



## **Guidance for managing potential conflicts of interests**

### **Issue**

1. Revised guidance on the identification, reporting and management of potential conflicts of interest.

### **Recommendation**

2. The board is asked to discuss and agree the attached guidance which we intend to publish on our website.

### **Further information**

3. Available from Nolan Smith, Director of Resources, Finance and Transformation ([nolan.smith@officeforstudents.org.uk](mailto:nolan.smith@officeforstudents.org.uk)) or Ben Whitestone, Head of Governance ([ben.whitestone@officeforstudents.org.uk](mailto:ben.whitestone@officeforstudents.org.uk)).

## Background

4. The board, its committees and directors must be able to report that its decisions are made fairly and impartially, and that members<sup>1</sup>/directors play a full and active role in the work of the OfS. This is important in helping to provide confidence to students and other stakeholders in the organisation's decisions. The duty of each member is to act in the best interests of the OfS when carrying out their member role. This means that all members, under the board's code of conduct, are required to fully disclose any actual, perceived or potential conflict of interest as soon as these arise. A members' register of interests is published on the OfS website at: <https://www.officeforstudents.org.uk/about/who-we-are/our-board-and-committees/>

5. At its meetings in May and July 2018 the board had discussions on managing potential conflicts of interest. Since then we have taken advice from the Cabinet Office and the chair has personally spoken to the Permanent Secretary in DfE (as reported to the board in December 2018). The Permanent Secretary agreed it was right to have initially erred on the side of caution for managing any potential conflicts however he confirmed, where there is uncertainty over a potential conflict, it would be for the chair to determine on a case by case basis if any individual members or groups of members were conflicted whilst balancing the benefits members bring with their knowledge and experience.

6. This paper brings a revised approach to managing potential conflicts to take on board the advice from the Permanent Secretary and the Cabinet Office. It also updates the previous guidance to better reflect the way we are operating both as a board and in OfS committees.

## Conflicts

7. Conflicts of interest are a common and unavoidable part of management and governance that can arise in a range of situations and environments. They can result from policy decisions or systems or can occur naturally in certain situations. It is therefore not reasonable or practical to completely eliminate all conflicts of interest. It is better to recognise the associated risks and put measures in place to identify and manage conflicts when they do arise. However it is important to acknowledge that a conflict could ultimately result in a decision being declared unlawful and invalid.

8. It is also worth recognising that it is important for the OfS board, committees and directors to have a broad range of skills and experiences that will inevitably mean there will be a variety of interests, especially with regards to higher education providers. Whilst this needs to be recorded and appropriately managed it does not mean that all actual or perceived conflicts should be avoided. This paper provides an updated framework to ensure we balance the benefits of having diverse experiences alongside mitigating the impact of potential conflicts.

9. All OfS members are holders of public office in their OfS role. The Committee on Standards in Public Life which advises on ethical standards has set out the seven principles where holders of public office need to put the obligations of public service above personal interest. These principles equally apply to OfS directors. As a reminder, the seven principles are listed below:

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<sup>1</sup> 'Members' means members of the OfS board and committees.

<b>The Seven Principles of Public Life</b>	
<b>Selflessness</b>	Holders of public office should act solely in terms of the public interest.
<b>Integrity</b>	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
<b>Objectivity</b>	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<b>Accountability</b>	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
<b>Openness</b>	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing
<b>Honesty</b>	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing
<b>Leadership</b>	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs

10. In addition to the above principles, members are reminded of the duty of confidence that applies to information received in their OfS role. Given the likelihood of highly confidential information being received or discussed at OfS board meetings, for example aspects of legal advice or matters relating to government policy, it is particularly important that members take a cautious approach about the information discussed outside of OfS meetings and communications.

#### Identifying and recording interests

11. All board members, committee members, and directors interests should be declared and registered with the OfS. An interest, for this purpose, is something which a member is connected with which may draw the member into conflict with their role at the OfS. Conflicts of interest arise if an individual has or might have, or might be, perceived to have a 'personal' interest when making or influencing decisions on behalf of the OfS. This includes relevant indirect interests through a partner, spouse or immediate family. Relevant interests in this context include:

- a. Remunerated or honorary positions and other connections with providers (either on or likely to apply to be on the OfS register) and/or organisations connected with such providers (e.g. advisory/representative groups)
- b. Ownership or part-ownership of, or employment by, businesses or consultancies likely or possibly seeking to do business with the OfS or with any of the providers it funds or regulates
- c. Executive and non-executive directorships of, shareholdings in, or employment by, public or private companies likely or possibly seeking to do business with the OfS or with any of the providers or organisations it funds or regulates
- d. Membership of societies or professional bodies with a relevant interest
- e. In receipt of services (such as teaching) from a provider (either on or likely to apply to be on the OfS register).

12. Interests are recorded and published on the OfS website. Members and directors are encouraged to advise the Head of Governance at the OfS immediately of any changes. To ensure accuracy of the details, a survey of interests will be carried out by the OfS at least annually. Exceptionally, an individual may register an interest which is itself exempt from publication but which would be made known to the Head of Governance, chief executive and chair.

13. It is recognised that any actual or perceived conflict of interest could relate to both the operations of the OfS and/or the role of OfS as a regulator of higher education providers. As operational decision making is delegated to the chief executive and through her to staff within the OfS, separate guidance is provided to staff especially when procuring goods and services. The focus of this paper/guidance is for board/committee members and directors where they are or may be perceived to be part of the decision making activities of OfS as a regulator.

#### Managing known interests

14. Given that a number of members and directors (or their families) have interests relating to higher education providers there will need to be a judgement if an interest is sufficiently material to mean that actions should be taken.

15. Judgement on materiality could be based on the following measures:

- a. The time consumed by the individual on the external interest, balanced against his/her responsibility to the OfS
- b. Public perception of the conflict and potential reputational impact
- c. The nature/seniority of the role held at a provider, including whether the individual is being remunerated and the extent of that remuneration
- d. The extent of the actual or perceived connection with OfS policy (current and in development) or OfS regulatory decisions.

16. The board is asked to note the following measures of materiality and, where an interest is judged to be material, what actions should be taken. The 'possible actions' are not exhaustive and equally there will be occasions where no further actions, beyond the minimum mitigations, are required.

<b>Examples of interests</b>	<b>Level of materiality</b>	<b>Minimum mitigations/actions</b>	<b>Possible additional actions</b>
<ul style="list-style-type: none"> <li>• Acute or pervasive interests e.g. significant interests with a number of HE providers (or applying to be on) the OfS register</li> </ul>	Very high	<ul style="list-style-type: none"> <li>• Register interests</li> <li>• Discuss with Chair about whether the conflict is too great and therefore the member should resign from their current OfS role or relinquish their conflicting role</li> </ul>	<ul style="list-style-type: none"> <li>• Excluded from voting on decisions relating to the regulatory framework, TEF and any other area where the OfS is making/running decision making processes on individual providers</li> </ul>
<ul style="list-style-type: none"> <li>• Employed in a senior Executive position by a HE provider on (or applying to be on) the OfS register</li> </ul>	High	<ul style="list-style-type: none"> <li>• Register interest</li> <li>• Excluded from seeing papers relating to provider</li> </ul>	<ul style="list-style-type: none"> <li>• Excluded from discussions and decisions relating directly to individual providers</li> </ul>

<ul style="list-style-type: none"> <li>• Holding a significant non-Executive role at a provider (e.g. Chair)</li> </ul>		<ul style="list-style-type: none"> <li>• Unable to be a member of the Provider Risk Committee (PRC)</li> </ul>	<ul style="list-style-type: none"> <li>• Excluded from voting on decisions relating to the regulatory framework, TEF and any other area where the OfS is making/running decision making processes on individual providers</li> </ul>
<ul style="list-style-type: none"> <li>• Employed (other than in a senior Executive role) by a HE provider on (or applying to be on) the OfS register</li> <li>• Holding a non-Executive position at a HE provider that does not fall under the 'high' category</li> <li>• Where the member is 'involved with' a HE provider e.g. a significant shareholder in a company that has a major contractual relationship with a HE provider</li> <li>• Where there is potential direct competition between a provider and the provider where a known interest exists</li> </ul>	<p>Medium</p>	<ul style="list-style-type: none"> <li>• Register interest</li> </ul>	<ul style="list-style-type: none"> <li>• Excluded from discussions and decisions relating directly to the individual provider where an interest exists (or where there is significant direct competition with that provider)</li> <li>• Excluded from seeing papers relating to provider</li> <li>• Consider whether can be a PRC member depending on level of interest and need to balance experience on PRC. If on PRC must be excluded from discussions and decisions relating directly to the individual provider.</li> </ul>
<ul style="list-style-type: none"> <li>• Immediate family member<sup>2</sup> currently studies or works at a HE provider</li> <li>• Unpaid visiting professor at HE providers</li> <li>• Received honorary award from a HE provider</li> </ul>	<p>Low</p>	<ul style="list-style-type: none"> <li>• Register interest</li> </ul>	<ul style="list-style-type: none"> <li>• Excluded from decisions relating directly to the individual provider</li> <li>• Excluded from seeing papers relating to provider</li> </ul>

<sup>2</sup> Spouse/partner, parents, siblings, children

<ul style="list-style-type: none"> <li>• Meetings with HE providers on OfS business</li> <li>• Involved in a non-OfS meeting which includes HE providers</li> </ul>	Very low	<ul style="list-style-type: none"> <li>• For OfS meetings - ensure OfS aware of meeting and record any outcomes</li> <li>• For non-OfS meetings no action required</li> </ul>	<ul style="list-style-type: none"> <li>• Ask Head of Governance for advice</li> </ul>
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17. The above examples are not exhaustive but provide a framework for the actions that should be considered where actual or perceived conflicts are known. The action taken will need to be proportionate to the situation. The appropriate response to a potential conflict will also depend on the position the individual holds and the degree of influence over the decision making process. Early declaration of a potential conflict is crucial to allow time to agree steps to manage the conflict with the chair and Head of Governance. It is also important to declare all personal or business interests that could potentially conflict with public service duties, even where risk seems low. It may be agreed that no mitigation is necessary as there is no risk of actual or apparent conflict or the conflict is not material. As per the advice from the Permanent Secretary, the final judgement on the materiality and any actions to be taken should rest with the chair on advice from the Head of Governance (and others as appropriate). Where the chair is the person whose interest is being considered then the deputy chair should make the final judgement.

18. For certain decision making roles it is important that the level of materiality of the interest needs to be low. These roles include the chair, deputy chair, chief executive, Director of Fair Access and Participation and the Director of Competition and Registration. It would also include specific time limited roles such as the chair of the TEF appeals panel.

#### Managing previously undisclosed interests

19. If a member receives a written paper on a matter in relation to which they have an interest which was previously undisclosed, they should immediately return the paper to the Head of Governance with an indication of the extent to which the member has read the paper.

20. If a member becomes aware of a conflict during the course of any discussion, they should immediately disclose their interest and should, if appropriate, withdraw from the discussion and any decision relating to the matter.

#### Processes to follow

21. Any member who has a (very high or high) material interest in a matter under consideration at a meeting of the OfS should declare that interest at the start of the meeting, whether or not that interest is already formally recorded. At the discretion of the chair, the member concerned should withdraw from the meeting during the relevant discussion or decision and this will be formally recorded in the minutes.

22. In line with the board's code of conduct no papers or information provided to members should be shared with anyone outside of the board, relevant committee or OfS staff. Members should be aware that the misuse of information gained by virtue of their position may be liable for breach of confidence under common law or may amount to a criminal offence under insider dealing legislation. Every member must also take particular care to avoid disclosing to any person (or otherwise acting on) any discussion relating to decisions which have not yet been made public.

23. Members should try to avoid a situation where they have an interest in a regulated provider and could gain access to commercially sensitive or strategic about an actual or potential competitor. Members should also be conscious about the potential for conflicts when legal risks/advice is being discussed (even in general terms). In these situations, where there is deemed to be a significant advantage to the providers that certain board members are affiliated to by members being party to discussions on OfS legal advice members may be asked to withdraw from the discussions. Each case will be determined on its own merits and the final decision on the actions to be taken rest with the chair.

24. In addition to the above mitigating actions, you should also be aware of the policy on receiving gifts and hospitality. In general terms, you should not accept any gifts or hospitality which would, or might appear to, place you under an obligation. Any gifts or hospitality received, offered or given should be recorded on the gifts and hospitality register, and reported to the head of governance, even if refused.

#### Engagement with providers

25. We recognise that members will understandably want to engage with higher education providers to increase their knowledge of the sector we are regulating. However, members may find themselves in situations where their OfS relationship impacts on how higher education providers interact with them and how their views are interpreted.

26. It is important to ensure that there is a clear documented purpose for any such engagement and that no discussions should be allowed on OfS decision making processes (or decisions themselves) without prior agreement with the chair. The most likely example that will surface is around the registration process. In this circumstance the discussion should only focus on information that is the public domain e.g. timetable, information requirements, criteria etc. There should be no discussion about the likely outcome or how the OfS will internally consider information to make decisions. It is best to be slightly cautious in how members/directors engage in discussions about decision making processes. It is recognised that it is not possible to advise on every potential scenario but it is important that any OfS focussed discussions are recorded (in summary not detail) so we can ensure any perceived conflict is managed. The governance team in the OfS will retain these records as required.