

# Conflict of Interest Rules for Selection Decisions



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## Introduction

1. The “Code of Conduct for the Judicial Appointments Commissioners (July 2005)”, as well as the “Terms and Conditions” for Commissioners, give general guidance on the handling of possible conflicts of interest. The Code also requires that specific rules of conduct should be drawn up to ensure that conflicts are “...identified at an early stage and that appropriate action can be taken to resolve them.”<sup>1</sup> The rules below have been prepared to satisfy this requirement.
2. This Commission has agreed that the principles that will underpin the rules on conflict of interest are:
  - maintaining the independence, fairness and objectivity of the Commission’s selection decisions is of paramount importance.
  - a rigorous approach should be adopted to potential conflicts of interest that requires Commissioners to declare any form of connection with an applicant, no matter how trivial, as soon as it comes to their attention.
  - the onus is on Commissioners to recognise and identify possible conflicts and bring them to the attention of the Chairman and, as appropriate, the Commission.
  - there is a presumption that any conflict will require the relevant Commissioner to not contribute to the discussion for the item for which they have a conflict of interest.
  - any additional information that a Commissioner wants to introduce on the suitability or good character of a candidate over and above what appears on the papers must be provided in writing to the Chairman of the Judicial Appointments Commission (JAC) before selection decisions are made.
3. If a Commissioner has any doubt about how to handle a possible conflict of interest they should take this up with the Chairman or Chief Executive of the JAC.

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<sup>1</sup> See Section 12 “Handling conflicts of interest”.

## Identifying Conflicts of Interest

4. While it is not possible to be definitive or exhaustive about the circumstances in which Commissioners could have a conflict of interest, this is most likely to be the case when there is a family, or close personal or professional connection between a Commissioner and a candidate, including having received significant gifts or hospitality. The question Commissioners should ask themselves is:

“Is there a real possibility that this relationship might reasonably be perceived as putting me at risk of not being objective as to the candidate’s suitability or otherwise for selection?”

5. The following are examples of situations that the Commission could regard as creating material conflicts of interest:
  - 1) Where a Commissioner has had a significant level of business or professional involvement with a candidate, such as having them as a partner (or former partner) or an employee (or former employee);
  - 2) Where a Commissioner had mentored a candidate, or participated in an appraisal scheme that involved assessments of them;
  - 3) Where a candidate is a close relative (including but not limited to a father, mother, brother, sister, child, grandchild and step-father/mother/brother/sister/child), spouse or civil partner (or ex-spouse or ex-civil partner), or close personal friend of a Commissioner;
  - 4) When a Commissioner acts as a referee for a candidate. This should only arise in exceptional circumstances, as it has been agreed that Commissioners will not generally act as referees for candidates applying for judicial office.

## What to do about Potential Conflicts of Interest

6. What a Commissioner must do upon realising a potential conflict will depend on when during the process the conflict is recognised.
7. All Commissioners are required to complete and return a ‘Conflict of Interest Declaration Form’ upon receipt of selection papers, so in almost all cases conflicts should be identified well before selection decisions need to be taken. This form is designed to help Commissioners identify the connections that they have with candidates that could involve a possible conflict of interest. Completing it involves a two-stage process whereby each Commissioner must first declare all relationships to any of the candidates for selection. Secondly, they must consider whether they think they might have a conflict of interest as a consequence of the relationship, explaining the reasons why they think there is a possible conflict. The guidance above on how to identify a conflict should help with this second stage of the process.
8. Completed declarations must be sent back to the Chairman of the JAC’s Office, preferably at least two days in advance of the relevant selection meeting. For ‘nil’ returns an email to this effect will suffice. The Chairman then considers the conflicts declared and contacts the Commissioner to discuss the appropriate course of action. Where it is agreed that a Commissioner does have a material conflict, that Commissioner should return the papers relevant to that selection decision and should not contribute to the decision being taken.

9. The Chairman of the meeting will ask before selection agenda items if any Commissioners have a conflict of interest and their responses will be recorded in the minutes of the meeting.
10. In the rare event that a possible conflict is not recognised until the time of the selection meeting, it should be declared at the meeting. The Chairman of the meeting and other Commissioners will then consider what course of action to take.
11. If a conflict is recalled after a selection decision has been taken, the Commissioner will have to write to the Chairman of the JAC. These situations will be dealt with on a case-by-case basis depending on the circumstances.

### **Introduction of Additional Information**

12. There are likely to be occasions where a Commissioner has information that could be relevant to the suitability of a candidate or an assessment of 'good character' that has not been considered in the selection papers prepared for all the Commissioners.
13. If a Commissioner believes that they have information that could affect the Commission's assessment of the suitability or good character of a candidate, they can only provide this information to the Chairman of the JAC in writing before the selection meeting. If the Commissioner fails to provide the information in writing prior to the selection meeting, they can not introduce this information at any other time, and particularly not orally at the selection meeting. The Chairman of the JAC will decide whether the information should be passed on to the rest of the Commissioners.