

Management Board – for decision

Meeting date: 10 February 2025

Report title: Conflict of interest policy

Time required: 10 mins

Presenter: Louise Byers

Approved by: Jen Green

1. Objective and recommendation

- 1.1. Following recent internal audit reviews of the ICO's policies and approach to conflicts of interest, this paper asks the Board to discuss and approve a revised Conflict of Interest policy.

2. Developing a common understanding

- 2.1. There are a wide range of factors to consider to ensure the policy delivers the right balance between risk mitigation and the benefits of a wide, diverse and relevant pool of talent. The draft also takes into account the approach taken by other regulators, in particular Ofcom, while recognising the inherent differences in the regulatory landscapes.
- 2.2. The draft policy has been discussed at two Executive Team meetings. We have also undertaken wider consultation where discussions focussed on the balance of flexibility and clarity; the nature of conflicts with regards to individual organisations, but also sectors and competitors; decision making, in particular in relation to incompatible conflicts; perception and stakeholders; financial limits and legal review. These changes have, where appropriate, been incorporated into this draft and include:
 - requiring conflicts to be raised and resolved at the earliest opportunity;
 - explaining that conflicts can relate to gaining advantage but also to disadvantaging competitors or gaining market knowledge and/or advantage;
 - providing examples of stakeholders relevant to the policy; and

- clarifying roles and responsibilities in decision making.

2.3. As part of this consultation, we discussed the need for formal legal review of this policy. This has been completed the ICO's in house legal team and their comments have been reflected in the current draft. In particular, their changes have provided additional clarity to the policy in relation to the definition of conflicts, action to be taken and roles and responsibilities.

3. Matters to consider to achieve objective

3.1. The current policy is [here](#). It should be noted that the conflicts of interest policy is part of a wider suite of policies including [gifts and hospitality](#), [third party collaboration](#), [code of conduct](#), [declarations of interests](#), [secondary employment and inside information](#), [political activities](#) and [social media](#) policies.

4. Areas for challenge

4.1. As part of the Board's review, we would welcome feedback in particular on the following areas:

- **Does the approach to the 'categorisation' of organisations work?**

The critical challenge with a conflict of interest policy for a whole economy regulator is defining which type of organisations we are most concerned about. We have taken a 'categorisation' approach to this issue, as set out in the draft policy but it is challenging to balance sufficient clarity but also flexibility in considering potential Board members skills and expertise. In that context, does the draft policy give enough detail to enable us to identify and manage conflicts without impacting on our ability to attract and retain the skills and experience we need at Board level?

- **Is the definition of 'direct financial interest' right?**

The policy as drafted defines a direct financial interest as '*a financial interest which has a purchase or current value of £25,000 or over and/or represents over 5% of the senior leaders net worth*'. Other organisations, for example Ofcom and the Financial Conduct Authority, do not have a de minimis value, although it is worth noting that the companies they regulate are more clearly defined, allowing more scope for investments in other sectors. The Competition and Markets Authority, who have a remit that goes across the economy, has a £10,000 de minimis limit. In addition,

we are aware that while a limit is clearer, it does not necessarily represent the level of control a senior leader has through that investment and what it represents in terms of someone's total financial position, which would require significant levels of disclosure to determine.

- **Is the policy clear enough?**

The policy has a significant amount of terminology and read across required in terms of definitions etc. Although many Board level members and applicants will be used to this, wider ICO colleagues, other readers and stakeholders may not. There is a challenge in ensuring that members, who ultimately have responsibility for declaring interests, are clear about what is expected, while providing flexibility for almost limitless scenarios that we may encounter.

- **Is the policy 'future proofed' and does it address potential upcoming challenges?**

The policy needs to work not just for our current needs, but also future NED and executive member recruitment and the future Information Commission Board. It is important that, when our NEDs are appointed by Government, as an independent regulator we have a strong and robust conflicts of interest policy to ensure any conflicts, real or perceived, are identified and managed appropriately. We also know that the types of processing that pose the highest risk in terms of conflict of interest change all the time.

5. Communications considerations

5.1 There are no communications considerations for this report.

6. Next steps

6.1 The next steps for this work are to implement any changes requested by the Board, and to publish the updated policy.

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Consultees: Executive Team, Non Executive Directors from Management Board and its Committee, ICO Legal Service, ICO Corporate Governance team.

List of Annexes: A – Revised Conflicts of Interest Policy.

Official Sensitive

Publication decision: This report can be published internally and externally.

Outcome reached:

What is the purpose of the policy?

It is important that, as an independent regulator, we operate, and are seen to operate, impartially. Our stakeholders have to be confident that our decisions are not influenced by private interests and the members of our Management Board, Executive Team and Management Board Committees ('senior leaders') do not benefit from information available to them in their work at the ICO.

While this policy specifically relates to senior leaders, our Code of Conduct also sets out our expectations of ICO staff and this policy should be read alongside that Code as well as our policies on political activities, gifts and hospitality and third party endorsements.

We work on the basis of the following principles:

- 1) Perceptions of a conflict of interest can be just as harmful as actual conflicts of interest.
- 2) The responsibility for considering and disclosing potential conflicts of interests sits with our senior leaders. They should be actively considering potential conflicts of interest throughout their involvement with the ICO, from pre-appointment, to after they leave the ICO. Wherever possible, potential conflicts should be raised and resolved at the earliest opportunity, for example at the start of a recruitment process.
- 3) We will ask senior leaders to disclose their interests when they join the ICO and then at least once a year thereafter. However we expect senior leaders to make us aware of any chance of circumstances that may impact on their work at the ICO as soon as they are aware.
- 4) However, senior leaders are not expected to be aware of the financial and employment arrangements of their wider family and friends nor do we expect them to familiarise themselves with them. Proactive identification of potential conflicts of interest should focus on the senior leader themselves and close family members.
- 5) Given the nature of our work, this policy cannot be prescriptive and we know that it can be difficult to identify conflicts of interest. We recognise that, as a 'whole economy regulator', there are challenges around identifying all conflicts of interest, real, potential or perceived, given the breadth of organisations that we regulate. We also recognise that we cannot, and do not want to, prohibit all

involvement in organisations that we regulate, given the breadth and scope of our work.

- 6) A conflict can be related to creating an advantage for a single organisation, or to disadvantaging a competitor. A conflict may impact upon a whole sector, for example a senior leader's connection with a bank could give rise to a conflict in relation to the ICO's work in the financial sector. Conflicts do not only arise in respect of enforcement action against specific organisations, but can also arise where any interest or connection of a senior leader might, if it influences or has the potential to influence decision-making, create an unfair disparity in the relevant market or sector.
- 7) If in doubt about whether a conflict, whether actual, potential or perceived exists, senior leaders should seek the advice as early as possible from the ICO's Corporate Governance team, the Chair of the Audit and Risk Committee, the Senior Independent Director or the Information Commissioner (in their role as Chair of the Board), as appropriate.

What do we mean by 'conflict of interest'?

It is important to be clear about what we mean when we talk about potential conflict of interests. Below are some definitions for words used throughout the policy:

- Conflict of interest: For the purposes of this policy, we use the National Audit Office's definition of a conflict of interest: '*[A] conflict of interest is a set of circumstances that creates a risk that an individual's ability to apply judgement or act in one role is, or could be, impaired or influenced by a secondary interest. The perception of competing interests, impaired judgement or undue influence can also be a conflict of interest. Conflicts might occur if individuals have, for example: • a direct or indirect financial interest; • non-financial or personal interests; or • conflicts of loyalty where decision-makers have competing loyalties between an organisation they owe a primary duty to and some other person or entity*'.

Essentially, this means that we need to be aware of when someone's judgment or actions are, have the potential to be, or might be perceived as being, affected by something in their lives outside the ICO. This is so we can maintain independence and impartiality in our work and our stakeholders, for example businesses, parliamentarians, the public, civil society groups and our staff have trust and confidence in the decisions we take.

A conflict of interest can be direct or indirect, potential, actual or perceived i.e. where the circumstances create a risk that decisions *may* be influenced, regardless of whether the individual actually benefits. The perception of competing interests, impaired judgement or undue influence can also be a conflict of interest.

- Senior leader: member of Management Board, its Committees or the Executive Team.
- Category A organisations: given the nature of our work, there is no definitive list of Category A organisations. We also know that senior leaders will not be aware of all regulatory engagement. However, for the purposes of this policy, when determining whether an organisation falls into this category we would consider examples such as:
 - recently subject to regulatory action by the ICO or a data protection regulatory authority in a jurisdiction other than the UK;
 - where the senior leader's interest or connection with the organisation could give it a significant, significant market and/or competitive advantage.

These are examples of the criteria which could be considered and this list is not exhaustive, but illustrative.

- Category B organisations: any organisations which are required to pay the data protection fee which are not within Category A.
- Category C organisations: any organisations not required to pay the data protection fee. Interests in these organisations in this category do not usually create the potential for conflict of interest.
- Working for: any role including, but not limited to, Board or Committee membership, employment, contracting, consultancy, sponsorship or being paid a retainer.
- Incompatible conflict of interest: not compatible with a senior leader role at the ICO – these potential conflicts of interests preclude a senior leader from working for the ICO other than in exceptional circumstances (see below).
- Disclosable conflict of interest: the senior leader is required to proactively disclose the interest, which will then be published by the ICO. This will be updated at least annually. A disclosable conflict of interest does not automatically preclude the senior leader from working for the ICO but does require a published disclosure of the

conflict of interest including steps that will be taken to manage the conflict should it materialise.

- Declarable conflict of interest: the senior leader is required to declare the potential conflict of interest at the relevant time, for example at the start of a meeting, or during a discussion if the potential for conflict becomes apparent. A declarable conflict of interest does not preclude working for the ICO and are not required to be proactively disclosed.
- Close family member: a senior leader's spouse, partner and/or dependent children.
- Wider family and friends: a senior leader's extended family, for example parents or siblings and their close friends.
- Previously employed: a senior leader worked for the organisation in the six months prior to joining the ICO.
- Leaving the ICO: when a senior leader formally hands in their notice.
- Direct financial interest: a financial interest which has a purchase or current value of £25,000 or over and/or represents over 5% of the senior leaders net worth and is either
 - owned directly by a senior leader or a close family member (e.g. shares);
 - under the control of senior leader or a close family member (for example, where financial interests are managed for a member's children or through a power of attorney); or
 - beneficially owned by a senior leader or a close family member through an investment vehicle, trust, or other intermediary, where they have the authority to supervise or participate in the investment decisions.

For clarity, shares or investments held through investment vehicles such as pensions and ISAs where the senior leader or close family member cannot influence investment decisions are not required to be disclosed. This includes stocks and shares linked pensions and ISAs where the senior leader has minimal director control over where investments are made (for example low or high-risk portfolios of investments).

What sort of activities might cause a conflict of interest?

There is no definitive list, but examples of each type of conflict of interest or potential conflict of interest include:

- 1) Incompatible conflict of interest:

- a. The senior leader or close family member works for a category A organisation.
- b. The senior leader or close family member has a direct financial interest in a category A organisation.

2) Disclosable conflict of interest:

- a. The senior leader or close family member works for a category B organisation.
- b. The senior leader or close family member has a direct financial interest in a category B organisation.
- c. The senior leader is aware that a member of their wider family and friends works for, or has a direct financial interest in, a category A organisation.

3) Declarable conflict of interest:

- a. The senior leader is aware that a member of their wider family and friends works for, or has a direct financial interest in, a category B organisation.
- b. Senior leader was previously employed by a category A organisation.
- c. Senior leader is leaving the ICO to work for a category A organisation.

To summarise, with examples:

	Low level of involvement	High level of involvement
Low level of potential impact	<p><u>Example:</u> involvement in school PTA / volunteer with local community groups (which is a category C organisation)</p> <p><u>Action:</u> No further action required</p>	<p><u>Example:</u> senior leader sits on the board of small charity or their spouse has shares with a current value of over £25,000 in a large, multinational marketing company (which is a category B organisation)</p> <p><u>Action:</u> Disclosable. Need to proactively declare the interest, which is published, and update as necessary,</p>

		and at least annually including mitigating actions such as being recused from related discussions and/or decisions.
High level of potential impact	<p><u>Example:</u> previously worked for a large manufacturing company / sibling works for a national charity (which is a category B organisation)</p> <p><u>Action:</u> Declarable. No need to proactively disclose, but if the company or charity comes up at a meeting, required to disclose at the time</p>	<p><u>Example:</u> senior leader has shares in a large, multinational technology company with a purchase price of over £25,000 / senior leaders currently works for a large, multinational technology company (i.e. category A)/spouse works for global technology company (which is a category A organisation).</p> <p><u>Action:</u> Incompatible. The senior leader cannot work of the ICO.</p>

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Low level of potential impact, low level of involvement: Example: involvement in school PTA / volunteer with local community groups (which is a category C organisation). Action: No further action required.

High level of potential impact, low level of involvement: Example: previously worked for a large manufacturing company / sibling works for a national charity (which is a category B organisation). Action: Declarable. No need to proactively disclose, but if the company or charity comes up at a meeting, required to disclose at the time.

Low level of potential impact, high level of involvement Example: senior leader sits on the board of small charity or their spouse has shares with a current value of over £25,000 in a large, multinational marketing company (which is a category B organisation). Action: Disclosable. Need to proactively declare the interest, which is published, and update as necessary, and at least annually including mitigating actions such as being recused from related discussions and/or decisions.

High level of potential impact, high level of involvement: Example: senior leader has shares in a large, multinational technology company with a purchase price of over £25,000 / senior leaders currently works for a large, multinational technology company (i.e. category A)/spouse works for global technology company (which is a category A organisation).
Action: Incompatible. The senior leader cannot work of the ICO.

Does a conflict of interest mean a senior leader can't work for the ICO?

Not necessarily. How a conflict of interest is managed depends on the circumstances.

Incompatible conflicts of interest

The senior leader cannot start or continue their work with the ICO and, unless there are exceptional circumstances, they will have to leave the ICO. Decision on incompatibility, and any exemptions, will be made by the Information Commissioner, in their role as Chair of the Board, with advice from the Board.

Disclosable conflicts of interest

Where a senior leader identifies a disclosable conflict of interest, they must identify actions they will take should any interest become an actual, potential or perceived conflict of interest. This may include:

- fully participating in discussion of the matter. This will usually be the action taken when the interest is not directly relevant to the issue in question and there is no risk the judgement of the senior leader being impaired or the ICO being accused of bias;
- participating in discussion but not being involved in any decision-making. This will usually be action taken when there are no financial implications for the senior leader in question in relation to the matter under consideration, and/or there is a minimal risk of the judgement of the senior leader being impaired or the ICO being accused of bias;
- not take part in any discussion or decision-making (including leaving the meeting if appropriate). This will usually be action taken when there are any financial implications for the senior leader in question in relation to the matter under consideration and/or there is a risk of the judgement of the senior leader being impaired or the ICO being accused of bias.

The Register of Interests for senior leaders will be published on the ICO's website. This ensures a clear public record of any actual, potential or perceived conflicts of interests.

There will be some circumstances in which a senior leader is required to declare an interest that is not suitable for publication (such as for reasons of personal security). In such circumstances, the interest should still be declared to the ICO's Corporate Governance team, who will record that an interest has been declared, but will publish a redacted version of the Register of Interests on the ICO's website.

Declarable potential conflicts of interest

To ensure declarable conflicts of interest are identified and mitigated in meetings or discussions of the Management Board, Executive Team or Management Board Committees, as applicable, the following actions should be taken:

- Managing the agenda and reviewing the Register of Interests prior to issuing the agenda, so that senior leaders conflicts are not inappropriately included.
- Including an item on the agenda for members and attendees to declare any interests which they have in any items on the agenda for the meetings of Management Board, Executive Team or Management Board Committees. Declarations made will be recorded and published in the minutes. It is good practice to include an equivalent item on the agenda for formal meetings of any other body, group or forum but this is not a requirement
- If a senior leader has already disclosed an interest on the Register of Interests, it is good practice for them to declare that interest again in any meetings where it is likely to be a factor. This reduces the risk of there being a perception that any conflict is being hidden.
- Senior leaders should declare any interests they have which relate to specific agenda items before any discussion takes place. Ideally, all interests should be declared within the declaration of interests agenda item. However, there will be occasions when a potential interest only arises due to the direction of discussion of an agenda item. In such circumstances, the person should declare their interest at the earliest opportunity as soon as they become aware that it is relevant.
- Once an interest is declared at a meeting, the person's participation in the items where they have an interest will be considered in line

with this policy. It is expected that senior leaders act in line with this policy, but, where needed, the Chair will make a final decision on a senior leader's involvement.

- If a new declaration is made at a meeting by a senior leader, they should contact Corporate Governance to ensure that their register of interests is updated accordingly.

What happens if someone doesn't follow the rules?

Where there is a potential breach of this policy or a complaint about a perceived failure of a senior leader to disclose a relevant interest, the suspected breach or complaint will be referred to the Information Commissioner (in their role as Chair of the Board) or Senior Independent Director.

The Commissioner will either review the case themselves or refer this to another senior leader to review. In exceptional circumstances the Commissioner may choose to appoint a third-party investigating officer.

The appointed person will investigate the matter in the manner that they deem appropriate subject to this policy. The investigation should begin within 10 working days of the suspected breach being identified or the complaint being received. The initial investigation will seek to establish all the facts surrounding the suspected breach or complaint and will provide a report to the Commissioner on the findings. This may include interviewing the person who is the subject of the complaint or suspected breach. The investigation should be concluded within 10 working days of commencement. However, it may be necessary to extend this deadline.

Once the person investigating the matter has concluded their investigation, they will report their findings to the Commissioner. The Commissioner may make the determination of any action to be taken, or may delegate this to another person, typically another senior leader (including the investigator).

Corporate Governance will maintain a confidential log of any complaints or potential breaches, which will include the nature of the complaint or potential breach, the person who investigated it, and any actions taken as a result. Corporate Governance must be informed of the complaint or potential breach at the point at which a decision has been taken on any action required to deal with the potential breach or complaint.

If there is a complaint raised about disclosures not being published by the ICO, then a service review will be undertaken in the first instance within the relevant line management chain in Corporate Governance.