

Annex A

Guidance on Conflicts of Interest

What is a Conflict of Interest?

In general terms, a conflict of interest exists when an organisation or an individual has competing interests, which might impair its or their ability to make objective, unbiased decisions.

Conflicts of interest can arise in a variety of contexts. Our Conditions cover conflicts of interest that affect (or could affect) an awarding organisation's ability to develop, deliver and award regulated qualifications in a way that complies with its Conditions of Recognition. We define the term 'Conflict of Interest' in Condition J1 accordingly:

A Conflict of Interest exists in relation to an awarding organisation where –

- (a) its interests in any activity undertaken by it, on its behalf, or by a member of its Group have the potential to lead it to act contrary to its interests in the development, delivery and award of qualifications in a way that complies with its Conditions of Recognition,
- (b) a person who is connected to the development, delivery or award of qualifications by the awarding organisation has interests in any other activity which have the potential to lead that person to act contrary to his or her interests in that development, delivery or award in a way that complies with the awarding organisation's Conditions of Recognition, or
- (c) an informed and reasonable observer would conclude that either of these situations was the case.

The three parts of this definition are interrelated.

Part (a) of the definition covers Conflicts of Interest that relate to the awarding organisation. That is, situations where activities carried out by the awarding organisation itself (or on its behalf, or by a related company) might impair its ability to make objective, unbiased decisions about how best to develop, deliver or award its qualifications.

Similarly, part (b) covers Conflicts of Interest that relate to the individuals [connected to](#) any part of the development, delivery or award of its qualifications. That is, situations where a particular individual's interests might impair their ability to make the objective, unbiased decisions that are necessary to ensure the awarding organisation can develop, deliver and award its qualifications in line with the Conditions.

Part (c) extends our definition of Conflict of Interest to include situations where an observer would perceive that an awarding organisation or individual has such a competing interest.

What requirements must an awarding organisation meet?

Condition A4 imposes a number of obligations on awarding organisations in relation to Conflicts of Interest. Awarding organisations must:

- identify and monitor all Conflicts of Interest which relate to it, as well as any scenario in which it is reasonably foreseeable that any such Conflict of Interest will arise in the future (Condition A4.2)
- establish and maintain an up to date record of all Conflicts of Interest which relate to it (Condition A4.3)
- take all reasonable steps to ensure no Conflict of Interest which relates to it has an Adverse Effect (Condition A4.4)
- in any case where a Conflict of Interest nonetheless results in an Adverse Effect, take all reasonable steps to mitigate the Adverse Effect as far as possible and correct it (Condition A4.5)
- establish, maintain and comply with a written Conflict of Interest policy (Condition A4.8)

The Conditions do not impose a general prohibition on an awarding organisation operating when Conflicts of Interest exist. Rather, they require awarding organisations to identify, monitor and manage those Conflicts of Interest with a view to preventing any Adverse Effect that might arise from them, and to minimise any Adverse Effect should one nonetheless occur.

However, some of the Conditions do prohibit certain Conflicts of Interest in specific circumstances:

- Condition A8.3 prohibits anyone with a personal interest in the outcome of an investigation into potential malpractice from carrying out investigations of suspected or alleged malpractice
- Condition G4.6 prohibits anyone with a personal interest in the outcome of the investigation into potential breaches of confidentiality from carrying out investigations of suspected or alleged breaches of confidentiality
- Condition I1.2 prohibits anyone with a personal interest in the decision being appealed from taking decisions on that appeal

In addition, Conditions A4.6 and A4.7 require awarding organisations to take all reasonable steps to avoid Learners being assessed by anyone with a personal interest in the outcome of the assessment, and – where it is unavoidable – to ensure any part of the assessment they do conduct is scrutinised by someone else who does not have such an interest.

What is a personal interest?

A personal interest is a Conflict of Interest that relates to a particular individual. All Conflicts of Interests that fall under part (b) of our definition are personal interests, as are any perceived Conflicts of Interest under part (c) that relate to individuals, rather than to the awarding organisation itself.

A personal interest can be financial or non-financial in nature.

In the situations covered by Conditions A4.6-A4.7, A8.3, G4.6 and I1.2, the relevant questions to ask are:

- Does the individual carrying out the assessment, investigation or appeal have any reason or incentive to make anything other than a decision in line with the relevant Conditions?
- Would an informed and reasonable observer conclude that such a reason or incentive exists?

Examples of situations where Conflicts of Interest and personal interests exist or could be perceived to exist

Example 1

An awarding organisation produces equipment or materials (such as textbooks) used in the teaching or assessment of its qualifications.

A Conflict of Interest arises here because the awarding organisation's decisions and actions in relation to its qualifications might also affect those other activities. For example, a decision to revise the content of the qualification might also create a commercial opportunity for the awarding organisation to sell new equipment or materials to Centres offering its qualifications.

In turn, consideration of these other commercial interests could impair – or be perceived to impair – the awarding organisation's ability to make objective, unbiased decisions about how best to develop, deliver or award its qualifications.

Example 2

An awarding organisation is part of a Group, and another company within that Group operates a number of Centres delivering its qualifications.

A Conflict of Interest arises here because the awarding organisation's decisions and actions in relation to its qualifications will also affect that company – for example, by imposing costs or administrative burden.

In turn, consideration of the interests of this related company could impair – or be perceived to impair – the awarding organisation's ability to make objective, unbiased decisions about how best to develop, deliver or award its qualifications.

In particular, the awarding organisation might have – or be perceived to have – an incentive not to uphold qualification standards if that would advance the commercial interests of the other Group company.

Example 3

Centre staff carry out assessment on behalf of an awarding organisation. The Centre's main source of income is payments based on the number of students who pass the qualification. The pay and reward of Centre staff is directly linked to the Centre's overall income.

A Conflict of Interest arises here because an individual Assessor has a financial incentive to ensure that as many students as possible pass the qualification, as this will maximise both the Centre's and their own income.

That incentive could impair – or be perceived to impair – an Assessor's ability to make unbiased judgements about the extent to which a student has demonstrated the required knowledge, skills and understanding. In turn, that makes it less likely that an Assessor will in fact make an objective and unbiased decision.

Indeed, in this case Centre staff would most likely have a personal interest in the outcome of assessments for any students at their Centre, and Condition A4.6 would require the awarding organisation to take all reasonable steps to avoid using them as Assessors for those students. If this were unavoidable, Condition A4.7 would require any such assessment to be scrutinised by another person.

Example 4

An awarding organisation has received an allegation of malpractice, and is deciding who should investigate it.

Condition A8.3(b) requires investigators to be 'persons of appropriate competence'. In this case, one individual who meets that requirement is the Head of Centre.

Condition A8.3(b) also requires investigations to be undertaken by 'persons ... who have no personal interest in their outcome'. Whether or not the Head of Centre has such a personal interest here will depend on the facts of the case. It will be a matter of judgement for the awarding organisation.

Examples of situations where a Head of Centre has a clear personal interest in the outcome of an investigation would include cases where:

- the Head of Centre is accused of, or potentially implicated in, the alleged malpractice,
- the Head of Centre is related to, or has a close personal relationship with, any of the individuals accused of malpractice, and
- a finding of malpractice would have direct financial consequences for the Head of Centre (for example, if it would place a performance-related bonus, or their job, at risk).

Other cases will be less clear-cut, and awarding organisations may need to consider factors such as the nature, scale and scope of alleged or suspected malpractice when deciding whether or not the Head of Centre can conduct the investigation.

In broad terms, a Head of Centre is more likely to have (or be perceived to have) a personal interest in the outcome of an investigation where the alleged malpractice is more cultural or systemic.

Another factor awarding organisations may need to consider is the potential consequences of a finding of malpractice for the Centre (and, by extension, the Head of Centre). Such findings can affect the outcomes achieved by Learners, and the Centre's results in Government performance tables. They can also result in disciplinary action against Centre staff, which might disrupt the running of the Centre – significantly so if multiple staff members were implicated in the malpractice.

The greater the potential impact on the Centre, the more likely it is that the Head of Centre will have (or be perceived to have) a personal interest in the outcome of a particular investigation.

There will also be situations where a member of the Centre's staff who is not a Head of Centre could conduct an investigation. They must also meet the requirements of Condition A8.3(b). Many of the factors outlined above in respect of whether Heads of Centre have a personal interest in the outcome of an investigation may similarly be relevant for other Centre staff. Whether or not an individual has (or would be perceived to have) a personal interest will be a matter of judgement for the awarding organisation.

Example 5

An awarding organisation uses a large pool of markers for its assessments. Some of the more experienced markers also act as members of a panel which makes the final decision in respect of the outcome of appeals.

One appeal involves a Learner whose work was originally marked by one of the panel members. A Conflict of Interest arises here in relation to that panel member – because it is their own marking decisions that are being scrutinised on appeal.

That also means the panel member would have a personal interest in the decision being appealed, because the appeal would determine whether or not those marking decisions were appropriate.

As a result, Condition I1.2(b) would prohibit that panel member from taking decisions on this appeal. They would, however, be permitted to adjudicate appeals for other Learners whose work they had not marked.

In order to comply with Condition I1.2(c), the appeals panel would also need to include at least one decision maker who was not one of the awarding

organisation's markers (and was not connected to the awarding organisation in some other way).

Example 6

An awarding organisation pays individuals who determine appeals.

A Conflict of Interest arises here because the fact that the individual is paid by an awarding organisation creates – or could be perceived to create – an incentive for the individual to make decisions on appeal cases that favour the awarding organisation.

In this instance, a Conflict of Interest is largely unavoidable. It may be unrealistic to expect the awarding organisation to use unpaid volunteers to determine appeals.

Our rules reflect this. The fact the awarding organisation pays the decision maker does not necessarily create a personal interest in the decision being appealed, so it is not prohibited by Condition I1.2(b).

Rather, Condition A4 requires the awarding organisation to monitor and manage that Conflict of Interest to prevent it having an Adverse Effect, and to mitigate and correct any Adverse Effect that nonetheless occurs.