



# A guide to managing conflicts of interest for TEI councils

Councils of tertiary education institutions (TEIs) must ensure they have robust processes to help their members identify and declare their conflicts of interest, and ensure that any interests are recorded and appropriately managed.

## What is a conflict of interest?

A conflict of interest will arise if you have an interest that conflicts (or *might* conflict, or *might be perceived* to conflict) with an interest of the TEI council.

In essence, you should ask yourself:

- › *Does my other interest create an incentive for me to act in a way that may not be in the best interests of the TEI?*

If the answer is “yes”, a conflict of interest exists or may be perceived to exist, regardless of whether you would actually act on that incentive.

## Legislative requirements for managing conflicts of interest

The Education Act 1989 imposes obligations on council members in relation to specific interests.

If you have an interest in a matter that is being, or about to be, considered by the council, you must, as soon as possible after the relevant facts have come to your knowledge, disclose the nature of the interest at a meeting of the council or a council committee (section 175).

This obligation arises if either:

- › the matter relates to your conditions of service as the chief executive or as a staff member of the staff of the institution concerned, or
- › you have any other direct or indirect pecuniary (financial) interest in the matter.

The interest must be recorded in the minutes of the meeting of the council or committee. Further, if you have an interest under this section of the Act, you must not, unless the council decides otherwise:

- › be present during any deliberation of the council or committee with respect to that matter, or
- › take part in any decision of the council or committee with respect to that matter.

## Good practice for managing conflicts of interest

As well as meeting the requirements of the Education Act, it is important you help the council manage any conflicts of interest, perceived or real. Therefore, you should:

- › discuss potential conflicts with the council Chair
- › comply with the council’s conflict of interest policy (if the council has one)
- › include relevant information in the council's interest register and update that information as soon as practicable after any changes to the interests that you or your partner may have. For example, details on the register should include your name,

the name of your partner (if applicable), a description of any businesses that you and your partner engage in (if applicable), and any business or personal involvement you have with the TEI or other TEIs, and

- › raise potential conflicts of interest related to specific agenda items at the start of council meetings.

The **general rule** is: if in doubt, disclose the interest. Even if you are not sure whether the interest is relevant or significant, disclose it. The other council members can then decide if there is a relevant or significant interest.

## How you can manage your conflict of interest

If a manageable conflict of interest arises, you may use one or more of the following methods to avoid or minimise any risk to the decision.

- › Get rid of your interest that is creating the conflict (for example, by selling shares).
- › Declare the interest and agree not to participate in any vote on related issues. Your absence should be recorded in the minutes on each occasion.
- › Abstain from voting when related issues arise for discussion and/or decision at council meetings. Withdraw from the meeting for the duration of the item. The withdrawal should be noted on each occasion in the minutes.
- › Agree to not receive any information (eg, council papers, written or oral briefings) relating to the interest by the council.
- › Don't participate in any other council action concerning the interest (eg, not signing documents that relate to the interest on behalf of the council).
- › Leave an employment position or an organisation that gives rise to the conflict.

## Types of conflict of interest

Most council members of TEIs have personal and professional interests and roles that occasionally may overlap with the interests of the TEI.

Situations of overlapping interests or roles may create a conflict of interest when an individual's duties or responsibilities to the TEI could be affected by some other interest or duty – whether in a personal capacity or as a member of another organisation.

A conflict of interest may be financial or non-financial, direct or indirect, or professional or family-related.

### Financial conflicts of interest

In general terms, a council member may have a financial or pecuniary interest that creates a conflict:

- › directly, because the council member is a party to a contract with the TEI
- › indirectly, if the contract with the TEI is with a third party, but the council member has a personal connection with that third party or could benefit financially from the contract.

### Non-financial conflicts of interest

A non-financial interest can arise when a council member:

- › has a close relationship with an individual or organisation involved with the matter under consideration
- › acts in a way that indicates predetermination of a matter before hearing all the relevant information.

Non-financial interests may be more difficult to identify than financial interests, especially where a council member has an established position on a policy issue. Usually, council members are free to express their views, but sometimes a degree of sensitivity may be required if the council is considering issues that have the potential to affect the interests of third parties.

## How else conflicts of interest can arise

Conflicts of interest can also arise from:

- › directorships or employment with another organisation
- › interests or involvement in other business enterprises or professional practices
- › professional or legal obligations
- › holding another office
- › membership of professional associations or relationships with other organisations' investments, and shares or property ownership

- › beneficial interests in trusts
- › gifts and hospitality
- › existing professional or personal associations with the TEI concerned or with other tertiary education providers
- › family or close personal associations with other groups or organisations
- › strong political or personal beliefs.

## Conflicts of interest scenarios and how they were managed

The three factual examples below show the right way to avoid or manage conflicts of interest in different circumstances.

- › A council member holds shares in a private training establishment that is in direct competition with the TEI for certain funding. The appropriate action will depend on the value of the shares held and, possibly, on the member's own circumstances (for example, the relative importance of the shares to the member's financial situation). If the value of the shares is very low and there is no risk of a negative public perception, the conflict may be immaterial. If the value of the shares is more significant, it will probably be necessary to sell them or place them in a blind trust. Declarations of interest are not suitable because the conflict of interest concerns the performance and success of the council as a whole, rather than one specific area of its operation.
- › A council member is the spouse of the TEI's Chief Financial Officer. Because of the closeness of the family relationship, combined with the ongoing and pervasive nature of the conflict, the appointee is probably unsuitable for appointment or, if the situation arises mid-term, should resign.
- › A council member was in the past employed by a lobby group in the education sector although the association has now ceased. Whether the perception of a conflict is manageable or not will depend on a number of factors:
  - the political sensitivity of the appointment
  - the passage of time between the council member's involvement with the lobby group and the date of the appointment
  - the public profile of the council member and/or the body
  - the likelihood of the council member resuming contact with the lobby group after the expiration of their term on the council.

Even though the conflict of interest may be more perceived than real, the appointment may not be tenable if it would seriously compromise the integrity and standing of the council in public opinion.



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