



## Managing conflicts of interest

### What are the main aims of this policy?

1. The main aims of this policy are to:
  - a. Underscore the importance of conflicts of interest being promptly declared and properly managed throughout the OfS.
  - b. Set out what is likely to amount to a conflict of interest.
  - c. Explain why the policy is important and the main negative consequences of conflicts of interest not being declared and managed.
  - d. Explain how declarations about conflicts of interest should be made.
  - e. Indicate the main ways in which conflicts of interest may be managed.

### Who does the policy apply to?

2. This policy applies to all of the following persons:
  - a. members of the OfS;
  - b. members of OfS committees (including committees that are referred to as panels);
  - c. members of advisory groups or panels which are not constituted as committees;
  - d. OfS directors; and
  - e. any members of OfS staff<sup>1</sup> who perform roles that involve doing one or more of the following on matters relating to, or otherwise connected with, the OfS's functions:
    - i. making any type of decision;
    - ii. conducting any type of assessment;
    - iii. providing advice; and/or
    - iv. making any type of recommendation.

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<sup>1</sup> Including temporary or seconded in staff.

## What may amount to a conflict of interest?

- For simplicity and legal consistency, the OfS will apply the established (objective) legal test on apparent bias in order to determine whether a conflict of interest may exist. This means that a conflict of interest will be treated as existing in circumstances where a “fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the [person in question] was biased”. Declaring a conflict of interest is not a judgement about the intentions of individuals, it is about being open and transparent to ensure that appropriate arrangements to manage the conflict are put in place.
- The table below sets out three illustrative and non-exhaustive examples of circumstances where a conflict may be treated as existing:

Circumstances / nature of interest	Example of conflict
A person has any type of ongoing and/or planned future financial, personal, or professional relationship or connection with an English higher education provider (including any of its staff or students) or a body representing the interests of such providers (including its staff).	Any type of OfS discussion or decision that is likely to have a positive or negative impact on any English higher education provider.
A person has any type of ongoing and/or planned future financial, personal, or professional relationship or connection with a provider, or proposed provider, of goods and services to the OfS (including any of its staff).	Any type of OfS discussion or decision that is likely to have a positive or negative impact on the provider of goods and services.
Any type of ongoing and/or planned future financial, personal, or professional relationship or connection with an organisation (including any of its staff) which has aims or objectives relating to English higher education.	Any type of OfS discussion or decision that is likely to have a positive or negative impact on any English higher education provider.

## Why is compliance with this policy important?

- If conflicts of interest are not declared and properly managed, there is a credible risk that any decisions tainted by the conflict of interest could be successfully challenged before the courts on public law or common law fairness grounds, or complaints against the OfS are upheld by the Parliamentary and Health Services Ombudsman. This could therefore lead to OfS decisions being overturned (and therefore needing to be retaken), the OfS having to pay legal costs or compensation, and damage to the public trust in the OfS.

## Who is responsible for declaring conflicts of interest?

- The OfS generally expects individuals within the scope of this policy to proactively consider whether matters relating to their circumstances could potentially amount to a conflict of interest and, if so, reach their own judgement about when it may be appropriate to declare that interest in accordance with the practical arrangements set out below.

7. However, members of the OfS, directors, and OfS staff may also proactively ask individuals about whether any matters relating to their circumstances could potentially amount to a conflict of interest at any time. For example, where an individual has any ongoing employment or personal relationship with a higher education provider or its staff, the OfS would generally expect the individual to adopt an increased level of transparency with the OfS to facilitate consideration of potential conflicts of interest, and the OfS may also proactively ask that individual about such potential conflicts of interest.

## **What are the practical arrangements for declaring conflicts of interest?**

8. Board members and members of OfS committees and panels should normally declare any matter which could potentially amount to a conflict to the Corporate Governance Manager. However, bespoke arrangements may be made from time to time and, where this is the case, board members and members of committees and panels will be informed of the different arrangements.
9. OfS directors are responsible for declaring any matter which could potentially amount to a conflict to the OfS chief executive.
10. For any members of staff at the OfS who come under the definition in paragraph 2e, interests should be declared to the relevant director and the OfS corporate governance team.
11. Where any individual identifies that any new or existing matter which could potentially amount to a conflict is relevant to the business of a particular meeting, the OfS would expect that individual to proactively raise the potential conflict as soon as possible to the person chairing or leading the meeting.
12. Where it is decided that a reported matter does constitute a conflict of interest that requires managing, that interest for board members and directors may be published on the OfS website.
13. If an individual is in doubt about whether to report a conflict they should seek advice from the Corporate Governance Manager.

## **How might conflicts of interest be managed?**

14. Where a matter has been determined to amount to a conflict of interest that requires managing, depending on the scope and materiality of the conflict, the range of options available to the OfS in seeking to manage that conflict include:
  - a. Excluding, preventing or limiting the relevant person from:
    - i. Being responsible for decision-making, including as part of a collective decision-making process (for example, depending on the circumstances, this could be decision-making that relates to: (a) only a particular higher education provider; (b) a class of higher education providers, or (c) all higher education providers).
    - ii. Being involved in recommendations or discussions relating to decision-making.
    - iii. Having access to papers and advice related to the subject matter that relates to the scope of the conflict.

- b. Encouraging the relevant person to terminate an external relationship or connection (e.g. by resigning from a position of employment held at a higher education provider).
  - c. Encouraging the relevant person to resign from their employment or appointment with the OfS.
  - d. In the extreme, seeking to terminate a contract of employment, committee appointment or recommend to the Secretary of State that an appointment is terminated.
15. The action taken will need to be appropriate for the particular circumstances and dependent on the position the relevant person holds and their degree of influence over the discussion and decision-making process.

## Who determines the actions that are taken to manage any conflict of interest?

Relevant person with a conflict	Envisaged arrangements for final judgement about any actions
Chair of OfS	A collective decision of the deputy chair of OfS and the chief executive (where appropriate, taking advice from the Permanent Secretary)
OfS board member (other than the chair, chief executive, director for access and participation and the director for freedom of speech and academic freedom)	A collective decision of the chair of OfS and the chief executive or director of resources and finance (where appropriate, taking advice from the Permanent Secretary)
OfS committee or panel member	In addition and without prejudice to any bespoke delegation arrangements that apply to any committees or panels, a collective decision of the chair of committee or panel and the chief executive or director of resources and finance
OfS chief executive	A collective decision of the chair of OfS and director of resources and finance
OfS director	Chief executive
OfS staff	Chief executive or director responsible for the member of staff

## Relationship with other policies and guidance on conflicts of interest or bias

16. This policy is intended to constitute the OfS's main and overarching policy on conflicts of interest and bias. The substantive text set out paragraph 3 in this policy takes precedence over any other test or explanation of what may amount to a conflict of interest or bias contained in any other policy or guidance adopted by the OfS.
17. Without prejudice to any alternative arrangements for notifying persons about conflicts of interest or for persons authorised to make decisions about the appropriate way of managing conflicts of interest, any other policy or guidance made or adopted by the OfS in respect of conflicts of interest or bias is to be interpreted and applied consistently with the substantive test set out in paragraph 3 of this policy.

## Further advice and guidance

18. Further advice on conflicts of interest is available for board members from the Corporate Governance Manager.
19. OfS staff should speak to the relevant director in the first instance. A director should seek advice from the chief executive, Director of Resources and Finance or the Corporate Governance Manager as appropriate.

## Document history

3 July 2023	Approved by the board. Scope of the policy includes all individuals: board, committee and panel members, staff and assessors.
July 2026	Next review due