

REBRANDED NOVEMBER 2024



CONFLICTS OF INTEREST GUIDANCE FOR DISCIPLINE AND APPEAL TRIBUNALS



Purpose

This guidance has been prepared by the Discipline Board to assist Discipline and Appeal Tribunals in their consideration of possible conflicts of interest.

Application

All references in this guidance to 'Members' apply equally to CA Student Members, Firms and Affiliates.

In addition, where appropriate, a reference to a conflict of interest should be taken to include a potential or perceived conflict of interest.

What constitutes a conflict of interest?

A conflict of interest arises where a Tribunal member's duties are likely to be compromised, or may appear to be comprised, by an interest in a matter under consideration.

There are many different forms of interest which could create a conflict in a Tribunal case. Some of the main examples are:

- The involvement of a family member or friend.
- A close association with one of the parties or entities involved.
- The involvement of a current or previous work colleague.
- Any financial interest (however small), including possible competition issues between firms or other entities.
- Where the Tribunal member may suffer or benefit depending on the outcome of the case.

It must be remembered that potential and perceived conflicts of interest can be as important as actual conflicts. Therefore, careful consideration has to be given to how a third party might view the involvement of the proposed Tribunal member in a case.

What might fall short of constituting a conflict of interest?

A conflict of interest may be distinguished from simple knowledge or association with any of the parties involved in a formal complaint.

Tribunal members – Chartered Accountants in particular – may previously have met one or more of the parties involved in a complaint. By way of example, it is likely that an insolvency practitioner sitting on a Tribunal will have knowledge of the parties involved in an insolvency-related complaint.

While a proposed Tribunal member may wish for such knowledge or association to be noted, they will not normally require to be excluded from sitting on the Tribunal.

Why are conflicts of interest so important?

It is crucial that all members of a Tribunal are seen to be ethically beyond reproach in the eyes of the parties involved in a complaint. Openness, transparency and independence are all key principles of ICAS' Tribunal process.

Tribunal proceedings are subject to provisions of the Human Rights Act, which means that there is an obligation on ICAS to ensure that Members, CA Student Members, Affiliates and Firms receive a fair hearing. A key part of this is unbiased and independent decision-making. Therefore, a failure to adequately address a conflict of interest could leave a Tribunal's decision open to challenge through Judicial Review proceedings.

Given the importance of properly dealing with conflicts of interest, it will always be better to err on the side of caution when assessing a potential conflict.

At what points in the process should conflicts of interest be considered?

Proposed Tribunal members should consider the scope for conflict of interest when being asked by the Tribunal Clerk to sit on either a Discipline or Appeal Tribunal. At that point in time, the proposed Tribunal member should have been advised of the name of the Member who is the subject of the complaint.

While a conflict of interest may not be identified at that stage, it is important that Tribunal members continue to be mindful of the scope for conflicts as and when additional information is made available in relation to the matters under consideration.

How should a conflict of interest be disclosed?

Conflicts of interest should be reported to the Tribunal Clerk at the earliest opportunity.

If a conflict of interest is not identified until after a Tribunal has been appointed, the conflict should be reported to the Chair of the Tribunal.

Who is responsible for assessing a conflict of interest?

In the first instance, it is the responsibility of all Tribunal members to identify and assess possible conflicts of interest. If the issues involved are straightforward, it is expected that the proposed Tribunal member will simply inform the Tribunal Clerk that he or is unable to sit on the Tribunal. As noted above, all potential issues should be reported, even if the proposed Tribunal member considers that there is not a conflict.

If the issues involved are not straightforward, the proposed Tribunal member should provide all the relevant information to the Tribunal Chair, allowing him or her to decide whether it would be appropriate for the appointment to be made. If a Tribunal Chair considers that they may be conflicted, the matter should be raised with the Chair of the Discipline Board, who will then be responsible for assessing and determining the issue.

In all instances, it will be appropriate to ensure that there is a record of all correspondence or discussions in relation to the identification, disclosure and assessment of a conflict of interest.

Further information

Further information in respect of conflicts of interest can be obtained by contacting the Tribunal Clerk by email as follows: tribunalsclerk@icas.com