

**Ethical Standards
Commissioner**

**Guidance on
Conflicts of
Interest in Public
Appointments**
(Non-Statutory Guidance)

December 2023

ESC

Introduction

The fit and proper person test in the Code of Practice requires confirmation that the applicant has no inappropriate or unmanageable conflicts of interest incompatible with their appointment. This guidance is intended to assist the Scottish Ministers and selection panels to explore these matters with applicants.

In most cases, conflicts of interest may be manageable. Each body has a Code of Conduct for its members, which includes provisions on the registration and declaration of interests. When an interest is declared, the board member concerned is required to leave the meeting and to take no part in debate or decision-making. Such declarations may be required to be made only very occasionally, meaning that the conflict would be manageable. If, however, such declarations are required very regularly, due to the nature of the conflict and its proximity to the work of the board, then the conflict can be considered to be unmanageable. Examples of manageable and unmanageable conflicts of interest are included in the [guidance](#) provided by the [Standards Commission for Scotland](#).

For a small proportion of public bodies, a whole group of people may hold other positions that would preclude their appointment to a board (see the statutory guidance at 7.5). These should be included alongside the disqualifications set out in the information provided to applicants. Where a decision is made *after* a public appointment vacancy has been advertised about such a conflict of interest being unmanageable on a blanket basis, which would affect a group of people who might otherwise apply or who may already have applied, advice should be sought from the Commissioner as soon as practicable.

In most cases, however, prospective conflicts of interest require exploration with individual applicants, as whether or not they qualify as inappropriate and/or unmanageable will turn on the facts and circumstances. Examples of both types of conflict of interest are provided below for illustrative purposes.

Conflicts of interest affecting a whole group of people

The Scottish Local Authority Remuneration Committee (SLARC) was established under the provisions of the Local Governance (Scotland) Act 2004 to advise Scottish Ministers on the payment by Local Authorities of remuneration (including pensions), allowances and the reimbursement of expenses incurred by local authority councillors in accordance with criteria specified by Scottish Ministers from time to time.

The Scottish Ministers consider that serving local authority councillors would have an unmanageable conflict of interest which would preclude their also serving on SLARC. This is because they have an “interest” in the outcome of SLARC’s work, inasmuch as they stand to directly benefit from the better terms and conditions that SLARC may recommend for local authority councillors.

Because of this, when positions on SLARC are publicised, wording to the following effect should be included in the applicant information for prospective applicants, alongside the information on disqualifications.

“Serving councillors may not, at the same time as serving as a councillor, fulfil a role on SLARC”.

If a panel identifies that a serving councillor applies for a role on SLARC, it is perfectly legitimate for the panel to contact that individual to highlight the wording in the pack and to indicate that they would have to relinquish their role as a councillor in order to serve on SLARC. It is then open to the applicant to continue with their application or not.

[NOTE: if another example is required, we could include serving police officers applying to be the Chair of the PNBS].

Conflicts of interest affecting individuals

Scenario 1

An economic and community development agency is responsible for supporting businesses and communities in a discrete area of Scotland with grant support. An applicant for a role on the board of the agency has major financial interests in a significant number of businesses and community enterprises operating in the area served by it. It has provided funding to many of these in the past. The panel considers that the applicant is suitable for interview, given their considerable experience of economic development in both the private and third sector. During the course of the interview, the panel explores the applicant’s potential conflict of interest by asking them about their financial interests, including whether any of the businesses and community enterprises they are involved with may be applying for further funding from the agency. The applicant explains that they are divesting themselves of all of these financial interests shortly, as they wish to contribute, if considered appointable, to the work of the agency. The panel is content that the prospective conflicts of interest, should the applicant be appointed, are manageable.

Scenario 2

As with scenario 1, but, during the course of the interview, the applicant confirms that the businesses and community enterprises in which they have financial interests will be applying to the agency for funding in the coming months and years. The panel concludes that this would represent an unmanageable conflict of interest and the applicant is advised of this conclusion and provided with an opportunity to respond (see the statutory guidance at 7.6). The applicant confirms that they do not plan to divest themselves of their financial interests. The panel concludes that the applicant is not suitable for appointment. [NOTE: ideally, the panel’s conclusions should be relayed to the applicant during the course of the interview. However, if the panel requires time to deliberate following the interview, its conclusions may be relayed to the applicant thereafter in writing. In all cases, applicants must be given an opportunity to respond before a final decision is reached].