

A quick guide to Conflict of Interest

A reference guide to assist in identifying and avoiding or mitigating a conflict of interest.



Conflict of interest

A conflict of interest is a situation where the responsibilities you have, in your work for the University, is affected by an interest or relationship you have in your private life. Having a conflict of interest does not necessarily mean you have done anything wrong. It all depends on how you manage it.

You need to ask yourself not just whether the interest or relationship means you are biased, but also whether someone looking in from the outside could have reasonable grounds to think you might be. There needs to be a high level of confidence that any decisions that you make:

- Are made impartially and for the right reasons, and
- Are not influenced by personal interests or ulterior motives.

Who is this guide for?

This guide is intended to inform and assist the staff of the University of Cape Town in identifying, avoiding, or mitigating a conflict of interest.

Important contacts

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Conflict of interest types

There are three types of conflicts of interest:

- A **DIRECT** conflict of interest - where a person can be influenced by their private interests when doing their job.
- A **PERCEIVED** conflict of interest - where a person can appear to be influenced by their interests when doing their job.
- A **POTENTIAL** conflict of interest - where a person is in a position where they may be influenced in the future by their private interests when doing their job.



Be honest & trustworthy

Parties to a procurement process must:

- Act lawfully and objectively.
- Be honest and work to the best of their abilities, ensuring that their actions are not affected by our personal interests or relationships.
- Never misuse their position for personal gain.
- Use the University's resources carefully and only for the intended purposes.
- Treat information with care and use it only for proper purposes.
- Decline gifts or benefits that place them under any obligation or perceived influence.

- Avoid any activities, work, or non-work, that may harm the reputation of the University.

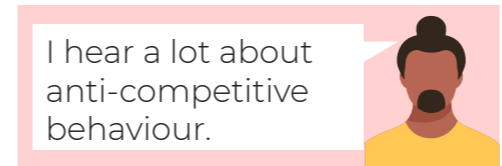
Evaluation process

The evaluation process must be free of bias and any perception of bias. Any conflicts of interest actual, potential, or perceived and possible issues of bias must be disclosed and discussed with the Evaluation Committee or Adjudication Chair before commencement of this stage.

Everyone involved in the evaluation must have completed/ signed a Conflict of Interest & Confidentiality Agreement.

Confidentiality must be respected and maintained throughout the process.

What is this about?

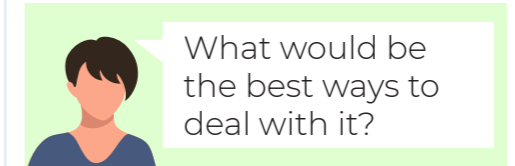


In a normal market, one of the evaluation criteria that businesses will compete on is price. However, sometimes businesses collude to remove competition from the market so that they can charge higher prices, and make more money. This is, of course, illegal as it harms the University.

The following are the most common forms of anti-competitive behaviour:


- **Price Fixing** e.g., companies agree to keep a price at a specific level.
- **Dividing Markets** e.g., company A agrees that it will not approach company B's clients or sales regions and vice-versa.

- **Collusive Tendering** e.g., companies A, B and C are the only players in a specific industry, and they share information before tenders to ensure that the prices remain high, and they all get some of the tenders.



Here are some reminders:

- Think about conflicts of interest and be as transparent as possible.
- Submitting false information, or even withholding information, can be seen as fraud.
- Avoid BEE fronting, this too can be seen as fraud.
- Gifts and entertainment from parties involved during a tender should be declined.
- Note that when companies are submitting bids that they should not be speaking to their competitors as this could be collusive behaviour.
- Bribes are not just money. Favours, loans, and any other 'gratification' can also be seen as bribes. Raise the alarm when approached for a bribe.

 **Having an interest does not necessarily mean you have a conflict of interest**

Having a personal interest, on its own, is not what causes a conflict. Everyone has multiple roles and interests at work, at home, in their extended families, or in the community.

A potential conflict of interest arises only where your duties or responsibilities as an employee of the University overlap with

one of your other roles or interests.

For example, you are an elected member of a Council Committee and are also involved in running a business. Your involvement in the business and role on the Committee do not necessarily result in a conflict of interest, however, there may be occasions where it does. For instance, if your business puts in a bid to provide goods or services to the University.

Assessing the seriousness of a conflict of interest

Several factors might need to be considered in assessing the seriousness of the conflict of interest, they include:

- The type or size of the person's other interest.
- The nature or significance of the decision or activity being carried out by the University.
- The extent to which the person's other interest could specifically affect, or be affected by, the University's decision
- The nature or extent of the person's current or intended involvement in the University's decision or activity.



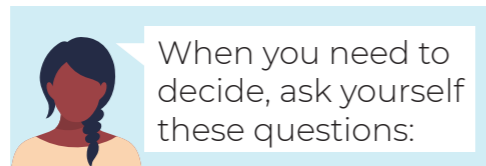


Avoiding or mitigating a conflict of interest

There is a broad range of options for avoiding or mitigating a conflict of interest. These options (listed roughly in order of lowest to highest severity) include:

- Taking no action;
- Asking whether all affected parties will agree to the person's involvement;
- Seeking a formal exemption to allow participation;
- Imposing additional oversight or review over the person;
- Withdrawing from discussing or voting on a particular item of business at a meeting, or taking some other steps to limit influence or decision-making powers (for example, they might not take part in decisions but could still provide advice);
- Exclusion from a committee or working group dealing with the issue;
- Re-assigning certain tasks or duties to another person;
- Agreement or direction not to do something;
- Withholding certain confidential information;

- Placing restrictions on access to information (including, if applicable, post-employment restrictions, such as restrictions under a restraint of trade agreement);
- Transferring the person (temporarily or permanently) to another position or project;
- Relinquishing the private interest;
- Refraining from having further dealings with a person or organisation; and
- Resignation or dismissal from one or other position or organisation.



Financial gain?

Do you stand to gain or lose financially from the decision? Does someone close to you, like an immediate family member, or a business you are involved with, stand to gain or lose financially from the decision?

A situation does not need to involve cash changing hands to be considered a financial interest. A financial interest could, for example, relate to an effect on the



value of property. A financial interest might be direct or indirect. In situations where someone close to you, or a business you are involved with, has a financial interest, you might be considered as sharing their interest.

Financial interests are generally treated more strictly than other types of interest. If you have a financial conflict of interest, the law presumes you are biased. Therefore, you should automatically treat a financial conflict of interest seriously, even if it seems trivial to you.

Non-financial gain?

If you have a conflict of interest, but not one from which you stand to gain or lose financially, the law does not automatically assume you are biased.

This does not necessarily mean a non-financial conflict is less serious than a financial conflict. But, there is generally more room for judgement around whether it is acceptable for you to participate.

Questions you need to think about include:

- How close is your relationship with this other person or organisation?
- Will they be directly affected by the decision?
- How seriously will they be affected?

Conflict of roles?

The issue with a conflict of roles is not so much whether you personally have a conflict, but whether the interests of the two organisations conflict.

If you have a conflict of roles, you will need to consider whether it is appropriate for you to participate in the decision-making process "on both sides of the table".

You will also need to think about whether you are going to be able to fulfil your obligations to both entities at the same time.



If so:

- Is there a risk that you will be seen to be acting in the interests of entity B rather than entity A?
- If you participate in this decision, is there a risk that you might breach obligations you owe to either entity? For example, a duty of loyalty or confidentiality?

If there is a risk that there might be conflicts at some point during the decision-making process, you should discuss your situation with both entities.

This gives each an opportunity to consider the risks from their perspective, and decide whether they are comfortable with you participating on both sides.

Pre-determination?

It is accepted that people working for the University will have their own views on many matters and, in many cases, might already have views on what the "right answer" to an issue is.

You are not required to approach every decision as though you have given it no prior thought, or have no existing knowledge or opinion.








However, you are required to keep an open mind, and you must be prepared to change or adjust your views if the evidence or arguments warrant it. That means you

need to take care that what you do or say does not make it look like you have already made your decision before you have considered all the relevant information and evidence.

In conclusion

If you are unsure about an interest, its reportability under UCT policy, your duty to make a disclosure, or the implications of a possible conflict of interest, please declare the interest. This will facilitate an evaluation thereof. The scholarly community at UCT depends on the actions of its individual members to maintain its reputation for objectivity and ethical engagement in all fields of knowledge.

Conflict management tools

	Disclosure of interests or relationships either privately or publicly.
	Sharing of authority through collective decision-taking.
	Restriction of access to certain information.
	Temporary separation or recusal from the relevant process or decision.
	Permanent separation from a particular process or function.
	Divestment or liquidation of financial interests or the use of tools such as blind trusts.
	Resignation in cases where a conflict is irreconcilable with the individual's functions.

Staff procurement

A staff member may not conduct business directly or indirectly with the University unless three conditions laid down in the Higher Education Act have been met. In particular a staff member may not in his or her official capacity contract, or propose a contract between himself/herself in his/her private capacity and the University.

Only Council may sanction contracts between UCT and an entity in which a Council member or a staff member has a direct or indirect interest. Policy as adopted by Senate (November 2014) and Council (December 2014).

Only Council may sanction a staff member's contract that entails or may entail a conflict of interest with the University.

Council may do so when the contract meets the following criteria as set out in the Higher Education Act (Section 34 subsection 5): (i) the goods, products or services in question are unique; (ii) the supplier is a sole provider; and (iii) it is in the best interest of the University.

Each case has to be considered on its merits, with a full record of all the matters considered and the reasons for arriving at the decision in question.

Additional UCT resources

Conflict of Interest - Principles, Policies and Rules:

<http://www.uct.ac.za/main/about/policies>

Research Integrity - Conflict of Interest:

<http://www.researchsupport.uct.ac.za/conflicts-interest>

FAQs Regarding Reportable Financial Interests & Conflicts of Interest:

http://www.researchsupport.uct.ac.za/sites/default/files/image_tool/images/362/Documents/Integrity/conflict-of-interest-faqs.pdf

Guidelines for Completing Forms HR130/HR131