

Conflict of Interest Registers

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Identifying, preventing, and addressing conflicts of interest is a recurring and challenging issue for regulators. A board or committee member who acts in a conflict of interest can create reputational harm and even liability for both the regulator and the individual. The resulting decision can be set aside. Public confidence, including from the relevant government Minister, can be compromised.

Part of the difficulty is that conflicts of interest can take many forms. Obviously, where the board or committee member, or a member of their family, has a financial interest in the decision, a conflict can arise. They can also arise where the board or committee member has a dual allegiance, such as a fiduciary duty to another organization with a different mandate than the regulator (such as a professional self-interest association). Not all conflicts of interest are based on relationships or affiliations. For example, being the subject of a complaint or investigation can create a conflict for participating in any related policy issues.

Another complicating factor is that many conflicts of interest depend on the degree of the conflict. For example, how close must the family member be before the financial interest becomes a concern? How about casual friends? Most would agree that simple membership in a professional self-interest organization does not create a conflict. But what degree of involvement does? Serving on the planning committee for a local charity event for a professional association? Contributing to the background information for their legislative affairs committee?

As a result, regulators usually adopt multiple strategies to address conflicts of interest including:

- Written guidelines.

- Educational sessions.
- Mentoring, especially of newer board and committee members.
- Encouraging informal clearing of relationships, connections, or other circumstances, through a confidential process.
- Formal requests for declarations of conflicts at each meeting.
- After the fact inquiries or formal investigations that can result in sanctions ranging from informal additional education measures to removal.

In recent years, some regulators have created a conflict of interest register. Each board and committee members lists all of their affiliations and connections, and that of their immediate family or close associates. The list is then posted on the regulator's website.

An interesting example is found on the [website of the medical regulator in the UK](#), the General Medical Council (GMC). For each board member there are a list of affiliations and organizations. Notable is the breadth of the affiliations declared, including roles with a range of health and non-health organizations. Some of the affiliations listed relate to family members. For example:

- One member listed that their brother-in-law owns a computer company that has undertaken training for some GMC staff up to 2015.
- Another member listed that their step daughter-in-law undertakes market research/business intelligence for market research agencies on behalf of pharmaceutical companies.

As can be seen, the declaration includes past affiliations.

In Ontario, the government mandated College Performance Measurement Framework (CPMF)

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anticipates that health regulators will develop a questionnaire for board members that is attached to the Council meeting materials as an appendix. While some of the health regulators modify that expectation somewhat (e.g., by simply listing declared conflicts of interest in their minutes), some have attached the forms. For example, for the [Royal College of Dental Surgeons of Ontario](#), the forms consumed 44 pages of their meeting materials in a recent package. One could argue that the CPMF expectation makes the information less accessible than placing conflicts registers explicitly and separately on the regulator's website.

There are obvious benefits to conflicts registers. It compels board and committee members to put their minds to the kinds of affiliations that might be relevant to their regulatory role. The register enables others within and outside of the organization to point out potential conflicts of interest that may be unrecognized by the individual (a recurring issue). It provides a level of public transparency and accountability. However, there are several potential drawbacks to this approach as well.

Complacency. A board or committee member may be less inclined to critically assess whether they have a conflict of interest on a particular matter because "someone" will point it out. This places an undesirable burden on other board and committee members, and particularly regulatory staff, to raise the issue. It is assumed that the organization has full knowledge of the declared affiliations, so "someone" is obligated to keep the register at hand at all times.

Constriction. The register only captures conflicts of interest related to affiliations. Many conflicts of interest do not relate to relationships. For example, a strong expression of opinion can also disqualify a board or committee member. So can certain actions such as meeting privately with interested parties, suing the regulator, running for political office, being the subject of a complaint or investigation, or even engaging in the

conduct that is the subject of the debate. A board or committee member may assume that the conflicts register is all that matters and may fail to recognize other categories of conflicts.

Confusion. Some board or council members may not fully understand the purpose and scope of the questions posed for the declaration. Or the affiliation may not come to mind. They may also forget to update the declaration when circumstances change. This may be the case especially where the questionnaire is worded in such a way as to require the exercise of discretion (e.g., "do you have any relationships or interests that could compromise, or be perceived to compromise, your ability to exercise judgment or decision-making independently and objectively"). As recent events south of the border illustrate, very senior people can assert that they did not understand the question when completing the form.

Confidentiality. The UK GMC example would be viewed by many board and committee members as intrusive. The form reveals private information about third parties, such as family members. Some highly qualified individuals may choose not to accept a position with regulators that require that level of public disclosure. Interestingly, the [UK Nursing and Midwifery](#) regulator in the UK requires disclosure of affiliations of close family members and associates, but states that those answers will not be posted on the regulator's website.

While Conflict of Interest Registers appear to be a coming trend for regulators, they do have some potential drawbacks. Even if adopted, they should only be seen as a small part of the regulator's efforts to prevent conflict of interest concerns arising for board and committee members.