



Policy Title: Conflict of interest	Policy Number: CORP-POL-05
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Lead person: Chief Executive	Approved by: Board
	Date approved:

General Note

The Mental Welfare Commission acknowledges and agrees with the importance of regular and timely review of policy statement and aims to review policies within the timescales set out.

New policies will be subject to a review date of no more than one year from the date of first issue.

Reviewed policies will have a review date set that is relevant to the content (advised by the author) but will be no longer than three years.

If a policy is past its review date then the content will remain extant until such time as the policy review is complete and the new version published.

1. Policy Statement

The Commission has an obligation to conform with the requirements of the Ethical Standards in Public Life etc. (Scotland) Act 2000 and with the guidance issued by the Standards Commission for Scotland. These requirements include the need for high ethical standards, fairness and openness in the way we conduct Commission business.

The focus of this particular policy is conflicts of interest. A conflict of interest exists where either the Commission, or an individual to whom this policy applies, has competing interests or loyalties in the same matter.

The Board Code of Conduct (Policy 017) adopted in April 2022 gives clear guidance on the definition of an interest (three step process of connection; interest; participation) and how to manage an interest to avoid conflicts. The Commission adopts these principles across all its work in relation to managing conflicts of interest.

The Commission would wish to adopt these principles, even in the absence of statutory obligations. A reputation for fairness and independence is the bedrock of our work and enhances the impact of our recommendations. Any impairment of this

reputation could reduce our authority in investigating, reviewing and advising on the care that individuals receive.

2. Scope

To avoid public concern that any such interests might prejudice the integrity or impartiality of those involved in the business of the Commission, this policy applies to all those who work at the Commission, including board members and staff (seconded and temporary).

3. Roles & responsibilities

3.1 Board members

If a Board member recognises a conflict of interest they must declare this immediately to their Chairman and/or Chief Executive or at the start of the meeting.

3.2 Chief Executive and Executive Leadership Team

Responsible for ensuring Commission-wide compliance with this policy.

3.3 All Staff

If a member of staff suspects that he or she could be perceived as having a conflict of interest, it is safest to assume that this would be so and to take appropriate action by raising this with their Line Manager.

4. Operational system

4.1 Recognising a conflict of interest

It is important to identify and minimise any conflicts of interest that could prevent Board members and staff, including secondees, from making fair and objective judgements, *or could be perceived as doing so by our stakeholders and the public*. Therefore:

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

In addition to this policy, Board members and staff have an obligation to observe other relevant Commission policies: they should register any financial and general interests

under the Staff Code of Conduct (Policy HR-POL-03 and the Board Members Code of Conduct (Policy 017).

Determination as to whether or not an interest is in conflict with the work of the Commission will involve the application of this policy and will sometimes require careful judgement based on the facts and the work that we do. In the event of doubt, it is best to consider how the particular interest will be perceived by an ordinary member of the public. Where there is doubt, it is better to declare interests than not to do so.

The following is a guide to identifying and avoiding conflicts of interest when Board members or staff are engaged in Commission business.

4.2 Identification of conflicts of interest

4.2.1 It is up to the individual to be aware of possible conflicts of interest which could be perceived as influencing his or her judgement. The key issue is whether, in respect of any particular decision, the person receiving care/carer/service provider, or another member of the public, would regard the Commission's judgement as impartial, if he or she knew of the interests of the Board members and staff who were involved in the decision making process.

4.2.2 Although it is primarily the responsibility of the individual, other staff or Board members have a role in identifying conflicts. The chair of any particular meeting has a particular responsibility, as does a line manager or supervisor.

4.2.3 The following Board members or staff *could* be perceived as having a conflict of interest in relation to a particular person or service. This list is not exhaustive.

- Someone who has a social or family connection with a person being discussed.
- Someone currently employed by an NHS Board, local authority, voluntary agency or independent organisation which is directly involved in providing care in a particular case under discussion.
- Someone with a close family member involved with a provider as described at 3.2.
- Someone who has been employed by such a care provider within the past two years
- Someone receiving similar care, him or herself, from such a provider or having a close relative or friend in this position. Clearly, whether this could be perceived as a conflict of interest will depend on the size of the service provider, and the type of care being provided.
- Someone with a financial interest in such a care provider. (This should be declared in the Commission's Register of Interests.)

4.3 Situations giving rise to conflicts of interest

4.3.1 Situations in which conflicts of interest may arise include the following. Again, this list is not exhaustive.

- Carrying out or considering reviews of guardianship orders.
- Carrying out or considering deficiency in care investigations.
- Consideration of suicides, death in detention, homicide reviews and adverse incidents.
- Visits to individuals in hospitals, care homes or other services.
- Considering Commission action in relation to visits to individuals or to services.
- Dealing with case work active interventions, or discussing cases on the phone.

4.4 Possible action in respect of conflicts of interest

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

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

Appropriate action may include:

- Seeking advice on the appropriate course of action from the line manager, or the person chairing any relevant meeting, in advance of the meeting, or other relevant situation.
- Declaring the conflict at the appropriate meeting. At formal meetings this should be noted in the minutes.
- Taking no part in discussion of the relevant case or issue.

- If an interest is declared, leaving the room whilst the case is being discussed. It may be necessary to adjourn the meeting briefly to seek the advice of the chair or the other members. It should be borne in mind that the individual's presence at a discussion may influence the other participants, even though he or she does not make any direct verbal contribution. Leaving is mandatory if there is a social or family relationship with any person involved in the case. If the meeting is a formal one, there should be a record of the action taken in respect of an identified conflict of interest.
- If there is a social or family relationship with a person under discussion, avoiding other situations in which there might be access to information about that individual.
- Sometimes an individual may have a conflict of interest but also be the sole source of expertise or advice within the Commission. In reaching a decision about whether such an individual should take part in the consideration of a particular case or issue, the following questions should be asked:
 - How close is the relationship with the person being discussed/provider/carer in question?
 - How recent is the relationship?
 - How relevant is the relationship to the issue under discussion?
 - If the person/provider/carer in question were aware of the relationship, how would they perceive it?

Are there alternative sources of advice which the Commission could access?

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

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

5. Risk Management

The implementation of this policy will be monitored by Executive Leadership Team