

Annex A: Principles and procedure for conflicts of interest

1 Introduction

- 1.1 This Annex sets out principles for the management of conflicts of interest, and potential conflicts of interest, arising in relation to Board Members and procedures to be followed in recording and addressing such matters. It supplements the general provisions on conflicts of interest in the body of these Rules of Procedure.
- 1.2 This procedure is designed to:
- (a) so far as possible, prevent conflicts of interest from arising; and
 - (b) ensure that any conflicts of interest that do arise are managed in such a way that the independence and integrity of the decisions of Ofwat are neither compromised nor perceived as being compromised.
- 1.3 While this procedure expressly addresses those conflicts of interest that can be readily anticipated, it is not possible to provide a comprehensive list of all of the conflicts of interest that might arise. Therefore:
- (a) this procedure must be interpreted with regard to its spirit and purpose and in particular with a view to meeting the objectives set out at paragraph 3 below;
 - (b) Board Members must comply with this procedure in spirit as well as in letter; and
 - (c) if there is any doubt as to whether a matter amounts to a conflict of interest, it should be presumed to be a conflict of interest until a decision is made to the contrary by the Chair or, in relation to a potential conflict disclosed by the Chair, the Chief Executive.
- 1.4 For the purposes of these Rules of Procedure, a conflict of interest is any interest, role, responsibility or duty that is held by a Board Member – whether or not financial in nature – that a fair-minded and informed observer, having considered all of the relevant facts, would conclude gave rise to a real possibility of bias in relation to a matter which that Board Member is required to consider or decide.

- 1.5 A matter which would otherwise constitute a conflict of interest need not be treated as such if each party which is likely to be affected by the matter that is under consideration has been given a full explanation of the Board Member's relevant interest and has agreed, clearly and unequivocally, to waive any objection to the Board Member's participation in the process of considering or deciding upon that matter.

2 Scope

- 2.1 This Annex A applies to Board Members.
- 2.2 Some parts of this procedure require Board Members to ensure certain conduct by, or to make declarations in relation to, their spouses, partners and dependent children.
- 2.3 Provisions similar to those set out in this procedure are also binding on Ofwat employees under the Code of Conduct published on Ofwat's website, so as to ensure so far as possible that the entire advisory and decision-making process of Ofwat is not affected by conflicts of interest.

3 Objectives of the procedure

- 3.1 The objectives of the procedures set out in this Annex are:
- (a) to protect the Board corporately and each Board Member individually against the breach of any law, including, for example, offences relating to insider dealing under the Criminal Justice Act 1993;
 - (b) to protect the Board corporately and each Board Member individually against impropriety or the appearance of impropriety, including risk to its and their reputations; and
 - (c) to protect Ofwat against any conflicts of interest that may be detrimental to the exercise of its functions, by:
 - ensuring so far as possible that Board Members make decisions free from any inappropriate external influence, whether personal or financial, whilst recognising that it is precisely their position and expertise external to the Board that enables some of the Board Members to make valuable contributions to its work; and

- adhering to the principle that Board Members should not (otherwise than as permitted, exceptionally, by any separate agreement to provide services to Ofwat outside the scope of their duties as a Board Member) make a personal profit as a result of their membership of the Board or an Ofwat committee, such as by using confidential information for personal gain.

4 Prohibited interests

- 4.1 Subject to paragraph 4.7 of this Annex below, no Board Member may at any time hold any interests of the type specified in this section whether directly or indirectly (the prohibited interests).
- 4.2 The prohibited interests are any equity or other financial interest in, and any employment, consultancy, directorship or other remunerative agreement with:
- (a) any water or sewerage undertaker (including any new appointee) appointed for an area in England or Wales, or any affiliate of that undertaker;
 - (b) any prospective holder of an appointment, or any affiliate of that company; or
 - (c) any actual or prospective holder of any licence issued or that may be issued by Ofwat pursuant to the WIA91, as amended, or any affiliate of that company.
- 4.3 Each Board Member must ensure that no spouse, partner or dependent child of theirs has at any time a prohibited interest in the form of any equity or other financial interest.
- 4.4 If any Board Member has a prohibited interest, they must immediately notify the Chair and the Chief Executive in writing.
- 4.5 If a Board Member is aware that their spouse, partner or dependent child has a prohibited interest in the form of any equity or other financial interest, they must immediately notify the Chair and the Chief Executive in writing.
- 4.6 Where a Board Member notifies the Chair and the Chief Executive of any prohibited interest, the Board Member shall be excluded from any further participation in the activities or decision-making of the Board or any relevant Committees, at least until such time as that interest has been terminated.

- 4.7 In appropriate circumstances, which are likely to be exceptional, the Board may decide that what would otherwise be a prohibited interest should not be classified as such for the purposes of these Rules of Procedure for a particular period or with respect to particular decisions or categories of decisions. The Board may vary or revoke any such decisions at any point.

Register of disclosable interests

- 4.8 The Board Secretary shall maintain a register with details of Board Members' disclosable interests ([the Register](#)).
- 4.9 The Register shall be a public document, and shall be amended from time to time by the Board Secretary so that it remains accurate and up to date.
- 4.10 The purpose of the Register is to ensure transparency in relation to any interests of Board Members – or of their spouses, partners and dependent children – that have the potential, or might be perceived as having the potential, to give rise to a conflict of interest.
- 4.11 The Register must contain, in relation to each Board Member, details of any of the following held or carried on by that Board Member:
- (a) company directorships;
 - (b) memberships of any limited liability partnership;
 - (c) other public appointments;
 - (d) charitable appointments (including trusteeships, and positions with not-for-profits NGOs or pressure groups);
 - (e) employment or consultancy activities;
 - (f) memberships of or offices held within any professional body; and
 - (g) any equity or other financial interest in, or any remunerative agreement with, a significant contractor (or another significant supplier of goods or services) to any of the entities set out in paragraph 4.2 above¹.
- 4.12 Registration of the interests set out at (a) and (b) above is required for present interests and past interests held in the last 5 years. Registration of the interests listed at (c)-(g) is required for current interests.

¹ For these purposes, 'significant' should be assessed by reference to the turnover of the contractor or supplier (so where at least 10% of turnover in the preceding financial year is derived from the supply of goods or services to any of the entities set out in paragraph 4.2).

- 4.13 The Register must also contain details of any employment, consultancy, directorship or remunerative agreement held or carried on by a spouse, partner or dependent child of a Board Member with any of the entities set out in paragraph 4.2 above where they are either present interests or past interests held in the last 5 years.
- 4.14 The Register must further contain details of any other matters that have the potential, or might be perceived as having the potential, to influence the judgment of any Board Member in relation to their participation in the normal activities or decision-making of the Board. This shall include indirect influences by way of personal or familial connections, as well as direct influences in the form of financial and legal relationships.
- 4.15 It is the duty of each Board Member to declare to the Board Secretary and to the Chair in writing any matter that is required to be included in their entry on the Register.
- 4.16 If a Board Member is in doubt as to whether a particular matter should be declared, they should declare it, and the Board Secretary (in consultation with the Chair if appropriate) shall decide whether it is a matter that is required to be included on the Register.
- 4.17 A Board Member shall make a declaration of their interests and any other relevant interests for the purposes of the Register immediately on taking up appointment as a Board Member or Committee Member, and shall subsequently declare any new matter that is required to be included on the Register or otherwise notified to Ofwat as soon as possible.
- 4.18 Board Members must ensure that their entries on the Register are accurate and up to date, and the Board Secretary will ask them to provide confirmation that this is the case at least once in each financial year.
- 4.19 Each Board Member must sign a form to confirm the accuracy of their entry on the Register if requested to do so by the Board Secretary.

5 Board meetings

- 5.1 Board Members must comply with the further requirements as to the disclosure of conflicts of interest arising at Board meetings, as set out in paragraphs 17 to 28 of the Rules of Procedure.

6 Subsequent appointments of Board Members

- 6.1 Board Members are also subject to the requirement to secure the prior approval of the Chair and the Department for Environment, Food and Rural Affairs (Defra) if, within two years of ceasing to be a Board Member, they wish to accept an appointment with:
- (a) any of the entities listed in paragraph 4.2 above;
 - (b) a significant contractor or supplier of goods or services to any of the entities listed in paragraph 4.2 above; or
 - (c) any other firm or body closely connected to the water industry.
- 6.2 The purpose of this is to maintain public trust in the work of Ofwat and in particular to avoid:
- (a) any suspicion that the advice and decisions of a Board Member might be influenced by the hope or expectation of future employment with a particular firm or organisation; and
 - (b) any risk that a firm might gain an improper advantage over its competitors by employing someone who, in the course of their work, has had access to technical or other information which those competitors might legitimately regard as their own trade secrets or to information relating to proposed developments in government policy and procedure which may affect that firm or its competitors.
- 6.3 Any approval of an appointment under paragraph 6.1 above given by the Chair may be subject to conditions, which may include the imposition of a waiting period before it can be taken up.

7 Audit

- 7.1 Information held on the Register will be subject to audit, a summary of which will be published in Ofwat's annual resource accounts.

8 Interpretation

- 8.1 In this Annex, an "equity and other financial interest":

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- (a) shall be deemed to comprise shareholdings, debt securities, debentures, bonds, options, rights or future rights to shares, and other securities; but
 - (b) shall be deemed to exclude such interests which are managed through Unit Trusts, Blind Trusts or funds managed in a way equivalent to either Unit Trusts or Blind Trusts, and any interest in gilts or other Government securities.
- 8.2 A “Blind Trust” is an arrangement by which an individual gives a stockbroker or another professional investment manager absolute discretion to manage their investments and under which that individual:
- (a) is not consulted before any dealing in those investments takes place;
 - (b) does not instruct the investment manager with regard to any specific securities; and
 - (c) is not informed of changes in specific investments or the state of the portfolio other than in an aggregated form or as required for tax return purposes.
- 8.3 In this Annex, a “remunerative agreement” shall not be taken to include any employer’s pension scheme in respect of which employer pension contributions ceased to be made prior to the time at which a Board Member was appointed.
- 8.4 In this Annex, a “prospective holder” means a company which the relevant Board Member has been notified has submitted a formal relevant application to Ofwat.