioning of democratic governments by:

- weakening adherence by public officials to the ideals of legitimacy, impartiality, and fairness in public decision-making, and
- distorting the rule of law, the development and application of policy, the functioning of markets, and the allocation of public resources.

Core principles for managing conflict of interest

In the interests of maintaining public confidence in public institutions, the Guidelines reflect the fact that public officials may be expected to observe in particular the following core principles in dealing with conflict-of-interest matters to promote integrity in the performance of official duties and responsibilities:

Serving the public interest

- Public officials should make decisions and provide advice on the basis of the relevant law and policy, and the merits of each case, without regard for personal gain (*i.e.* be "disinterested"). The integrity of official decision-making, in particular in the application of policy to individual cases, should not be prejudiced by the religious, professional, party-political, ethnic, family, or other personal preferences or alignments of the decision-maker.
- Public officials should dispose of, or restrict the operation of, private interests that could compromise official decisions in which they participate. Where this is not feasible, a public official should abstain from involvement in official decisions which could be compromised by their private-capacity interests and affiliations.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

- Public officials should avoid private-capacity action which could derive an improper advantage from "inside information" obtained in the course of official duties, where the information is not generally available to the public, and are required not to misuse their position and government resources for private gain.
- Public officials should not seek or accept any form of improper benefit in expectation of influencing the performance or non-performance of official duties or functions.
- Public officials are expected not to take improper advantage of a public office or official position which they held previously, including privileged information obtained in that position, especially when seeking employment or appointment after leaving public office.

Supporting transparency and scrutiny

- Public officials and public organisations are expected to act in a manner that will bear the closest public scrutiny. This obligation is not fully discharged simply by acting within the letter of the law; it also entails respecting broader public service values such as disinterestedness, impartiality and integrity.
- Public officials' private interests and affiliations that could compromise the disinterested performance of public duties should be disclosed appropriately, to enable adequate control and management of a resolution.
- Public organisations and officials should ensure consistency and an appropriate degree of openness in the process of resolving or managing a conflict-of-interest situation.
- Public officials and public organisations should promote scrutiny of their management of conflict-of-interest situations, within the applicable legal framework.

Promoting individual responsibility and personal example

- Public officials are expected to act at all times so that their integrity serves an example to other public officials and the public.
- Public officials should accept responsibility for arranging their private-capacity affairs, as far as reasonably possible, so as to prevent conflicts of interest arising on appointment to public office and thereafter.
- Public officials should accept responsibility for identifying and resolving conflicts in favour of the public interest when a conflict does arise.
- Public officials and public organisations are expected to demonstrate their commitment to integrity and professionalism through their application of effective conflict-of-interest policy and practice.

Engendering an organisational culture which is intolerant of conflicts of interest

- Public organisations should provide and implement adequate management policies, processes, and practices in the working environment to encourage the effective control and management of conflict-of-interest situations.
- Organisational practices should encourage public officials to disclose and discuss conflict-of-interest matters, and provide reasonable measures to protect disclosures from misuse by others.
- Public organisations should create and sustain a culture of open communication and dialogue concerning integrity and its promotion.
- Public organisations should provide guidance and training to promote understanding and dynamic evolution of the public organisation's established rules and practices, and their application to the working environment.

Developing the policy framework

Defining a policy approach to dealing with conflict of interest is an essential part of the political, administrative and legal context of a country's public administration. These Guidelines do not attempt to cover every possible situation in which a conflict of interest might arise, but instead are designed as a general policy and practice reference that is relevant to a rapidly changing social context. The proposed measures are intended to reinforce each other to provide a coherent and consistent approach to managing conflict-of-interest situations. The key functions of this approach are:

- **Definition** of the general features of conflict-of-interest situations which have potential to put organisational and individual integrity at risk.[4]
- **Identification** of specific occurrences of unacceptable conflict-of-interest situations.[5]
- **Leadership and commitment** to implementation of the conflict-of-interest policy.[6].
- **Awareness** that assists compliance, and **anticipation** of at-risk areas for prevention.[7]
- **Appropriate disclosure** of adequate information, and **effective management** of conflicts.[8]
- **Partnerships** with other stakeholders, including contractors, clients, sponsors and the community.[9]
- **Assessment and evaluation** of a conflict-of-interest policy in the light of experience.[10]
- **Redevelopment and adjustment** of policy and procedures as necessary to meet evolving situations.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

1.1. Identify relevant conflict-of-interest situations

1.1.1. Provide a clear and realistic description of what circumstances and relationships can lead to a conflict-of-interest situation.

a) The general description of conflict-of-interest situations should be consistent with the fundamental idea that there are situations in which the private interests and affiliations of a public official create, or have the potential to create, conflict with the proper performance of his/her official duties. The description should emphasise the overall aim of the policy – fostering public trust in government institutions.

b) The description should also recognise that, while some conflict-of-interest situations may be unavoidable in practice, public organisations have the responsibility to define those particular situations and activities that are incompatible with their role or public function because public confidence in the integrity, impartiality, and personal disinterestedness of public officials who perform public functions could be damaged if a conflict remains unresolved.

c) The policy should give a range of examples of private interests which could constitute conflict-of-interest situations: financial and economic interests, debts and assets, affiliations with for-profit and non-profit organisations, affiliations with political, trade union or professional organisations, and other personal-capacity interests, undertakings and relationships (such as obligations to professional, community, ethnic, family, or religious groups in a personal or professional capacity, or relationships to people living in the same household).

d) More focused examples of unacceptable conduct and relationships should be provided for those groups that are working in at-risk areas, such as the public-private sector interface, government procurement, regulatory and inspectorial functions, and government contracting. Specific attention needs to be given to functions which are subject to close public scrutiny or media attention.

1.1.2. Ensure that the conflict-of-interest policy is supported by organisational strategies and practices to help with identifying the variety of conflict-of-interest situations.

a) Laws and codes, as primary sources, should state the necessary definitions, principles and essential requirements of the conflict-of-interest policy.

b) In addition, guidelines and training materials, as well as advice and counselling, should provide practical examples of concrete steps to be taken for resolving conflict-of-interest situations, especially in rapidly-changing or "grey" areas such as private-sector sponsorships, privatisation and deregulation programmes, NGO relations, political activity, public-private partnerships and the interchange of personnel between sectors.

1.2. Establish procedures for identifying, managing and resolving conflict-of-interest situations

1.2.1. Ensure that public officials know what is required of them in relation to identifying and declaring conflict-of-interest situations.

a) Initial disclosureon appointment or taking up a new position— Develop procedures that enable public officials, when they take up office, to identify and disclose relevant private interests that potentially conflict with their official duties. Such disclosure is usually formal, (by means of *registration* of information identifying the interest), and is required to be provided periodically, (generally on commencement in office and thereafter at regular intervals, usually annually), and in writing. Disclosure is not necessarily required to be a public process: internal or limited-access disclosure within the public organisation, together with appropriate resolution or management of any conflicts, may be sufficient to achieve the policy objective of the process – encouraging public confidence in the integrity of the public official and their organisation. In general, the more senior the public official, the more likely it is that public disclosure will be appropriate; the more junior, the more likely it is that internal disclosure to the management of the official's organisation will be sufficient.

b) In-service disclosure in office – Make public officials aware that they must promptly disclose all relevant information about a conflict when circumstances change after their initial disclosure has been made, or when new situations arise, resulting in an emergent conflict of interest. As with formal registration, *ad hoc* disclosure itself is not necessarily required to be a public process: internal declaration may be sufficient to encourage public confidence that integrity is being managed appropriately.

c) Completeness of disclosure – Determine whether disclosures of interests contain sufficient detail on the conflicting interest to enable an adequately-informed decision to be made about the appropriate resolution. The responsibility for the adequacy of a disclosure rests with the individual public official.

d) Effective disclosure process – Ensure that the organisation's administrative process assists full disclosure, and that the information disclosed is properly assessed, and maintained in up-to-date form. It is appropriate that the responsibility for providing adequate disclosure of relevant information should rest with individual officials. Ensure that the responsibility for providing relevant information rests with individual officials and this requirement is explicitly communicated and reinforced in employment and appointment arrangements and contracts.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

1.2.2. Set clear rules on what is expected of public officials in dealing with conflict-of-interest situations.

a) Dealing with conflicting private interests – Public officials should be required to accept responsibility for identifying their relevant private interests. An organisation's policy statement should make it clear that the registration or declaration of a private interest does not in itself resolve a conflict. Additional measures to resolve or manage the conflict positively must be considered.

b) Resolution and management options – Options for positive resolution or management of a continuing or pervasive conflict can include one or more of several strategies as appropriate, for example:

- Divestment or liquidation of the interest by the public official.
- Recusal of the public official from involvement in an affected decision-making process.
- Restriction of access by the affected public official to particular information.
- Transfer of the public official to duty in a non-conflicting function.
- Re-arrangement of the public official's duties and responsibilities.
- Assignment of the conflicting interest in a genuinely "blind trust" arrangement.
- Resignation of the public official from the conflicting private-capacity function, and/or
- Resignation of the public official from their public office.

c) Recusal and restriction – Where a particular conflict is not likely to recur frequently, it may be appropriate for the public official concerned to maintain their current position but not participate in decision-making on the affected matters, for example by having an affected decision made by an independent third party, or by abstaining from voting on decisions, or withdrawing from discussion of affected proposals and plans, or not receiving relevant documents and other information relating to their private interest. The option of re-assigning certain functions of the public official concerned should also be available, where a particular conflict is considered likely to continue, thereby making *ad hoc* recusal inappropriate. Particular care must be exercised to ensure that all affected parties to the decision know of the measures taken to protect the integrity of the decision-making process where recusal is adopted.

d) Resignation – Public officials should be required to remove the conflicting private interest if they wish to retain their public position and the conflict of interest cannot be resolved in any other way (for example by one or more of the measures suggested above). Where a serious conflict of interest cannot

be resolved in any other way, the public official should be required to resign from their official position. The conflict-of-interest policy (together with the relevant employment law and/or employment contract provisions) should provide the possibility that their official position can be terminated in accordance with a defined procedure in such circumstances.

e) *Transparency of decision-making* – Registrations and declarations of private interests, as well as the arrangements for resolving conflicts, should be clearly recorded in formal documents, to enable the organisation concerned to demonstrate, if necessary, that a specific conflict has been appropriately identified and managed. Further disclosure of information about a conflict of interest may also be appropriate in supporting the overall policy objective, for example by demonstrating how the disclosure of a specific conflict of interest was recorded and considered in the minutes of a relevant meeting.

Implementing the policy framework

While it is primarily the responsibility of individual public officials to be aware of possible conflicts of interest, public bodies and government organisations have the responsibility to ensure that the conflict-of-interest policy is implemented effectively. Particular attention needs to be paid to at-risk areas and functions, especially where significant conflicts are more likely to arise or to prove more damaging to organisational integrity and public confidence. In so doing, the potential for overly-complex procedures to discourage compliance should be recognised.

2.1. Demonstrate leadership commitment

2.1.1. Leadership

All public officials, particularly more senior public officials and senior managers, should arrange their private-capacity interests in a manner that preserves public confidence in their own integrity and the integrity of their organisation, and sets an example to others. Mere compliance with the letter of the conflict-of-interest policy or law, narrowly interpreted, is not generally sufficient to encourage public confidence in an organisation's integrity.

2.1.2. Commitment – Organisations should take responsibility for the effective application of their conflict-of-interest policy, by:

a) *Deciding in individual cases* – Managers must be prepared to exercise judgement when dealing with a disclosure of private interests. In particular, they should consider carefully the larger question of whether a reasonable person who is in possession of the relevant facts would be likely to think that the organisation's integrity was at risk from an unresolved conflict of interest.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

When determining the most appropriate solution to resolve or manage the actual conflict situation, managers should weigh the interests of the organisation, the public interest, and the legitimate interests of employees, as well as other factors – including in specific cases the level and type of position held by the public official concerned, and the nature of the conflict.

b) *Monitoring and evaluating the effectiveness of the policy* – Over time, organisations should ensure that the policy remains effective and relevant in dealing with current and anticipated conflicts in a continuously evolving environment, and change or redevelop the policy as necessary.

2.2. Create a partnership with employees: awareness, anticipation and prevention

2.2.1. Ensure wide publication and understanding of the conflict-of-interest policy.

a) *Publish the conflict-of-interest policy* – Give all new public officials, upon initial appointment and on taking up a new position or function, a clear and concise statement of the current conflict-of-interest policy.

b) *Give regular reminders* – Regularly remind public officials of the application of the policy in changing circumstances, and in particular ensure that public officials know how the rules are applied in the organisation and what their own responsibilities are. For example, an organisation's *Code of Conduct* can be tailored as a practical instrument for setting and communicating conflict-of-interest standards both to public officials and the wider public.

c) *Ensure that rules and procedures are available* – Provide up-to-date information about the organisation's policy, rules and administrative procedures relevant to conflict of interest, and clearly establish any additional requirements specific to the organisation.

d) *Provide guidance* – Support public officials with information and advice, including real-world examples and discussions on how specific conflict situations have been handled in the past and are expected to be handled in the future. In particular, consult with staff on the application of the policy, and ensure that the policy's rationale is understood and accepted.

e) *Provide assistance* – Identify sources of appropriate assistance for public officials who are in doubt about the application of the policy, and widely publicise how to obtain such advice. Make such advice available to clients of the organisation and others, including contractors, agents, and partnering bodies, to assist stakeholders to be well-informed. Such advice may be especially valuable to parties who may feel that the public organisation's conflict-of-interest policy is not fully effective but are reluctant to complain formally to the organisation concerned.

2.2.2. Review "at-risk" areas for potential conflict-of-interest situations.

a) Additional employment – Define the circumstances, including the required authorisation procedures, under which public officials may engage in ancillary ("outside") employment while retaining their official position.

b) "Inside" information – Make sure that information collected or held by public organisations which is not in the public domain, or information obtained in confidence in the course of official functions, is understood to be privileged, and is effectively protected from improper use or disclosure.

c) Contracts – Consider the circumstances in which the preparation, negotiation, management, or enforcement of a contract involving the public organisation could be compromised by a conflict of interest on the part of a public official within the public organisation.

d) Gifts and other forms of benefit – Consider whether the organisation's current policy is adequate in recognising conflicts of interest arising from traditional and new forms of gifts or benefits.

e) Family and community expectations – Consider whether the organisation's current policy is adequate in recognising conflicts of interest arising from expectations placed on public officials by their family and community, especially in a multicultural context.

f) "Outside" appointments – Define the circumstances, including the required authorisation procedures, under which a public official may undertake an appointment on the board or controlling body of, for example, a community group, an NGO, a professional or political organisation, another government entity, a government-owned corporation, or a commercial organisation which is involved in a contractual, regulatory, partnership, or sponsorship arrangement with their employing organisation.

g) Activity after leaving public office – Define the circumstances, including the required authorisation procedures, under which a public official who is about to leave public office may negotiate an appointment or employment or other activity, where there is potential for a conflict of interest involving the organisation.

2.2.3 Identify preventive measures that deal with emergent conflict situations.

a) Meeting procedures – Enable participants in official decision-making to foresee potential conflicts, where feasible: for example by providing meeting agendas in advance; record in meeting proceedings any conflicts that arise and the measures taken to resolve them.

b) Recusal – Establish clear rules and efficient procedures (for example, a register of interests for board members, advisors and senior management),

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

to ensure that *ad hoc* conflicts of interest are made transparent so that decision-making is not compromised.

c) *Screening processes* – As part of selection processes, require identification in advance of relevant interests, and discuss possible strategies for resolution of identified conflicts; obtain appropriate clearances (such as tax clearance certificates), declarations or undertakings, to identify and deal with potential conflict-of-interest situations at an early stage.

d) *Periodic system assessment* – Review the implementation of policy and procedures on a regular basis and update mechanisms and procedures to ensure their relevance to a constantly evolving situation. Consider the relevance of current assumptions – for example concerning the impact of new technology, which makes possible "day-trading" of stocks and shares via the Internet, which in turn could necessitate daily disclosures of an individual's changing pecuniary interests. Draw on surveys of client and partner bodies' experience of risk, where appropriate, partly to engage a broader set of experience, and partly to indicate continuing commitment to the process of risk-management and safeguarding the organisation's integrity.

2.2.4. Develop an open organisational culture where dealing with conflict-of-interest matters can be freely raised and discussed.

a) *Involve employees, their representatives and other interested parties* in the review of existing conflict-of-interest policy. Their opinion, as users, on the daily problems faced in the implementation of the conflict-of-interest policy can substantially contribute to the improvement of existing measures.

b) *Consult* on future prevention measures to bring a practical aspect into the policy-making process and to build a common understanding that is vital for the implementation of agreed policy.

c) *Assist understanding* by providing training for public officials to develop an understanding of the relevant general principles and specific rules, and to help them improve decision-making skills for practical application.

d) *Provide support mechanisms* for assisting managers in reviewing and improving their skills in identifying and resolving or managing conflicts in their day-to-day work.

2.3. Enforce the conflict-of-interest policy

2.3.1. Provide procedures for establishing a conflict-of-interest offence, and proportional consequences for non-compliance with conflict-of-interest policy including disciplinary sanctions.

a) *Personal consequences* – Non-compliance with the organisation's conflict-of-interest policy should generally be regarded as, at minimum, a disciplinary matter, while more serious breaches involving an actual conflict could

result in sanctions for abuse of office, or prosecution for a corruption offence. Other sanctions may apply to the public official depending on the seriousness of the breach – for example, a simple failure to register a relevant interest as required, compared with a more serious refusal to resolve an actual conflict of interest of which the public official is aware. Sanctions should be enforceable, to the extent of ultimately affecting the appointment or career of the public official involved where appropriate.

b) *Management measures* – Positive management can provide effective complementary forms of redress for breaches of conflict-of-interest policy, and can be effective in dissuading those who would seek to benefit, directly or indirectly, from such breaches. Such measures could include retroactive cancellation of affected decisions and tainted contracts, and exclusion of the beneficiaries – whether corporations, individuals, or associations, etc. – from future processes. Such exclusion measures may operate for a given period of time, within given contract monetary limits, or for certain types of activities.

2.3.2. Develop monitoring mechanisms to detect breaches of policy and take into account any gain or benefit that resulted from the conflict.

a) *Controls* – Ensure that management and internal controls as well as external oversight institutions – such as independent auditors or an ombudsman – work together to detect those who do not comply with required standards. Appropriate reporting for independent oversight institutions and the publication of regular reports on the implementation of integrity-management arrangements and on the progress of any investigation, can play an important role in encouraging compliance with policy and discouraging abuse of the integrity-management process.

b) *Complaint-handling* – Develop complaint mechanisms to deal with allegations of non-compliance, and devise effective measures to encourage their use. Provide clear rules and procedures for whistle blowing, and take steps to ensure that those who report violations in compliance with stated rules are protected against reprisal, and that the complaint mechanisms themselves are not abused.

2.3.3. Co-ordinate prevention and enforcement measures and integrate them into a coherent institutional framework.

a) *Policy Responsibility* – Identify a central function, not necessarily an independent organisation or government agency, as being responsible for the development and maintenance of the conflict-of-interest policy and procedures; this function could also evaluate and provide guidance on agencies' management of conflict-of-interest policy and procedures, as well as selecting "champion" organisations and disseminating their best practices.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

b) Synergies – Consider the combined use of complementary instruments to support related policy objectives; for example, disclosure systems that require regular declaration of financial and other interests can prevent potential conflicts of interest, help to detect illicit enrichment of public officials, and also help to deter corrupt practices.

c) Consistency of Laws – Harmonise existing laws with the conflict-of-interest policy to remove conflicts and enable effective enforcement of the policy, including disclosure requirements and sanctions.

2.4. Initiate a new partnership with the business and non-profit sectors

Mechanisms for resolving conflict-of-interest situations must be kept up-to-date in the context of increasing co-operation between public organisations and the business and non-profit sectors. This is particularly crucial when appointing representatives to public bodies from other sectors to benefit from their particular experience, knowledge and involvement.

2.4.1. Create partnerships for integrity with the business and non-profit sectors by involving them in the elaboration and implementation of the conflict-of-interest policy for public officials.

a) Stakeholder Involvement – Engage representatives of the business and non-profit sectors in reviewing the policy in order to have their views on the problems of implementation, and possible applications of the policy.

b) Consultation – Ensure that proposed standards reflect actual public expectations by involving the business and non-profit sectors in the design of new integrity measures. Consultations could be used to identify or negotiate mutually acceptable solutions and encourage co-operation in the implementation process.

2.4.2. Anticipate potential conflict-of-interest situations when public organisations invite the involvement of persons representing businesses and the non-profit sector.

a) Potential problems – Anticipate potential problems in order to maximise the benefit of involving representatives from other sectors in the work of public bodies – such as boards and advisory bodies – by identifying situations where the involvement of these representatives could result in a conflict of interest.

b) Safeguards – Set up mechanisms that prevent confidential information, authority or influence gained through involvement in the activities of public bodies, from being used for personal gain or for the improper advantage of other businesses and non-profit organisations. Examples of potentially

effective prevention mechanisms include the restriction of an individual's access to particular information, formally recording the fact that a specific individual has had access to particular confidential information, and requiring the identification of relevant private and business interests of appointees from the business and non-profit sectors.

2.4.3. Raise awareness of the conflict-of-interest policy when dealing with other sectors, and include safeguards against potential conflict-of-interest situations when co-operating with the business and non-profit sectors.

a) *Provide information* – Make other organisations aware of the potential consequences of non-compliance (which can include the termination or retrospective cancellation of a contract, recording and publicising a proven breach in a register, or prosecution for criminal offences such as corruption). Assist partner organisations, for example through providing contractors with training in compliance with and enforcement of the stated requirements.

b) *Review together high-risk areas* – Potential conflict-of-interest areas should be identified, and appropriate preventive mechanisms developed, to protect both sides in a potential conflict situation. Ensure, for example, that partner organisations and the business sector accept that relevant private interests are to be disclosed transparently in the process of lobbying, and that breaches or attempted breaches of policy are to be brought to light so that they can be dealt with firmly and constructively. Similarly, ensure that partner organisations and the business sector are aware of the public organisation's requirements regarding the handling of privileged "inside" information that is not available in the public domain, ensure that "commercial-in-confidence" information is adequately protected by verifiable processes, and ensure that decision-making procedures at all stages can be audited for integrity and justified.

Notes

1. See Tool No. 1.
2. See Inroduction, Tools 1, 2, 3.
3. See Tools 2, 4.
4. See Tools 1, 2, 3.
5. See Tools 4, 7, 8, 9.
6. See Tools 5, 6, 12, 13.
7. See Tools 4, 6, 10, 11.
8. See Tools 4, 6, 7, 8, 9, 10, 11, 12.
9. See Tools 4, 9, 10, 12.
10. See Tools 3, 4, 5, 12, 13.

MANAGING CONFLICT OF INTEREST IN THE PUBLIC SECTOR – ISBN 92-64-01822-0 – © OECD 2005

OECD PUBLICATIONS, 2, rue André-Pascal, 75775 PARIS CEDEX 16
PRINTED IN FRANCE
(42 2005 12 1 P) ISBN 92-64-01822-0 – No. 54033 2005

Managing Conflict of Interest in the Public Sector

A TOOLKIT

Conflicts of interest in both the public and private sectors have become a major matter of public concern world-wide. The OECD Guidelines define a conflict of interest as occurring when a public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities. However, identifying a specific conflict of interest in practice can be difficult. And resolving the conflicting interests appropriately in a particular case is something that most people find even more challenging.

The Toolkit focuses on specific techniques, resources and strategies for:

- Identifying, managing and preventing conflict-of-interest situations more effectively; and
- Increasing integrity in official decision-making, which might be compromised by a conflict of interest.

This Toolkit provides non-technical, practical help to enable officials to recognise problematic situations and help them to ensure that integrity and reputation are not compromised. The tools themselves are provided in generic form. They are based on examples of sound conflict-of-interest policy and practice drawn from various OECD member and non-member countries. They have been designed for adaptation to suit countries with different legal and administrative systems.

FURTHER READING

Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences

The full text of this book is available on line via this link:
http://www.sourceoecd.org/governance/9264018220

Those with access to all OECD books on line should use this link:
http://www.sourceoecd.org/926418220

SourceOECD is the OECD's online library of books, periodicals and statistical databases. For more information about this award-winning service and free trials ask your librarian, or write to us at **SourceOECD@oecd.org.**

www.oecd.org

OECD PUBLISHING

ISBN 92-64-01822-0
42 2005 12 1 P

9 789264 018228