

OFFICE OF THE OMBUDSMAN FOR BERMUDA

CONFLICT OF INTEREST POLICY

Purpose

The Office of the Ombudsman (“Office”) recognises the importance of identifying actual and potential conflicts of interest that may arise as we carry out the work of our office. This Policy provides a guide for identifying and a framework for monitoring and managing actual potential conflicts of interest that could arise between the Office’s employees and its service-users, suppliers and other stakeholders.

Policy Statement

The Office is committed to the highest standards of ethical conduct and integrity. The Office’s effectiveness depends on its reputation for being open, fair and impartial and it is essential that we are scrupulous in maintaining this reputation.

As part of this commitment, the Office seeks to ensure that it is open and clear about any actual or potential conflicts of interest between our work and other interests and relationships.

Authority

This Policy has been issued by the Ombudsman.

Application & Scope

This policy applies to all officers and employees of the Office including those on either permanent or fixed term contracts and those on secondment from other organisations.

Temporary agency workers, contractors, consultants and advisers working at the Office, in line with the principles and guidelines laid out in this policy, are required to declare any actual, or perceived, conflict of interest pertaining to the work they have been engaged to undertake.

A conflict of interest may arise from an employee’s own interests or activities or from that of a member of their family or an individual with whom they have a close personal relationship.

Responsibility for identifying and declaring an actual or potential conflict of interest rests with the employee.

Statutory Obligations

In the procurement of goods and services for the Government, all Public Officers must adhere to the Government's *Code of Practice for Project Management and Procurement* (2nd July 2018) ("Code of Practice") as issued by the Director of Project Management and Procurement under section 32B(4) of the Public Treasury (Administration and Payments) Act 1969. This Policy should be read with the Code of Practice, the Bribery Act 2016, the Financial Instructions, Conditions of Employment and Code of Conduct and Good Governance Acts of 2011 and 2012.

Conflict of interest definitions and examples

Conflict of interest

This refers to a situation when someone has, or is perceived to have, competing professional or personal obligations, or personal or financial interests, that would make it difficult to fulfil their duties fairly or effectively, or which could influence, or may be perceived to influence, the Office's actions or the independent exercise of its judgements. It is important to note that for the purposes of the Office's procurement practices, the Code of Practice defines conflict of interest as interfering or impacting the independent exercise of judgment in Government's best interest as the Office is funded by Government funds.

Even where an employee has acted impartially, a perceived conflict of interest can be damaging to the Office's reputation. This policy covers 'actual', 'perceived' and 'potential' conflicts of interest.

There are four primary types of activity that might lead to a conflict of interest: secondary employment; business interests; personal interests/relationships; and previous employment. A conflict of interest may also arise if an employee is party to a complaint made to the Ombudsman or an authority under our jurisdiction.

Secondary/other Employment

'Secondary employment' is a job, other than that undertaken with the Office, whether paid or unpaid and on any type of contractual arrangement or any type of self-employment. The carrying out of public duties does not count as a second job, nor do outside interests such as personal investments or being a member of a committee, although these may constitute a conflict of interest under a different category.

The Office does not prohibit employees from taking secondary employment and will not unreasonably withhold permission for an employee to do so, provided that the second job does not interfere, and is not likely to interfere, with the employee's job performance at the Office or represent a conflict of interest.

Where an employee is seeking to take up secondary employment, in exceptional circumstances, the Office reserves the right to withhold permission for this if it is identified as a conflict because:

- the job is with a service-user, authority, supplier or other stakeholder;

- the job or the type of job involved might represent a conflict of interest or risks reflecting poorly on the reputation of the Office;
- the hours of work would be likely to interfere with the employee's performance, attendance and/or timekeeping; or
- the total number of hours worked in both jobs would be likely to impact on health and safety.

If it arises that an employee is already carrying out a second job and their duties have changed, the employee should discuss this with the Manager, including steps and timescales for resolving any conflict of interest.

Business Interests

There is potential for conflict of interest where an employee, their partner or a family member has a direct or indirect business/financial interest (such as investment, employment or the expectation of future employment) in an institution which:

- is under investigation or is linked to an investigation conducted by the Office;
- is within the Office's jurisdiction; or
- transacts business or has any kind of commercial contract with the Office.

The '*Gifts and Hospitality*' section below sets out further information regarding gifts and/or hospitality which may be received as a result of a business interest.

Personal interests including political activities

This may arise where an employee, their partner or a family member has a close relationship with a stakeholder, contractor etc of the Office or a personal interest which could be seen to compromise the Office.

Relationships at work may also be a conflict of interest. Examples of this may be where an intimate or close (e.g. family) relationship between two employees could be perceived as conflicting, for instance, if one manages the other. In such circumstances the potential conflict must be disclosed.

The Office places a restriction on employees' engagement in political activities where it may compromise, or be seen to compromise, their impartiality. Employees may not stand as candidates in parliamentary elections and require prior permission from the Office to canvass on behalf of candidates or publicly express views on matters of political controversy.

Previous Employment

Whilst previous employment does not in itself represent a conflict of interest, a conflict may subsequently arise if an employee is assigned a case that relates to a past employer.

Should this occur, the employee should notify the Deputy Ombudsman as soon as the potential conflict is identified and the issue discussed to decide whether it might be perceived as a conflict of interest.

Complaints to the Ombudsman or an Authority under Our Jurisdiction

Where an Office employee is involved in bringing a complaint to the Ombudsman about an authority under our jurisdiction, he or she should first discuss this with the Deputy Ombudsman prior to the complaint being submitted or referred to us.

With regard to complaints made to the Office by employees or their close relatives, the following steps should be taken.

- A clear, agreed plan for the management of the complaint should be drawn up. The Deputy Ombudsman should discuss this with the Ombudsman.
- The plan should identify which individuals will deal with the preliminary assessment and (if needed) further assessment of the complaint. The plan must ensure that the employee has no access to the complaint and that it is not discussed with them. For example, in the event that the employee is in the team that would normally have dealt with the case, then the employee should not be included in any of the discussions on the complaint.
- The plan should be agreed by the employee, the Deputy Ombudsman and the relevant investigation officers.
- Where the complaint is made by someone other than a member of staff (for example a close relative) then we should ensure that the complainant is aware of the conflict and is told that the member of staff concerned will not be able to access details of, or be involved in the consideration of, the complaint.
- If possible it should be arranged for the employee to be barred from accessing the electronic and physical case records (which means that the complainant would not be able to access any documents about their case).
- If it becomes necessary to make substantive enquiries of the authority complained about (that is, beyond contacting them at preliminary assessment to check if a complaint is premature) then the Investigation Officer dealing with the case should contact the Authority complained about. The Investigation Officer should advise them that the complainant is an employee and of the steps that we have taken to prevent any conflict or potential conflict of interest.
- If it is determined that the complaint merits investigation then the plan should be reviewed and specific handling arrangements agreed with the relevant Investigation Officer (including which investigator will deal with the case).
- In all cases the plan should be monitored to ensure that it is fit for purpose and should be subject to a review by the Deputy Ombudsman at least every three months. The Ombudsman will also monitor all mitigation plans on a quarterly basis and should be informed when the case has been closed.

Gifts and Hospitality

Bermuda's Bribery Act 2016 (the "Act") provides a very general definition of bribery. Section 3 above makes it an offence for a person to offer, promise or give a financial or other advantage to another person in order to induce or reward a person to perform improperly relevant function or activity.

Section 4 of the Act makes it an offence for a person to request, agree to receive or accept a financial or other advantage for improperly performing a function or activity or as a reward for the improper performance of a function or activity.

Sections 5, 6 and 7 define 'Improper performance'. The Government's guidance note on the Act sets out that *improper performance means performance which amounts to a breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust. The offence applies to bribery relating to any function of a public nature, connected with a business, performed in the course of a person's employment or performed on behalf of a company or another body of persons.*¹

An offence can be committed even if the recipient does not know or believe that their performance of the activity or function is improper (s. 3(4)).

Monitoring

The Manager will monitor the implementation of this policy and will formally review this policy on an annual basis and at any time there is an update to the Code of Practice or other statutory or contractual obligations.

Roles and Responsibilities

The Ombudsman has overall responsibility for ensuring that the Office complies with the requirements of legislation on conflicts of interest and bribery. He is also responsible for making decisions in line with this Policy on areas which are brought to his attention by the Manager and the Deputy Ombudsman.

The Deputy Ombudsman is responsible for:

- overseeing the handling of an employee's complaint to our Office about an Authority under our jurisdiction (or the complaint of an employee's close relative); and
- advising employees when conflicts arise in the course of their case-management responsibilities.
- advising an employee on any actual or perceived conflict or possible conflict that may be created or perceived to be created when an employee takes up a new interest, activity, second job or relationship that may possibly create or be perceived to create a conflict of interest or if an existing one develops in such a way that it may become a conflict;
- alerting the Ombudsman of any conflicts or perceived that should be brought to his attention.

¹ Government of Bermuda, Ministry of Legal Affairs, "The Bribery Act 2016 Guidance about Procedures Which Relevant Commercial Organisations Can Put into Place to Prevent Persons Associated with Them from Bribing (Section 11 of the Bribery Act 2016)." Government of Bermuda, 8th June 2017. www.gov.bm/sites/default/files/BRIBERY-ACT-2016-Guidance-FINAL2.pdf.

The Manager is responsible for:

- monitoring the implementation of this policy to ensure that employees have the opportunity to update their personal record on conflicts of interest;
- formally reviewing this policy on an annual basis and at any time there is an update to the Code of Practice or other statutory or contractual obligations;
- alerting the Ombudsman of any conflicts or perceived that should be brought to his attention; and
- ensuring that the Office records and discloses, when necessary, any actual or perceived conflicts.

Individual employees are responsible for identifying and declaring an actual or potential conflict of interest, reporting it to the Manager and if required the Deputy Ombudsman and Ombudsman.