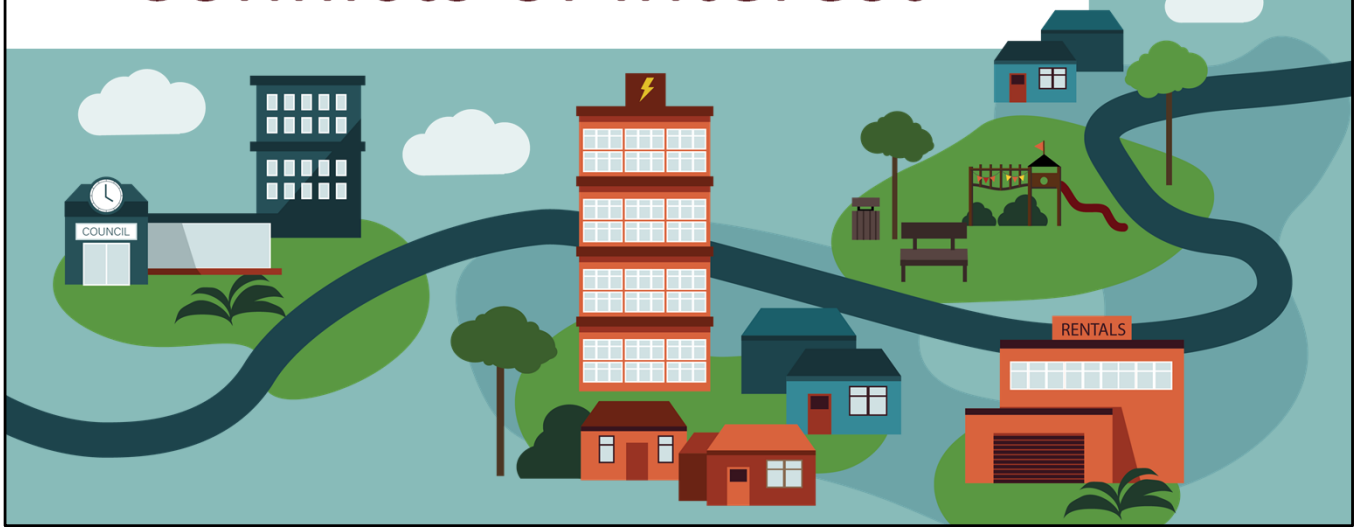




# Conflicts of Interest





## What is a conflict of interest?

A conflict of interest is:

- a situation where the responsibilities you have in your work for a public organisation are affected by an interest or relationship you have in your private life.

A conflict can exist where:

- the interest or relationship means you are biased; and/or
- someone looking in from the outside could have reasonable grounds to think you might be biased.

**Refer to Part 2 of the Guide, page 7**

A conflict of interest is any situation where your duties or responsibilities as an employee or office holder in a public organisation conflict, or could be seen to conflict, with some other interest you might have outside of work.

The other interest or duty might be:

- holding another public office;
- being a current or (recent) former advisor, director, or partner of another business or organisation;
- being a member of a club, society, or association;
- having a professional or legal obligation to someone else (such as being a trustee);
- having a beneficial interest in a trust;
- owning or occupying a piece of land;
- owning shares or some other investment or asset;
- having received a gift, hospitality, or other benefit from someone;
- owing a debt to someone; or
- being a relative or close friend of someone who has one of these interests, or who could otherwise be personally affected by a decision of the public

organisation.

**See also paragraph 2.9 in the guide on perception**

Even if you have no intention of acting improperly, and are confident that you can think and act impartially, **if it looks like** you might be influenced by personal interests or ulterior motives when making a decision, you risk undermining public confidence in the integrity of that decision. You can also potentially expose the organisation you work for to legal, commercial, political, or reputational risk.

## Does an interest mean you have a conflict?

- Having an interest does not necessarily mean you have a conflict of interest.
- Everyone has multiple roles and interests at work, at home in their extended families, or in the community.
- An interest becomes a potential conflict of interest only where your duties or responsibilities as an employee or office holder in a public organisation overlaps with your other roles or interests.



Refer to Part 2 of the Guide (paragraph 2.3-2.5), page 7

## Different types of conflict

- financial;
- non-financial;
- conflict of roles; and/or
- predetermination.



### Refer to Part 3 of the Guide, page 10

Questions to ask yourself to identify if you have a conflict (see the one-page handout here: <https://oag.parliament.nz/2020/conflicts/docs/quick-guide.pdf>)

Financial:

- Do you stand to gain or lose financially from the decision?
- Does someone close to you – like an immediate family member or a business you are involved with – stand to gain or lose financially from the decision?

Non-financial:

- Might you be affected personally in some other way (other than financially) that might make you biased or appear biased?
- Is someone close to you or an organisation you are involved with likely to be affected by the decision you make?
- If so, is there a risk that you will be seen to be biased in your decision because of this relationship or association?

Conflict of roles:

Will a second organisation you have a role in (entity B) be affected by the decision you are making for the public organisation you work for (entity A)? If so:

- Is there a risk that you will be seen to be acting in the interests of entity B

rather than entity A?

- If you participate in this decision, is there a risk that you might breach obligations you owe to either entity – for example, a duty of loyalty or confidentiality?

Pre-determination:

- Does it look like you have already made up your mind?
- Is there anything you have previously done or said that might make people think you are not going to listen fairly to all the relevant information before you make your decision?

It is important to be aware of the different statutory rules that apply in different parts of the public sector, particularly with regard to elected and/or appointed positions.

You can find more information in **Appendix 2 of the Guide, page 43** on the rules applying to:

- Crown Entities;
- District Health Boards;
- city, district and regional councils, community boards and a range of other public bodies (including members of their committees);
- companies; and
- school boards of trustees and tertiary education institution councils.



### Refer to Part 4 of the Guide, page 16

- Identify – Interest versus conflict of interest? Is there actually a conflict, or does it look like one? Does it make a difference? **See paragraphs 4.7-4.10**
- Disclose - Who should you disclose it to? How? When? **See paragraphs 4.11-4.20**
- Assess – What sort of conflict is it? How serious is it? **See paragraphs 4.31 – 4.35**
- Manage – What might you need to do to manage the conflict – other than disclose it? What other options do you have? **See paragraphs 4.36 to 4.45**

Some points for noting/discussion:

It is useful to note that it is the responsibility of individuals to identify any interests they have and organisations should have in place systems to elicit that information.

There may not be a formal requirement for how any information is recorded, such as on a register, but it will be useful to consider how information is to be held so that it can be easily referenced when necessary. It may also be beneficial to consider the need to provide multiple opportunities for individuals to disclose conflicts, such as having it as a standing item on the agenda for decision-making meetings.

It is also useful to consider the matters the organisation is responsible for making decisions on, as this will impact on the need for disclosure and the implications for individuals in terms of participation in decision-making processes.

# Managing conflicts of interest

Managing conflicts of interest is not just about creation and enforcement of policies and procedures.

Effective management of conflicts of interest within public organisations requires:

- having robust policies and procedures;
- promoting an ethical culture in an organisation; and
- ensuring an understanding of how well conflicts of interest are being managed.



Refer to Part 5 of the Guide, pages 23-25

## Paragraph 5.12 provides

Policies and procedures should:

- state principles or values that emphasise the organisation's commitment to addressing conflicts of interest and the importance of people in the organisation being alert for such situations;
- establish rules for the most important and obvious actions that people must or must not take;
- establish a mechanism (such as an interests register) for recording those types of ongoing interests that can commonly give rise to a conflict of interest and a procedure for putting this into effect and updating it regularly;
- set out a process for identifying and disclosing instances of conflicts of interest as and when they arise, including a clear explanation of how someone should disclose a conflict of interest and to whom;
- set out a process for managing conflicts of interest that arise, including who makes decisions and perhaps detailing the principles, criteria, or options that will be considered;
- provide avenues for training and advice;
- provide a mechanism for handling complaints or breaches of the policy; and




- specify the potential consequences of non-compliance.

**Refer to Part 7 of the Guide, page 30 for ‘Conflicts of interest examples in everyday life’**

**Refer also [Getting it right: Managing conflicts of interest involving council employees \(oag.parliament.nz\)](https://oag.parliament.nz/getting-it-right-managing-conflicts-of-interest-involving-council-employees)**

This article shares the findings of work done by the Office of the Auditor-General looking into how the conflicts of interest of council employees, including the chief executive and staff, are managed across four councils. Findings are arranged under three main components:

- The need for robust policies and procedures: these should cover the essential requirements, not create additional risks through the use of multiple processes, and consider the need for contractors to also comply with conflict of interest policies.
- Promoting an ethical culture in an organisation: this involves identify conflicts of interest as an integrity issue and the need for ethical leadership to drive a culture of integrity and trust. It also notes the need to provide support and training for employees on the management of conflicts, and how they can raise concerns.
- Knowing that the system works well: is about ensuring that there is good information available that provides managers and governors with assurance that policies and procedures are working, and allows them to identify areas for improvement.



## What are the rules?

- there are no universal rules – only general principles;
- different rules apply depending on sector, entity type, type of conflict, and type of decision being made;
- the rules are generally stricter than in the private sector; and
- rules are derived from:
  - statutory rules;
  - common law rules; and
  - general standards and expectations.

**Refer to Part 6 of the Guide, page 26**

provides the main legal and ethical considerations that are likely to apply to managing conflicts of interest and the possible consequences of breaching the applicable rules.

**Appendix 2 of the Guide** outlines some of the more common statutory rules, specifically those in the:

- Crown Entities Act 2004 (applies to members of boards of statutory entities as defined in the Act);
- New Zealand Public Health and Disability Act 2000 (applies to members of District Health Boards (DHBs));
- Companies Act 1993 (applies to company directors);
- Local Authorities (Members' Interests) Act 1968 (applies to members of governing bodies of city, district and regional councils, community boards and a range of other public bodies – including members of their committees). Note there is a separate guide produced specifically on this *Local Authorities (Members' Interests) Act 1968: A guide for members of local authorities on managing financial conflicts of interest*, available on our website); and
- Education Act 1989 (applies to members of school boards or trustees, and TEI councils).

## Risks of conflicts of interest

- more significant risk in the public sector;
- poorly managed conflicts of interest can have consequences for individuals and organisations; and
- consequences for breaches of rules.



**Refer to Part 4 of the Guide, page 16**

For discussion:

Need to be conscious in your own organisation about what the risks are for the organisation and for individuals, and that there is strong awareness of the risks and any potential consequences of a conflict that is poorly managed.

### **Why conflicts matter more in the public sector:**

- you're spending public money / making decisions on the public's behalf;
- members of the public don't necessarily have the same ability to scrutinize or challenge decisions, or control who makes decisions, as might be the case in the private sector; and
- decisions of public organisations can be challenged on the grounds that the decision-making procedure was not fair – judicial review – doesn't apply in private sector.

### **Examples of risks/consequences:**

- disciplinary action against an individual;
- investigation or inquiry from a regulatory body (OAG or Te Kawa Mataaho Public Service Commission);
- could constitute an offence;
- Member removed from office;

- legal challenge to a decision-making process;
- risk of political or public criticism;
- damage to an individual's or an organisation's reputation, and to the public sector more generally.

# OAG good practice guide

OAG guidance available on our website

(<https://oag.parliament.nz/2020/conflicts>):

- good practice guide: aims to support those working in the public sector to identify, disclose, and manage conflicts of interest;
- a quick guide to managing conflicts of interest: a one-page summary document;
- Local Authorities (Members' Interests) Act 1968: A guide for members of local authorities on managing financial conflicts of interest; and
- Integrity town: interactive quiz on conflicts of interest.

