# CONFLICTS OF INTEREST

## POLICY

HIE
Highlands and Islands Enterprise
Iomairt na Gàidhealtachd 's nan Eilean

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## 1. Introduction and Background

### 1.1 Background

The Scottish public has high expectations of the Board members and staff of Highlands and Islands Enterprise (HIE) and the way in which they should conduct themselves in undertaking their duties. HIE expects the conduct of its Board members and staff to be above reproach.

The Ethical Standards in Public Life etc. (Scotland) Act 2000 sets out nine general principles of conduct which underpin public life in Scotland. These nine Scottish principles (which are defined at Annex 1) are as follows:

- Selflessness
- Integrity
- Objectivity
- Accountability and stewardship
- Openness
- Honesty
- Public service
- Leadership
- Respect

The handling of conflicts of interest is a particularly important and sensitive issue for HIE and is specifically referred to in the Scottish principle on 'honesty.

"You have a duty to act with honesty at all times. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest."

### 1.2 Codes of conduct for board members and staff

HIE has adopted a Code of Conduct for Board Members which is based on the Standards Commission's Members Model Code of Conduct. Sections 4 and 5 of the Code of Conduct set out the responsibilities of Board members in respect of the registration and declaration of interests.

HIE has a Code of Conduct for Staff which forms part of the terms and conditions of service for all staff. Paragraph 5 of the Code imposes a duty on staff to comply with HIE's policies and procedures in respect of conflicts of interest:

"Staff should abide by the rules adopted by HIE in relation to private interest and possible conflict with public duty; the disclosure of official information; and political activities. They should not misuse their official position or information acquired in their official duties to further their private interests or those of others. Staff working on contracts should ensure that any possible conflicts of interest are identified at an early stage and that appropriate action is taken to resolve them."

### 1.3 Why do we need a conflict of interest policy?

While all Board members and staff have a personal responsibility to observe their (respective) Code of Conduct, it is also incumbent on HIE to provide advice and guidance to its Board members and staff to ensure that, in discharging their roles, they comply with the law and fulfil their obligations under the Code of Conduct. In addition, HIE has a duty to avoid placing Board members and staff in positions where they may face a serious conflict of interest.

As part of HIE's corporate governance arrangements, this document sets out HIE's Conflicts of Interest policy and the procedures to be followed by Board members and staff when a conflict arises. It replaces the previous Conflicts of Interest policy dated April 2008.

### 1.4 Who does this policy cover?

This policy applies to:

- HIE Chairman, HIE Chief Executive and other Board members (including co-optees to committees and working groups)
- All HIE staff
- All HIE temporary staff (including agency staff and secondees)

### 1.5 Further information and advice

If you have any queries in respect of this Conflicts of Interest policy or need advice in relation to a specific case, please contact HIE's Standards Officer, Adrian Kitson, on 01463 244318. The HIE Standards Officer may also take advice from the HIE Head of Business Improvement and Internal Audit and/or seek approval of the Chief Executive.

## 2. HIE's Approach when Handling Conflicts of Interest

### 2.1 Handling conflicts of interest in HIE

Although this policy provides advice and guidance to Board members and staff on how to handle conflicts of interest, it cannot cover every conceivable situation that may arise. HIE has identified ten guiding principles which underpin its procedures to handle conflicts of interest appropriately.

Ten things you should think of when considering conflicts of interest are:

- **Take personal responsibility:** It is your personal responsibility to ensure that you comply with this Conflicts of Interest policy
- **Put HIE first:** Your first duty is to give undivided allegiance to HIE at all times. You must not subordinate your duty to private interests and must not make use of your official position to further outside interests
- **Be open and transparent:** Complete the Register of Interests annually (or bi-annually in the case of Board Members or Executive Grade staff), and update it as and when you

accrue new interests or if your interests change. Be open and transparent about your interests and always take advice

- **Be aware of public perception:** In considering whether an interest is material, you must consider not only whether you will be influenced but also whether a member of the public, acting reasonably, would think that you might be influenced (the public perception test)

- **Declare and play no part:** Where you are deemed to have a material interest (direct or indirect) in any organisation dealing with HIE, you should declare this interest and take no part in the appraisal, decision making or account management process in relation to that organisation

- **If in doubt, play safe!:** If in doubt, even after discussing the matter with your line manager or the HIE Standards Officer, you should err on the side of caution

- **Declare and refer every time**: You should declare your conflict of interest on each and every occasion that it arises and, if necessary, refer the matter to the appropriate authority (e.g. line manager, Standards Officer) for guidance

- **Escalate:** Given the reputational risks to HIE, complex and/or significant conflicts of interest should be escalated up the management chain (including to the HIE Standards Officer, Head of Business Improvement & Internal Audit and, if necessary, HIE's Chief Executive) as and when appropriate

- **Document everything**: All correspondence relating to the handling of a conflict of interest should be documented. There should be a clear audit trail which will stand up to scrutiny in the event of any challenge

- **Cooling off**: All material interests are deemed relevant for a period of at least 12 months after the interest ceases to exist. After a period of 12 months, the HIE Standards Officer can determine whether an interest is still relevant after an assessment of any reputational (and other) risks to HIE

## 3. Registration of Interests

### 3.1 What is the difference between registration and declaration of interests?

Registration is the formal process of recording all the direct interests of Board members and Staff on an annual (or bi-annual) basis whereas a declaration is made as and when interests arise during the day-to-day duties of Board members/staff.

### 3.2 Maintaining and updating the Register(s) of Interests

HIE's Standards Officer will issue guidance annually on what has to be registered:

**Board members and executive grade staff**

- All Board members and executive grade staff are required to formally register their own direct (personal) interests twice a year (in March and September). Leadership Support Team will co-ordinate these updates.

- Any new interests or changes to interests must be brought to the attention of Leadership Support Team within one month of the new interest/change occurring.

- Executive Grade staff should also update their HR on-line register and ensure where appropriate that other colleagues, including line manager, are made aware of these changes.

- Leadership Support Team will maintain and update the register of interests for Board members.

- The register of interests held for all Board members and executive grade staff will be made available for inspection on the HIE website. Leadership Support Team will ensure that the website is regularly updated.

**HIE staff**

- All other HIE staff are required to formally register their own direct interests annually through the HR on-line register.

- Any new interests or changes to interests must be added to the HR on-line register within one month of the new interest/change occurring.

- Ensure where appropriate that other colleagues, including line manager, are made aware of these changes.

- The register of interests will not be published on the HIE website but may be publicly available upon request.

**3.3 What has to be registered?**

The following six categories of interests should be registered:

- **Sources of remuneration:** All employment or other contractual arrangements (other than with HIE) for which you receive remuneration by virtue of being employed, self-employed, the holder of an office, a director of an undertaking, a partner in a firm, or undertaking a trade or profession

- **Related undertakings:** Any directorships of a parent or subsidiary undertaking which are unremunerated

- **Contracts:** Any contracts that you (or any organisation in which you have an interest) have or are currently negotiating with HIE

- **Houses, land and buildings:** Any houses, land or buildings you own or have any other right to which may be significant to the work and operation of HIE

- **Shares and securities:** Shares or securities held in a company or organisation which may be significant to the work and operation of HIE

- **Non-financial interests**: Any non-financial interests that may be significant to the work and operation of HIE

You do not have to register the value of any interest but rather the name and nature of the organisation in which the interest is held.

Board members and staff may have significant non-financial interests and it is equally important that relevant interests such as membership or holding office in public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described.

In this context, non-financial interests are those which members of the public might reasonably think could affect your responsibilities to HIE and to the public or could influence your actions or decision making.

The registered interests may be used within HIE to identify relevant interests relating to HIE activity.

### 3.4 What about the interests of family members?

Board members and staff are only required to register direct (personal) interests but may also voluntarily register indirect interests. The most common category of indirect interests is likely to be the financial interests of close family members.

Close family is defined within Accounting Standards as “those family members, or members of the same household, who may be expected to influence, or be influenced by, that person in their dealings with [HIE].” It is intended to include at least those relatives identified as ‘immediate family’, i.e. Spouse, live-in partner, parent, child, brother, sister and the spouses of any of these.

Even if indirect interests are not registered, they should be declared as and when they arise

## 4. Declaration of Interests

### 4.1 What is a ‘material’ interest?

Public confidence in HIE depends on it being clearly understood that decisions are taken in the public interest and not for any other reason. Board members and staff should only play a role in any decision making process if they can demonstrate objectivity.

In considering whether an interest is material (significant), an individual must consider not only whether he or she will be influenced but also whether any reasonable person would think that he or she might be influenced. The test is whether a member of the public, acting reasonably, might think that a particular interest could influence the decision made (the public perception test).

Interests may be financial or non-financial but there is a particular risk in respect of financial interests. In the case of a financial interest, there should be a presumption that the interest is material and that the conflicted Board/staff member should withdraw from playing any part in the process.

Board/staff members should also be aware of situations when it would be appropriate to declare relevant interests of close family or friends (indirect interests). Close family includes spouse, live-in partner, parent, child, brother, sister and the spouses of any of these.

### 4.2 What do you do if you have a material interest?

Where a material interest exists, either direct or indirect, objectivity will always be assumed to be impaired. This will be the case irrespective of the category of the organisation that the Board/staff member has the interest in (e.g. Private sector, public sector, voluntary sector or community organisation).

Where a person is deemed to have a material interest, he or she should declare this interest and take no part in the discussion or decision making process in relation to this matter. This includes:

- Not being present at the relevant part of a Board, Committee or other meeting and not participating in discussions or having any kind of involvement or influence

- Not receiving any relevant papers (including minutes) in relation to that matter. If papers have been received inadvertently, they should be returned intact at the earliest opportunity

- Not being copied in on any e-mails or other correspondence in relation to this matter

- Not using his or her position to try and improperly influence a decision by, for example, asking or directing another person to represent his/her interests or views at the meeting

- Not making any public comment about the matter at any time, inside or outside meetings (including to the Press)

Where the member of staff is Executive Grade any activity related to account management or financial assistance should not normally be dealt with by the business unit within which the individual sits. For all other staff the activity related to account management or financial assistance should not be dealt with by the same team in which the individual sits. In addition to the normal HIE delegated authority arrangements the relevant Executive Grade member of staff should have oversight of the activity. In certain situations, it may be considered appropriate to pass the activity to another business unit.

### 4.3 What if you are unsure as to whether you have a material interest?

Where a Board/staff member is unsure as to whether or not an interest is material or what action to take in a given situation, he or she should seek the advice of the appropriate authority (Board member = Chairman/Leadership Support/Standards Officer; staff = line manager/HIE Standards officer). Leadership Support Team and the HIE Standards officer may consult with the Head of Business Improvement and Internal Audit. However, ultimately, it is for each Board/staff member to make his or her own decision and to take personal responsibility for that decision.

If a Board/staff member is still in doubt as to whether or not to declare an interest, even after discussing the matter with the appropriate authority and/or the Standards Officer, he or she should err on the side of caution. A Board/staff member cannot be accused of behaving improperly by declaring an interest which does not exist or by leaving the meeting upon declaring a material interest which a reasonable person would not have considered material. However, Board/staff members do run the risk of serious criticism and possible sanction if they do not declare an interest and act appropriately in respect of an interest that does exist. To protect the objectivity of HIE's processes HIE may remove the individual from the process.

### 4.4 When do you declare an interest?

Any Board/staff member should declare an interest to the appropriate authority as soon as possible after they become aware of it. In the case of a member of staff, this notification should be in writing and a copy of the notification should be sent to the Standards Officer.

It is not enough to declare an interest once and assume that this declaration covers any subsequent occasion that the interest arises. You should declare your conflict of interest on each and every occasion that it arises and, if necessary, refer the matter to the appropriate authority (e.g. line manager, Standards Officer) for guidance.

Where you are attending a meeting and have a material interest in one or more items on the agenda, declaration of the interest must be made as early as possible and certainly well before the particular item on the agenda is discussed. Ideally, the declaration should be made at the beginning of the meeting and provide enough information to allow those present to understand the nature of the interest. You should then withdraw from the meeting for the relevant part of the meeting.

### 4.5 What should be documented and when?

All correspondence relating to the handling of a conflict of interest should be documented. This includes the notification of the conflicted issue by, and the advice given to, the conflicted individual, any advice/instruction provided by senior management, and the action that was subsequently taken. The relevant file should have a clear and complete audit trail which will stand up to scrutiny in the event of any challenge.

At meetings, all declarations of interest and actions taken as a result (e.g. leaving the room) should be recorded in the minutes or other appropriate record of the meeting.

## 5. Board Member Protocols

The promotion of and adherence to high standards in public life is essential to ensure and reinforce public confidence in the activities and responsibilities of public bodies

As ministerial appointments HIE Board members are required to comply with the Codes of Conduct which exist within HIE. The Standard Commission is responsible for the enforcement of this Code.

HIE has in place code of conduct for Board Members which follows the Model Code of Conduct for members of devolved public bodies issued by Scottish Ministers. This code complements the HIE conflict of interest policy and both reference the 9 key principles which underpin public life in Scotland.

While all HIE Board members have specific strengths and skills they have not been appointed to represent any particular interest group, geographic or otherwise, and Board members need to be particularly aware that they must act in the interest of HIE at all times. It is essential that HIE decision making is underpinned by objective due diligence which will stand up to appropriate scrutiny. Executive staff are responsible for undertaking appropriate due diligence.

The responsibility for making decisions regarding the existence of conflicts of interest is a personal one for the member. However, in recognition that some board members will have

interests which may have potential to create actual or perceived conflicts of interest a pro-forma protocol has been drafted (Annex 2) to enable such issues to be considered and documented (this protocol can also be used for staff interests).

## 6. Other Issues

### 6.1 Significant or complex cases

In certain cases, there could be a reputational risk to HIE as a result of significant conflicts of interest. These situations include:

- A Board member or senior member of staff having an interest in an organisation which is a regular recipient of financial assistance from HIE or is in an ongoing commercial relationship with HIE

- Where more than one HIE Board/staff member has an interest in a particular [client/supplier] organisation

- Where a Board/staff member has an interest and the transaction is considered significant

It is important that potentially significant conflicts of interest that pose a reputational risk to HIE should be identified at an early stage and consideration given at the outset as to how to handle these conflicts should they arise:

- The line manager (for staff) and the Chairman (for Board members) should be made aware of the interests in question and put in place any additional controls/monitoring arrangements that he/she deems appropriate. The Standards Officer and Head of Business Improvement and Internal Audit should also be notified and consulted.

- It may be appropriate for staff in the same team, unit or division to be informed of the interest of their colleague in the particular organisation if it is likely to be an ongoing issue.

- Complex and/or significant conflicts of interest should be escalated to senior management (including HIE's Standards Officer, Head of Business Improvement & Internal Audit and, if necessary, the HIE Chief Executive) at an early stage (and on subsequent occasions, as necessary) for advice and direction.

- A 'red flag' approach should be applied to all 'transactions' involving the conflicted Board/staff member. The robustness and objectivity of the assessment process in such cases should be beyond reproach and, if necessary, an independent element introduced into the assessment process. See guidance on prior approval process for Board Member and Executive Grade staff interests.

- Where an application for financial assistance or grant is concerned and the interest involves a senior manager (Area Manager upwards), it may be appropriate to transfer the case/matter to another division under supervision of the HIE Standards Officer

A Board/staff member should not seek or accept membership of any Committee, sub-Committee, working group or panel if it would involve declaring a material interest so often that he or she would be of little value to that Committee etc. Or if it would damage public confidence in HIE, the Committee etc.

If a member of staff has a material interest that poses a reputational risk to HIE, the relevant Director and line manager should monitor that conflict of interest closely. It may be necessary to put Chinese walls in place to create a separation or, if the conflict of interest becomes unmanageable, to move the conflicted staff member from his/her post.

### 6.2 Prior approval process

Certain interests which HIE Board members and Executive Grade staff have are regarded as sufficiently high risk to require a prior approval process.

The prior approval process requires that the Chief Executive provides approval of any transaction between HIE and any organisation in which the HIE Chairman, HIE Board members or Executive Grade staff have a significant or potentially high-risk interest. (Hyper link to Prior Approval Process policy). It is the responsibility of the member of HIE staff initiating the transaction with the organisation to ensure approval from the Chief Executive is sought. Equally, Board members and Executive Grade staff must have in place their own arrangements with the organisations in which they have an interest, in order to be alerted each time there is a transaction with HIE.

Transactions are defined as decisions (approved or declined) to enter into any form of agreement which could result in HIE allocating funds to third-party organisations.

### 6.3 Gifts and hospitality

Board members and staff should exercise extreme care when gifts, gratuities, entertainment, hospitality or honoraria are offered from current or potential suppliers, clients, or grantees or any individual or organisation which stands to gain or benefit from a decision or action of HIE. Please refer to HIE's Gifts and Hospitality policy.

### 6.4 Outside commitments

The current HIE contract of employment states that "full time employees will not engage in other forms of paid or unpaid activity during the course of their employment, whether during or outside working hours, without the prior written approval of their line manager. Approval to undertake outside work will not be unreasonably withheld." Where staff have outside interests, it is a management responsibility to ensure that these interests do not impact on the employee's duties and responsibilities.

Staff must not engage in any external business, any external employment or any external appointment without the prior written consent of their line manager if any of the following circumstances apply:

- Engagement in it would, in the view of HIE, be detrimental to HIE's interests
- Engagement in it would, in the view of HIE, put the member of staff into a position where duty to HIE and external interests will conflict or be likely to conflict or
- Engagement in it would, in any way, in the view of HIE, weaken public confidence in the impartiality of HIE or in the effective conduct of HIE's work

Staff must not carry out any work for remuneration which may ultimately come before HIE for approval or decision.

Staff must not be involved in taking a decision if, at the same time, they are having discussions with an organisation on possible employment. Any prospective move to employment that might arouse criticism must be brought to the attention of the HIE Chief Executive.

### 6.5 Appointments to outside bodies as a representative of HIE

HIE should not appoint any Board member or member of staff to the Board of any organisation without the prior approval of the HIE Chief Executive.

Where a Board/staff member has a non-financial interest in another organisation as a result of being appointed to represent HIE, he/she may participate in internal HIE discussions relating to that organisation. However, he/she should not be involved in the HIE decision-making process in respect of any related funding application or other commercial transaction.

It is the responsibility of all Board/staff members to take legal and other advice on their responsibilities to HIE and to the outside body. This will include questions of declarations of interest. HIE will provide appropriate training and support to all those nominated or appointed to serve on the Boards of outside bodies.

HIE's policy on appointments to third party organisations provides more detailed advice and guidance on this matter.

### 6.6 Competitors

If a Board/staff member has a material interest, he/she should also not take part in any activity directly related to a competitor of the organisation in which an interest is recorded.

## 7. Key Responsibilities and Further Advice

### 7.1 Who is responsible for handling conflicts of interest within HIE?

It is the personal responsibility of each Board/staff member to ensure that he or she complies with this Conflicts of Interest policy. Even if a Board/staff member receives advice that an interest is not material, it is open to him/her to adopt a more conservative approach. However, if advised by the appropriate authority that an interest is material, it is not open to a Board/staff member to adopt a more liberal interpretation and to continue to involve themselves in the matter.

If the Chair of a meeting is aware that a Board/staff member has not declared a material interest or has declared it but not acted in accordance with this policy, the Chair should take appropriate action to ensure that HIE (and the individual concerned) is not compromised. This may involve asking the conflicted person to leave the room.

If a line manager becomes aware that a member of his/her staff has not declared an interest or has declared it but not taken appropriate action, he/she must intervene to ensure that the appropriate course of action is taken.

Within HIE, the Standards Officer is responsible for providing general guidance, and advice on specific cases, to managers and staff within HIE.  If in doubt, refer cases to the Standards Officer (through line management).

### 7.2  Further information and advice

Annex two contains a list of frequently asked questions on the practical application of this policy for HIE staff.

If you have a question or require advice that is not dealt with in Annex two or in the rest of this policy, please contact HIE's Standards Officer, Adrian Kitson, on (01463) 244318.

## Annex 1: The Nine Scottish Principles of Conduct

The nine Scottish principles of conduct underpinning public life are as follows:

**Selflessness**: You should take decisions solely in terms of the public interest. You should not do so in order to gain financial or other material benefits for yourself, your family, or other friends

**Integrity**: You should not place yourself under any financial or other obligation to outside individuals or organisations that might influence you in the performance of your official duties

**Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, you should make choices on merit

**Accountability and stewardship**: You are accountable for your decisions and actions to the public and must submit yourself to whatever scrutiny is appropriate to your office

**Openness:** You should be as open as possible about all the decisions and actions that you take. You should give reasons for your decisions and restrict information only when the wider public interest clearly demands

**Honesty**: You have a duty to declare any private interests relating to your public duties and to take steps to resolve any conflicts arising in a way that protects the public interest

**Public service:** You have a duty to act in the interests of HIE and in accordance with the core tasks of HIE

**Leadership**: You should promote and support these principles by leadership and example

**Respect:** You must respect Board members and staff of HIE and the role they play, treating them with courtesy at all times

## Annex 2: Protocols for Board Members Performance

- Specify the interests which exist

- Identify those which have a potential relevance to the activity that HIE is involved in

- Describe the areas of potential relevance to HIE activity:
    - Identify the nature of the issue
    - Describe for each the areas of potential conflict
    - If appropriate document why a conclusion has been reached that the issue does not have potential to create a conflict in relation to HIE activity

- Describe arrangements to be put in place to avoid conflicts and protect objectivity
  Consider arrangements for within HIE
    - Consider arrangements which the HIE Board member has to put in place
    - Distinguish between input to strategy and more operational matters

- Agree review periods

## Annex 3: Frequently Asked Questions

This Annex contains a list of questions (and answers) on the practical application of this Conflicts of Interest policy in HIE.

**Q1 What questions should I ask myself in considering whether I have a material interest and how to handle it?**

Is my interest financial or non-financial?

If financial, there is a presumption that you should not play any role in the discussion or decision-making process unless the interest is irrelevant or of little significance.

If non-financial, you should ask whether a reasonable person would consider that your interest could potentially affect your responsibilities to HIE and to the public or could influence your actions or decisions?

Is there any reputational risk for me personally and/or for HIE in this matter?

Could I defend/justify my actions to a member of the public, the press or a Parliamentary Committee?

Is this an area of sensitivity for HIE where there has been media attention in the past and/or criticism of HIE or another public body?

Have I discussed the matter with a more experienced colleague, my line manager or the HIE Standards Officer?

**Q2** Can I take part in activity directly related to the organisation in which I have registered/declared an interest? **[Activity includes requests for financial assistance and/or an involvement in account management role]**

No.

**Q3 Can I take part in activity related to a subsidiary or member of the same Group as the organization in which I have registered/declared an interest? [Activity includes requests for financial assistance and/or an involvement in account management role]**

No, unless the interest is so insignificant or remote that no reasonable person would see it as being material. A relative working in a subsidiary could enhance his/her own position by feeding relevant and valuable information to the parent company.

You should refer a case like this to your line manager and through him/her to the Standards Officer before proceeding.

**Q4 Can I take part in any activity directly related to a competitor of the organisation in which I have registered/declared a material interest?**

In most cases, no.

**Q5 Can I take part in wider strategic activity or engagement with the sector in which the organisation (in which I have an interest) operates?**

In most cases, yes. If your role involves looking at generic issues or broad themes, or will involve engagement with the sector generally, that should be fine. However, if (for example) the strategy is focusing on a technology unique to one company that would be problematic.

**Q6 I am aware of a colleague who is clearly in breach of this policy. How should I deal with this situation?**

If the breach appears to be an oversight due to ignorance or poor judgment, you may wish to discuss the matter informally with the individual concerned to enable him/her to rectify the situation. If this is not an acceptable or appropriate course of action (e.g. due to the seriousness of the breach, the seniority or likely reaction of the individual concerned), you should refer the matter to your line manager or the HIE Standards Officer or Head of Business Improvement and Internal Audit.

If the breach is so serious that it might constitute a criminal offence, you should deal with the matter under HIE's whistleblowing policy which sets out a procedure for handling such concerns.