

Supplementary Guidance on Conflicts of Interests

Issued under the Code of Conduct and Practice for Ministers and Assistant Ministers ("Ministerial Code")

1. Introduction

- 1.1. This document provides additional guidance to Ministers and Assistant Ministers on managing conflicts of interest, including appropriate declarations, examples, actions, and a process for ensuring compliance with the Ministerial Code ("the Code")¹.
- 1.2. Conflicts of interest can bring decision-making into disrepute, if not well-managed. Often the perception of conflict is alone enough to cause concern. This can lead to reputational damage and undermine public confidence in the integrity of institutions.
- 1.3. Conflicts of interest are a common and unavoidable part of management that can arise in a range of situations and environments, and in a small Island jurisdiction, where politicians are strongly embedded in the community, are more likely.
- 1.4. It is therefore not reasonable or desirable to completely eliminate the risk of conflicts of interest arising. It is better to recognise the associated risks and put measures in place to identify and effectively manage conflicts when they do arise, supporting the highest standards of propriety and observance of the Seven Principles of Public Life.²
- 1.5. Under the Code it is the responsibility of each Minister and Assistant Minister to identify and actively address any actual or perceived conflict of interest between their ministerial responsibilities and their private interests, or any other public role they hold, and they must ensure that any conflict does not compromise their judgement. This responsibility cannot be abrogated or shared with colleagues or officials.

2. Definition

- 2.1. The National Audit Office in the United Kingdom defines a conflict of interest as *"...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. It can occur in any situation where an individual or organisation (private or government) can exploit a professional or official role for personal or other benefit. This definition is based on generally accepted standards."*

¹ Presented to the States Assembly on 12 October 2022 - [r.140-2022 code of conduct for ministers \[com\].pdf \(gov.ie\)](#)

² As outlined in the Code, "Ministers and Assistant Ministers must always uphold the highest standards of propriety through compliance with the Code of Conduct for Elected Members and through observance of the "Seven Principles of Public Life" (selflessness, integrity, objectivity, accountability, openness, honesty, leadership)"

- 2.2. They add: *“Conflicts can exist if 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”*.³ In Jersey’s Ministerial Code: *“A perceived conflict of interest should generally be treated as seriously as an actual conflict and Ministers are expected to err on the side of caution...”*.
- 2.3. In addition to considering the above, the seven principles of public life include “honesty”, which is generally taken to include acting without bias. The test for determining bias in relation to the judiciary, and one adopted by the Local Government Association for Councillors, is this: *“...if a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased, the judge must recuse himself”* (Porter v Magill [2002] 2 AC 357 at [102]). That test is to be applied having regard to all the circumstances of the case.
- 2.4. This definitional approach is common and similar to that which applies in other jurisdictions.
- 2.5. The Corruption (Jersey) Law 2006 also makes it a criminal offence for a person to corruptly receive or to give or offer an advantage in order to have a public body (including a Minister) do or not do something the public body is concerned with. Furthermore, there is a criminal customary law offence of misconduct in public office where a public office holder wilfully acts or fails to act to such a degree as to amount to an abuse of the public’s trust in the office holder.

3. Extract from the Code:

Paragraph 4: Avoiding Conflict of Interest

“Ministers and Assistant Ministers must identify and actively address any actual or perceived conflict of interest between their ministerial responsibilities and their private interests, or any other public role they hold, including their role as a constituency representative, ensuring that any conflict does not compromise their judgement, the conduct of government, or place themselves under an improper obligation.

Where a conflict or perceived conflict relates to the Minister’s portfolio, the Minister or Assistant Ministers should be guided by the general principle that they should either dispose of the interest giving rise to the conflict, or take alternative steps to manage the conflict, which can include transferring a ministerial responsibility to another Minister, or in relation to a more minor matter, a delegation to an Assistant Minister. In some cases, it may not be possible to devise

³ [Conflicts of interest - National Audit Office \(NAO\) insight](#)

a mechanism to avoid such an actual or perceived conflict of interest, for example, due to the significance and nature of the conflict, and in any such case, the Chief Minister must be consulted, and it may be necessary for the Minister to cease to hold ministerial office.

Where the conflict relates to a matter outside of a Minister's area of responsibility, but the Minister or Assistant Minister is part of a wider discussion at the Council of Ministers, or in other ministerial meetings, they should declare this at the earliest opportunity, the declaration should be recorded, and the Minister or Assistant Minister would generally be asked to recuse themselves from any discussions.

In considering the above, the extent of the conflict, whether it is a conflict generally held by many people, and how direct or substantial it is to the interests of the Minister or Assistant Minister, should be considered.

A perceived conflict of interest should generally be treated as seriously as an actual conflict, and Ministers are expected to err on the side of caution in the wider interests of the government and maintaining public confidence."

4. Examples of Conflicts of Interest

- 4.1. As outlined in the Code, a conflict is something that includes a private interest, essentially anything other than their ministerial role, which potentially compromises the Minister's or Assistant Minister's judgement, the conduct of government, or places the Minister or Assistant Minister under an improper obligation. This includes things that do actually present a conflict of interest, or that could be perceived as doing so (perceived by a reasonable person in most circumstances).
- 4.2. Some examples are outlined below, which apply whether the interest is held by the Minister or Assistant Minister, or by a "relevant person" (spouse, civil partner or cohabitee; a dependent child of the member or of their spouse, civil partner or cohabitee; and any other relative who is a member of the member's household)
- 4.3. Examples of a conflict of interest include:
 - Being involved in the award of a contract to suppliers in which the Minister/ Assistant Minister has a personal or financial interest.
 - Accepting hospitality or gifts from interested parties during a procurement exercise they are aware of or involved in.
 - Awarding a licence or other permission to a business in which they have shares or are in a position of management control.

- Owning properties where rental income is a sizable component of the Minister's or Assistant Minister's overall income and where decisions taken have a material effect on this income (as opposed to decisions that have a small effect that is generalised and applies to lots of people).
- Being a business owner and making decisions, or contributing to decision making discussions, that relate to a specific and clearly defined business sector (as opposed to businesses in general) which includes your business, and that have more than a small impact on the profitability or outcomes of that individual business.
- Using information gained in the course of official duties to secure private gain, personally or for a relevant person (where this involves personal information this also likely contravenes data protection legislation).
- Awarding a licence or other permission to a business where a close professional advisor (personal lawyer, accountant, or similar) holds a significant ownership share or is part of the management control of the business.
- Being on the governing body of an organisation as a private individual, such as a charity, and making decisions, such as licencing decisions, or the allocation of government resources, which directly effect that organisation.

4.4. Examples that are *not* a conflict of interest include:

- Being a taxpayer, one of thousands in the Island, and making decisions on taxation rates (as compared, for example, to having an interest that is held by only a small number of people and making taxation decisions that have a large impact on those people).
- Being a business owner and being part of a decision that impacts on all business owners (unless clearly disproportionately to the business that is owned or that business sector).
- Having previously met an individual who has a vested interest in a decision, whether in a social or professional setting. In a small Island jurisdiction, it is likely that Ministers or Assistant Ministers and Assistant will have come across many people and the purpose of this guidance is not to prevent Ministers discharging their responsibilities because of acquaintanceships.
- Observing normal courtesies in a social engagement or setting with an individual who has a vested interest in a matter for which the Minister is responsible. Ministers should not in a position of being discourteous.

- A matter which the Minister or Assistant Minister has no awareness of, or reasonably should not be expected to have knowledge of (such as the client list of a relevant person).
- 4.5. This is a list of examples and is not an exhaustive list. Each circumstance needs to be weighed individually.
- 4.6. In each case, the specific circumstances need to be weighed, and the response may or may not require recusal (see below).

5. Declaring Conflicts of Interest

- 5.1. Minister and Assistant Ministers should record their interests, in the same way as any other States Member, in the Register of Interests of Elected Members, in line with Standing Orders.
- 5.2. In any case, declarations should be made at the earliest opportunity following becoming aware of the conflict, preferably the first opportunity that an item is raised with the Minister or Assistant Minister. They should also be repeated each time the relevant subject is under discussion and where the Minister or Assistant Minister is present in the discussion.
- 5.3. Where the declaration is made in a Council of Minister's meeting, or another meeting recorded by the States Greffe, it will be recorded in the minutes of that meeting. It will also be included in the minutes or notes in the case of any other meeting.
- 5.4. Ministers and Assistant Ministers are advised to consider any relevant declarations where practical in advance of the meeting as part of their preparation. It is not possible to provide comprehensive advice at the meeting, without the full facts, and advance consideration therefore provides more opportunity to consider and as necessary seek advice.

6. Managing Conflicts of Interest

- 6.1. The existence of a conflict of interest in itself does not mean the Minister need recuse themselves from decision-making. A conflict may be acknowledged to exist, but may be marginal or limited, and the appropriate course may be to contribute to discussions ensuring that all participants are aware of the conflict of interest.
- 6.2. Appropriate mitigations may also be put in place, such as the inclusion of another Minister or Assistant Minister in an advisory role, or reference to a ministerial group, with a view to managing the perception of a conflict.
- 6.3. In the case of recusal:

- A Minister should ask their Assistant Minister to act on their behalf discharging their responsibilities (ensuring an appropriate delegation is in place).
 - An Assistant Minister who has a conflict in their areas of delegation should ask their Minister to act on their behalf.
 - The Chief Minister should ask the Deputy Chief Minister to act on their behalf and discharge their responsibilities (as if the Chief Minister were absent).
- 6.4. Where a recusal has taken place, the Minister or Assistant Minister should have no further involvement in decision making, including meetings where the topic is under discussion, nor should they lobby in any way, formally or informally, or make enquiries into the matter.
- 6.5. If the conflict of interest requires recusal, and relates to a significant element of their portfolio, then the Minister or Assistant Minister should consider removing the conflict by way of a disposal of the interest if practical, or arrangements to achieve a similar effect such as placing at arm's length as if the interest is not held, and if not, there is a strong rationale for ceasing to hold responsibility for that area by removing the responsibility from their portfolio, or In the case of a significant part of their portfolio, it may to be appropriate for the Minister or Assistant Minister to consider their position.
- 6.6. It is also appropriate to make declarations to the States Assembly when debates, questions, or hearings in line with the requirements of Standing Orders and the rulings of the Bailiff.
- 6.7. Generally, it is recommended that meetings that Ministers and Assistant Ministers hold with external parties to discuss government business in their area of responsibility, whether a conflict of interests exists or otherwise, always have officials present. This enables verification of the nature and content of those discussions in the event of any allegation of improper conduct, protecting the Minister and Assistant Minister and demonstrating propriety and good governance. While Ministers and Assistant Ministers should apply best endeavours to operate in this manner, it is nevertheless accepted in a small community where chance encounters are common, and considering the pace of events, it may not always be possible. This should not be taken as relating to political matters.
- 6.8. Finally, it is valuable for a Ministers and Assistant Minister to question themselves from time to time on their approach to conflicts of interest, asking themselves questions such as "what have I done to reduce conflicts of interest"; "am I reviewing agendas and papers and considering any conflicts of interest held"; and "is it likely that I am perceived as having a conflict of interest".

7. Advice and Resolution

7.1. The Code deals generally with advice on compliance and responsibility for compliance, complaints procedures, and support and further guidance. This includes and should be taken to include:

- That Ministers and Assistant Ministers are personally responsible for making decisions.
- That Ministers and Assistant Ministers may seek advice in the first instance from their Private Secretary and Head of Ministerial Office; and thereafter from the Chief Executive as required.
- That concerns may be tabled with the Chief Minister, who shall ask another Minister or Assistant Minister, supported by an officer from the Ministerial Office, to review the matter (which will include obtaining information and discussing the matter with relevant Ministers and Officials, and seeking advice as necessary from the States Greffe, or others, and making recommendations to the Chief Minister).

7.2. Ministers and Assistant Ministers, and any other party, may also formally refer a matter to the Commissioner for Standards for a determination in line with the Commissioner for Standards Guidance [r.93-2023.pdf \(gov.ie\)](#) .

8. Conclusions

8.1. This guidance supports the interpretation and implementation of the Ministerial Code.

8.2. It is not possible to provide definitive advice on determining and managing conflicts of interests in all circumstances, as it depends on the specific circumstances in each case.

8.3. In the interests of promoting trust and confidence in government, Ministers and Assistant Ministers should err on the side of caution in how they act, and always have in mind their obligations under the Ministerial Code, in particular, the seven principles of public life.