



# Getting it right

## *Managing conflicts of interest involving council employees*

### Introduction

Councils need the trust and confidence of the communities they serve to operate effectively. One way to maintain this trust and confidence is to effectively manage both perceived and actual conflicts of interest.<sup>1</sup>

Conflicts of interest can occur in all walks of life. Having a conflict of interest is not in itself a problem – what matters is how it is managed. This is particularly important when dealing with public money. Councils are spending their communities' money, so their communities deserve to have confidence that decisions are made impartially and for the right reasons.

In this article, we share our findings on how conflicts of interest of council employees, including the chief executive and staff, are managed across four councils. We did not look at how the conflicts of interest of councillors are managed.

Four councils of various size and location were selected as case studies to highlight good practice and areas for improvement. This work is part of a

wider programme, aiming to support public sector leaders and governors to actively promote and manage integrity in their organisations.<sup>2</sup>

We saw many examples of good practice. All four councils we looked at had a reasonably up-to-date and clear policy in place.

Most councils we looked at had processes in place for their employees to declare conflicts.

However, we saw situations where there were multiple, and sometimes conflicting, processes. It is important to consider how these processes work together as a system. We did not see evidence of policies and procedures being consistently applied to contractors, and we were concerned by a lack of guidance for assessing the seriousness of conflicts. Some councils tended to manage conflicts informally and without up-to-date or complete documentation.

*“it is important that organisations encourage behaviours and actions that put integrity at the core of how the organisation operates*

<sup>1</sup> Controller and Auditor-General (2020), *Managing conflicts of interest: A guide for the public sector*, Wellington, page 8.

<sup>2</sup> Controller and Auditor-General (2020), *Annual Plan 2020/21*, Wellington.



We saw some examples of councils considering how conflict of interest policies could be supported by a wider culture of integrity. There was also an acknowledgement that this culture needed to be led from the top, with senior leadership role modelling behaviour expected of employees.

Organisations need to have mechanisms to understand whether their systems for managing conflicts of interest are working effectively. We did not see enough evidence that councils were routinely monitoring and reviewing the effectiveness of their policies, processes, or procedures. Policies and procedures also need to be supported by training and ongoing internal communication.

In our view, governors have a role to play helping to ensure that there is appropriate assurance the systems supporting conflict of interest management are fit for purpose.

Our findings are arranged under three main components of effective conflict of interest management:

1. Having robust policies and procedures.
2. Promoting an ethical culture in an organisation.
3. Ensuring an understanding of how well conflicts of interest are being managed.

We hope that this information will be helpful to councils and other public organisations as they continue to build on their own work around conflict of interest management for their employees.

Our good practice guide looks at how to manage conflicts of interest in the wider public sector. This article is intended to build on that guidance.

## Policies and procedures – establishing the foundation

*Managing conflicts of interest can never be as simple as creating and enforcing a set of rules. Nevertheless, robust policies and procedures are a useful starting point.*<sup>3</sup>

Councils carry out a wide range of activities, engaging with many organisations and people to support their local communities. There is always a risk that conflicts of interest could arise for their employees. Policies and procedures that cover the main areas of conflict of interest management provide the foundation for effectively managing any conflicts.

<sup>3</sup> Controller and Auditor-General (2020), *Managing conflicts of interest: A guide for the public sector*, Wellington, page 23.

We looked at each of the councils' policies to assess their completeness, who they applied to, in what situations they apply, and whether they provide an effective basis for managing conflicts of interest.

## Policies and procedures should cover the essential requirements

Our guidance on managing conflicts of interest emphasises that policies need to be clear about who they apply to and to clearly define what a conflict of interest is.<sup>4</sup>

Policies and procedures should:

- state principles or values that emphasise the organisation's commitment to manage conflicts of interest;
- establish rules for the most important and obvious actions that people must or must not take;
- establish a mechanism for recording those types of interest that might give rise to conflicts;
- set out a process to identify and disclose instances of conflicts of interest, including how and to whom;
- set out a process for managing conflicts of interest, including who makes decisions, detailing the principles, criteria, or options that will be considered;
- provide avenues for training and advice; and
- provide a mechanism for handling complaints or breaches of the policy and specify the consequences of non-compliance.

All four councils we spoke with had organisational policies to help manage conflicts of interest. These policies had all been put in place or reviewed in the last four years.

We were pleased to see that the councils' policies considered the conflicts of interest of employees at all levels from chief executives through to frontline staff, acknowledging that all employees could potentially have conflicts of interest that would need to be managed.

All four councils' policies provided helpful explanations about what constitutes a conflict of interest, including definitions of actual and perceived conflicts. All policies provided examples of different types of conflicts.

<sup>4</sup> Controller and Auditor-General (2020), *Managing conflicts of interest: A guide for the public sector*, Wellington, page 25.

Three of the four councils had policies that made it clear how, and to whom, employees can disclose conflicts of interest and established rules for the most important and obvious actions that employees must or must not take.

Examples of rules include that employees must not:

- allow private interests to interfere with their employment duties or council business;
- use information that they obtain in the course of their duties to the advantage of themselves or any other person; and
- ask for or accept any benefit or advantage from persons who are in, or seek to be in, any contractual or other relationship with the council.

Each policy included a good level of detail about suggested mitigations to conflicts of interest. For example, one council provided the types of mitigation that might be appropriate in particular circumstances. These include:

- seeking consent of all other affected parties for the involvement of the employee;
- imposing additional oversight or review over the employee;
- withdrawing the employee from discussion or decision-making on a particular issue;
- excluding the employee from a committee or working group dealing with the issue;
- withholding certain confidential information or placing restrictions on access to information;
- transferring the employee (temporarily or permanently) to another position or project; and
- relinquishing the private interest.

In general, we were confident that the policies provided a firm foundation for managing conflicts of interest. However, there are opportunities for each of the councils to strengthen their policies. For example, only two of the policies we reviewed provided guidance on how to assess the seriousness of a conflict of interest declaration.

One council helpfully included the types of factors that should be included in a risk assessment for conflicts of interest. These included:

- the type or size of the employee's interest;
- the nature or significance of the particular decision or activity being carried out by the council;
- the extent to which the employee's interest could specifically affect, or be affected by, the council's decision or activity, or be perceived to do so; and
- the nature or extent of the employee's current or intended involvement in the council's decision or activity.

We also found that only one policy specifically referred to predetermination. Predetermination is the risk that as a decision-maker you have made up your mind about a matter before you considered all the evidence.

Although this is not technically a conflict of interest, it is a form of bias covered by our guidance and the underlying risk is the same – that people might perceive a decision-maker to be biased.<sup>5</sup>

We encourage councils to consider how our guidance on managing conflicts of interest could be applied to further strengthen their policies in the areas we have discussed.

### Multiple processes create greater risks

The four councils we looked at all have policies and procedures that encompass all employees. These give varying levels of guidance to employees about how to manage a conflict of interest.

However, councils operate in a complex environment. Over time, councils have developed additional processes for dealing with conflicts of interest to meet the individual needs of their many and varied functions.

Some of these practices are driven by external professional guidance or statutory or contractual requirements.

<sup>5</sup> Controller and Auditor-General (2020), *Managing conflicts of interest: A guide for the public sector*, Wellington, page 14.

For example:

- Procurement teams manage conflicts of interest informed by government procurement rules and guidelines.
- As building consent authorities, councils need to have a procedure for identifying and managing conflicts of interest in regulatory decision-making.
- Waka Kotahi NZ Transport Agency has specific forms to be completed that show consideration has been given to possible conflicts of interest before a transport project can be approved.

Adding to this complexity, we also saw evidence of larger project teams setting up their own unique conflicts of interest processes.

It is apparent that managing conflicts of interest can include a complex set of arrangements.

The different processes generally seem to be working well. Employees expressed confidence that the individual arrangements they have responsibility for, or are subject to, are generally fit for purpose and proportionate to the level of risk.

However, these assessments are carried out informally and in isolation from other functions. It was unclear to us how the councils knew whether conflicts of interest were managed consistently or how the different processes related to each other.

For example, some councils have multiple versions of declaration forms that essentially record the same information. There may be opportunities to consolidate this information.

We encourage councils to think about their whole conflicts of interest system to ensure that:

- the assumptions about risk are correct and that the controls reflect this;
- the different arrangements align with the organisational policy and procedures and do not impose conflicting or unenforceable requirements; and
- the different arrangements serve a distinct purpose, are not simply duplicate records, and are accessible to the right people at the right time.

### **Contractors should be considered**

Employees and independent contractors have different legal rights and responsibilities. A contractor is not necessarily obliged to follow the council's policies and procedures unless the contract requires

this. In situations where people shift between being a council employee, a consultant, and/or a contractor with the council, there might be a greater risk of perceived and actual conflicts of interest.

Employees at one of the councils were concerned that contractors doing work for the council were not asked to declare their interests.

Excluding contractors from conflicts of interest policy or not taking them through conflict of interest processes presents two risks for councils. First, if processes were not followed, the council cannot assure the public that the decisions to contract people or organisations were free of any perceived or actual conflict of interest. Secondly, after people or organisations are contracted or engaged, the council might not be able to ensure that the contractors' conflicts of interest continue to be identified and managed appropriately.

We encourage all councils to consider requiring all contractors or consultants to comply with their conflict of interest policy even though they are not employees.

## **Building the right culture**

As we stated earlier, having robust policies and procedures is not enough to support effective conflict of interest management. Organisations also need to consider how they provide the right culture to support employees to appropriately respond to conflicts of interest. We looked at how the four councils are working to encourage the right behaviour.

### **Conflicts of interest are an integrity issue**

Thinking of conflicts of interest as an integrity issue helps employees understand why it is so important.

We were encouraged to see that each of the four councils we looked at identified conflicts of interest as an area they are actively considering as part of a wider range of integrity issues.

It was evident to us that the four councils understand how internal communications, ethical leadership, and training can all influence the behaviour of employees to follow their policies.

## The benefits of aligning policy with values

We wanted to know whether the conflict of interest policies we examined were aligned with organisational values and principles.

Alignment between these values and conflicts of interest policies reinforces the organisation's commitment to a culture of integrity.

We were pleased that two conflict of interest policies we reviewed showed a clear link between the policy and the organisation's

“we encourage all councils to consider the benefits of aligning their conflicts of interest policy with their organisational values.”

values. For example, one council's policy clearly states that it is based on principles of integrity, honesty, transparency, openness, independence, good faith, and service to customers. This was aligned to the values of the organisation and indicated a proactive and intentional approach to foster integrity in the organisation more generally. Making connections between organisational policies and values is an important part of shaping expectations for behaviour.

We encourage all councils to consider the benefits of explicitly aligning their conflicts of interest policy with their organisational values.

## Ethical leadership drives a culture of integrity and trust

*Compliance procedures that appear impressive on their face are meaningless if ... not fully endorsed and implemented by senior management. This remains true irrespective of whether the lack of support is a result of ignorance, complacency, turning a blind eye, or actively encouraging misconduct in the course of business. A consistent and comprehensive approach from those in charge will send a clear message that the organisation takes its corruption prevention procedures very seriously and encourage staff and customers to do the same.<sup>6</sup>*

Compliance with conflict of interest policies is the responsibility of individuals at each level of an

organisation. However, setting the “tone from the top” is critical to fostering a culture of integrity.

When we assessed how each council managed conflicts of interest, we considered the commitment of senior leadership and how this made a difference to how conflicts of interest were managed.

“where senior leaders did not set the tone or lead by example it was harder to identify a strong culture and commitment to integrity”

We saw examples of councils developing a strong culture of “doing the right thing” with conflicts of interest. This included leaders setting clear expectations and being role models for the behaviours they expected of their employees, such as senior managers being transparent with employees about their conflicts of interest or using their conflicts of interest as examples in meetings with employees.

We also saw examples of senior employees stepping away from decision-making or financial delegations where they have a conflict and leadership meetings beginning with declarations of interest.

In our view, where senior leaders did not set the tone or lead by example it was harder to identify a strong culture and commitment to integrity, including managing conflicts of interest.

In one council, we heard that the lack of participation by senior management in other integrity processes was seen by staff as a sign that these types of policies and procedures did not apply to everyone equally. This highlights the importance of the example set by the leadership team in matters of integrity.

## A safe way to call out wrongdoing provides an early warning system

The culture of an organisation affects the day-to-day decisions people make as they go about their job.

Ensuring that employees feel safe and confident about calling out wrongdoing in an organisation is an important part of building an ethical culture. A culture of speaking up about integrity concerns, such as conflicts of interest, is helpful because it provides an early warning system for potential issues. Employees are often best placed to observe wrongdoing.

One of the councils we looked at had provided a way for employees to speak up anonymously. In our view, this is an important step.

<sup>6</sup> Ministry of Justice, *Saying No to Bribery and Corruption – A Guide for New Zealand Businesses*, Wellington, page 8.

It is important to set up multiple avenues to report concerns and to ensure that people know about them. It is also important to establish an organisational culture that encourages their use. Designing these mechanisms with employees could also help to ensure that the policies and procedures that support speaking up will be trusted and used by employees.

We are concerned that employees at one council were not confident that disclosures would be treated with the confidentiality and sensitivity required. In short, any mechanisms put in place for employees need to be backed by a culture that supports speaking up.

We encourage the leadership teams of councils to make sure adequate processes supported by a strong culture are in place to facilitate employees speaking up, including anonymity where appropriate.

### **Employment processes provide an opportunity to consider interests**

Making sure that there are opportunities for new employees to declare their interests at the time of accepting or commencing employment is an effective means of introducing new employees to policy and practice. It is also an opportunity to demonstrate how policies and procedures relate to the culture of the organisation. All four councils we looked at are doing this.

We were also encouraged to see that all four councils had considered how education about conflicts of interest could be integrated into employment processes. This included, for example, information on the conflicts of interest policy being included in “on-boarding” packages for new employees. Other induction processes also included information on management of conflicts of interest.

One council has a two-week induction programme that incorporates management of conflicts of interest. This includes spending time with people managing conflicts of interest, training in the systems used to manage and document conflicts of interest, a policies session, a video, and a quiz.

Although these approaches are positive, there is potential for other councils to use the employment process to provide more in-depth information about managing conflicts of interest.

We encourage councils to ensure that the information provided to new employees is sufficiently detailed and understood. Councils would benefit from asking for employees to confirm their understanding of conflicts of interest policies and procedures.

### **Training is a critical tool**

In our view, training is a critical tool in assisting employees to identify and disclose conflicts of interest. It also supports employees to understand what actions might be taken to avoid and resolve them. Regular refresher courses are important to maintain this awareness.

We saw examples of conflict of interest training being made available to certain areas of the councils we looked at where functions were seen to be at higher risk, had financial delegations, or decision-making authority. For example, we saw certain functions, such as Procurement and Planning, receiving role-specific training that included conflicts of interest training.

Some of the councils had taken advantage of broader training on fraud awareness through consultants, which they found helpful.

Cost can be a consideration, which limits who has access to the training. We were told about examples where the number of staff receiving the training was limited even though all staff would have benefited from it.

Overall, we found training was limited in the four councils. Outside of information provided at induction, training occurred intermittently, and it did not necessarily reach all employees. Employees were aware of what a conflict of interest is. However, we found variable understanding of what needs to be declared.

All four councils were aware that a strong training programme and regular refresher courses were needed so that conflicts of interest could be managed effectively. All four councils said that improved training would help improve how they managed conflicts of interest. We agree with this and suggest it be made a priority by all councils.

### **Regular internal communication keeps conflicts of interest top of mind**

Messages about any integrity issue need to be clear and concise. Developing messages in conjunction

with employees is a means to ensure that the message connects with them.

The most effective messaging we saw about conflicts of interest included concepts that addressed employees' concerns. For example, we saw messaging that reassured employees that conflicts of interest are a regular part of life and the important thing is how they are managed.

In our view, effective messaging also included information about keeping employees and the organisation safe. This helps alleviate concerns that employees could be negatively affected by declaring a conflict of interest. This reflected that the council had taken time to seek the insight of employees, ensuring that messaging spoke to their concerns, and in this way encouraged them to take action.

Regular internal communications are also important in managing integrity issues well. This keeps the issue front of mind. Without constant visibility there is a risk that despite being informed about conflicts of interest, employees will not necessarily be alert to applying the policy day to day.

We heard and saw examples of different ways to share messages about conflicts of interest. This included employees' meetings, intranet pages, and opportunities for smaller groups to come together voluntarily to discuss particular issues.

Although we saw some good work, more could be done by most of the councils we looked at to ensure that messaging includes the potential concerns of employees and is regular and accessible. Where messaging was not regular, employees felt conflicts of interest were not always top of mind. Some councils were also aware that their internal communications to employees required improvement.

### Clearly defined roles are beneficial

In our view, having clearly defined roles in managing conflicts of interest is beneficial.

One of the councils we looked at had a member of the leadership team in an oversight role. The person in this role was able to co-ordinate the management of conflicts across different business units. Importantly, employees also knew they had someone to go to about any aspect of managing conflicts of interest.

*“training is a critical tool in assisting employees to identify and disclose conflicts of interest*

One of the councils divided responsibilities for different aspects of conflicts of interest between different business units. For example, while the maintenance of the annual interests register was the responsibility of one unit, the training and communication was the responsibility of another, and internal monitoring of conflicts of interest was done by a third group. It was unclear how the different functions interacted.

*“there is an opportunity for technology to be used further to address some of the complexities in managing conflicts of interest*

We consider councils could benefit from ensuring that the senior leadership team can bring the different arrangements together to form a complete view of the various conflicts of interest functions. Although it is important that all senior leaders are involved in managing conflicts of interest, there might also be value in appointing a dedicated member of the senior leadership team to oversee all aspects of conflicts of interest. This signals that managing conflicts of interest is a priority and supports the delivery and monitoring of good practice.

### Technology can be used to help manage conflicts of interest

Technology can be used to support conflict of interest management by making it easier for employees to put conflict of interest policies into practice.

We saw some good examples of technology being used to make it easier for employees to do the right thing:

- Automatic flagging was used in a purchase order system that required employees to confirm that there were no conflicts of interest. Where a conflict of interest was confirmed, the system would not let the employee proceed further and referred them to their manager to resolve the matter.
- The act of declaring an interest was made more straightforward by having a reminder email link directly to the declaration system rather than requiring the user to fill in a paper form.
- Employees' access to sensitive information was appropriately restricted by using security settings so that there is a smaller group of people who would have potential conflicts.

We also saw evidence of technology providing more options for training and communication. For

example, videos were used by leadership teams as a medium for communication on conflicts of interest. Integrating conflicts of interest into these mediums is currently being considered by some of the councils. In another council email, reminders were used for annual conflicts of interest declarations.

Over time, councils have developed a number of processes for dealing with conflicts of interest in their many and varied functions. Councils could consider how technology can help align separate processes and reduce duplication. Linking conflict of interest registers across the organisation to one central register, for example, might be one way of achieving this.

## Knowing that the system works well

How can a council know how well it is managing conflicts of interest? Managers and governors need assurance that policies and procedures are working. Good information is key to providing that assurance.

*“adopting a systematic approach to reviewing systems and processes would support continuous improvement*

None of the councils we looked at were systematically checking how effectively they manage employees' conflicts of interest. Nor were they collecting the types of information needed to assist them to do this.

We believe there are a number of things that councils can do better to monitor the effectiveness of policies.

## A risk assessment can provide important insights

From our integrity work, we know the importance of building an understanding of integrity risks. This is key to ensuring that the appropriate policies and controls are in place.

In our view, a conflict of interest risk assessment could help councils manage the complex set of arrangements for conflicts of interest. A risk assessment can help to determine whether appropriate policies and procedures are being applied to each function of the organisation. A risk assessment could also identify any gaps across the

organisation where conflicts of interest management is less effective.

Ultimately, this would give management a clearer view of how conflicts of interest are dealt with and a starting point for monitoring and reporting.

We saw evidence that councils have included conflicts of interest when considering wider organisational risks. For example, conflicts of interest were discussed by some audit and risk committees as a subset of wider risks being considered.

*“a conflict of interest risk assessment could help councils manage the complex set of arrangements for conflicts of interest*

However, a specific conflicts of interest risk assessment had not been considered by any of the four councils. In our view, this means that they might not have the detailed information they need to provide effective oversight of their system for managing conflicts of interest.

We encourage councils to consider how they can use conflicts of interest risk assessments to strengthen their oversight.

## Documentation protects everyone

Documenting the way conflicts of interest are being managed is essential.

Documentation protects both the organisation and the individual. It provides transparency for employees and means that expectations are clear. It also provides senior leaders with the information they need to be assured that processes are being followed.

All four councils were documenting the interests of their employees. We saw evidence that employees were required to regularly complete and submit a declaration listing personal interests. Although this is an important step, councils also need to clearly identify when these interests become a conflict and develop processes to support this.

We saw at least two councils clearly document conflicts of interest along with their mitigations. Those councils that did had a record that demonstrated both the individual and the organisation had considered the risks and taken the



appropriate steps to manage them. This is consistent with our expectations.

We were concerned that some councils were using less formal arrangements for managing conflicts of interest. These processes typically involve conversations between management and employees, verbal agreement of any mitigation steps, and no documentation.

“*we were concerned that some councils were using less formal arrangements for managing conflicts of interest*”

In our view, this does not support effective management of risks to the organisation or to the individual. These practices provide no record to show the public that the conflict has been considered and mitigated appropriately. This leaves the organisation and the individual exposed. Also, organisations cannot effectively monitor the decision-making about conflicts of interest without appropriate records.

## Learning from experience

We expect councils to use feedback and lessons learned from how they manage conflicts of interest as part of a continuous improvement programme.

We saw evidence in some councils that regular reviews took place, and advice on good practice was updated. We also saw an example where the individual employment agreement for new staff was changed after a conflict of interest policy breach. It is good these things prompted improvements in policy and procedures.

However, councils having a more proactive and systematic approach to reviewing their systems, policies, and processes would support innovation and continuous improvement. Employees' views on what conflict of interest processes work well and do not work well should be incorporated into these reviews. Reviews could also identify whether lessons learned from individual incidents could be more widely applied.

## Governors have a role to play

Governors need to have the means to assure themselves that conflicts of interest involving employees are managed effectively. The public deserves to have confidence in how their councils manage organisational conflicts of interest.

Audit and risk committees may have a role to play in helping to ensure that there is appropriate assurance over the management of organisational conflicts of interest.

Two of the audit and risk committees out of the four councils we looked at were unclear about whether they should be involved in what they viewed as operational matters.

We agree that audit and risk committees do not have a role in making decisions about conflicts of interest involving employees. However, they may have a role in ensuring that there is appropriate assurance that the council's system for managing conflicts is effective.

Mayors rely on their chief executives to raise any concerns about organisational conflicts of interest that could risk the reputation of their council. We found that the communication between mayors and chief executives regarding conflicts of interest in the four councils to be largely informal. This approach cannot provide effective assurance and presents a significant risk to the reputation of councils.

August 2021

## Resources

The Office of the Auditor-General produces a range of resources to assist public organisations with their management of conflicts of interest. These include conflicts of interest guides:

- [Managing conflicts of interest: A guide for the public sector](#); and
- [Local Authorities \(Members' Interests\) Act 1968: A guide for members of local authorities on managing financial conflicts of interest](#).

You can also test yourself with an interactive quiz:

- [Integrity town](#).