



ORGANISATIONAL CONFLICT OF INTEREST POLICY

Final Draft 01.11.2019

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FINAL DRAFT

REVISION HISTORY

| Rev No. | Date | Initials | Reason for Issue |
|---------|------------|----------|---|
| 1.0 | 09.10.2019 | CO'M | First Draft |
| 1.1 | 11.10.2019 | CO'M | Second draft incorporating comments from David Brown, Monitoring Officer. |
| 1.2 | 16.10.2019 | CO'M | Third draft incorporating comments from Carl Mathias and instructions from Jane Ryan. |
| 1.3 | 01.11.2019 | AF | Fourth draft incorporating comments from David Brown, Chris Bradley and Janette Gill. |

APPROVAL HISTORY

| Rev No. | Date | Approved by |
|---------|------|-------------|
| EB | | |

ASSOCIATED DOCUMENTS

| Documents relating to Havant Borough Council |
|---|
| Constitution https://www.havant.gov.uk/constitution |
| Plaza - Clear desk policy http://intranet/sites/default/files/Plaza%20User%20Booklet%20V2.5%20June%202019.pdf |
| Whistleblowing http://havant.moderngov.co.uk/documents/s20446/Whistleblowing%20Policy.pdf |
| Anti-bribery policy http://havant.moderngov.co.uk/documents/s20433/Anti%20Bribery%20Policy.pdf |
| Anti-fraud and corruption policy http://havant.moderngov.co.uk/documents/s20436/Anti%20Fraud%20and%20Corruption%20Policy%20and%20Response%20Plan.pdf |

| Document relating to East Hampshire District Council |
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| East Hampshire District Council Constitution https://www.easthants.gov.uk/constitution |
| Whistleblowing http://easthants.moderngov.co.uk/documents/s7672/Whistleblowing%20Policy.pdf |
| Anti-fraud and corruption policy http://easthants.moderngov.co.uk/documents/s7935/Anti-Fraud%20and%20Corruption%20Policy.pdf |

Who should read this policy?

- 1.1. In this policy, Havant Borough Council is referred to as **HBC** and East Hampshire District Council is referred to as **EHDC**. A reference to “Council” means either or both HBC and EHDC.
- 1.2. The Council expects all Officers, Members, employees or consultants of the Council to read and comply with this policy.

2. What is a conflict of interest?

- 2.1. In its report on ‘Conflicts of Interest’¹, the National Audit Office (**NAO**) defines a conflict of interest as a “...set of circumstances that creates a risk that an individual’s ability to apply judgement or act in one role is, or could be, impaired or influenced by a secondary interest. The perception of competing interests, impaired judgement or undue influence can also be a conflict of interest.”

3. How is this relevant to the Council?

- 3.1. A high level of governance and organisation integration exists between HBC and EHDC which can be summarised as follows:

- HBC and EHDC operate under a joint management structure with a shared senior management team. Since 2010, the post of Chief Executive has been a joint role and since 2011/12 the Councils have shared directors and service managers;
- pursuant to an inter-authority agreement, HBC provides the following services to EHDC: procurement, finance, human resources and IT;
- the Councils share legal, executive support and environmental health services;
- HBC has delegated the following functions to EHDC: parking, traffic management and environmental enforcement; and
- EHDC has delegated its environmental waste services function (**ES Function**) to HBC.

- 3.2. Also of note is that:

- EHDC has contracts with numerous other local authorities for the provision of environmental enforcement services;
- EHDC has a shareholding in EH Commercial Services Ltd (**EHCS Ltd**) and Regeneration Services (**Regenco**);
- EHDC has delegated its environmental enforcement function (**EE Function**) to EHCS LTD;
- HBC has a shareholding in Norse South East Limited (**NORSE South East Ltd**); and

¹ National Audit Office, Report by the Comptroller and Auditor General, Cross-government “Conflicts of interest”, 27th January 2015

- HBC is host employer of the Eastern Solent Coastal Partnership team which is a partnership between Portsmouth City Council, Gosport Borough Council, Fareham Borough Council and HBC for the sharing of coastal defence management services.

3.3. HBC and EHDC recognise that because of their close integration and their relationships with third party organisations it is inevitable that certain conflicts of interest will arise.

3.4. Each Council understands that a transparent and pragmatic approach is needed to manage the associated risks as it is not feasible nor realistic to eliminate totally the risk of conflicts of interest.

4. Different types of conflicts have different policies

4.1. This policy focuses on *organisational* or *institutional* conflicts which may arise and is not intended to replace the requirements of any other existing codes of conduct or policies which the Council may have in place.

4.2. Whilst there may be some cross over issues, broadly speaking, if the conflict you have identified is:

- personal versus work, then you should refer to the relevant Council's Code of Conduct for Employees or Code of Members' Conduct as appropriate; or
- linked to corruption or bribery, then you should refer to the relevant Council's Anti-Bribery Policy and/or Anti-Fraud and Corruption Policy for further guidance.

5. What is expected of all Officers and Members

5.1. The Council expects all its Officers and Members to:

- read this policy and keep informed of any updates. If you become aware of any colleagues who have not read this policy, please encourage them to do so, especially if they are working in an area which is recognised as having a greater exposure to risk of an organisational conflict;
- be alert to the ongoing risk of organisational conflicts arising. At the start of each new project the Council's exposure to risk of conflicts should be assessed. The risk should then be monitored and reviewed on a regular basis;
- attend or complete any training which is offered in relation to conflicts of interest; and
- act honestly and to volunteer information about conflicts in a timely fashion.

6. Spotting conflicts of interest

6.1. The crucial first step is to identify the conflict. It is important to remember that the conflict may be actual, possible or perceived.

6.2. Set out in Schedule 1 of this policy are examples of conflicts/potential conflicts which exist/may arise. The list in Schedule 1 is not intended to be exhaustive, instead it gives examples of how and where conflicts of interest may arise. This may help Officers and Members to identify issues in the future.

7. Why is it important to recognise conflicts of interest when they occur?

- 7.1. Failure to recognise a conflict of interest can give the impression that the Council and/or its representatives are not acting in the public interest which could potentially lead to a decision being subject to challenge. Defending decisions is costly and risks damaging the reputation of the Council.
- 7.2. Failure to recognise a conflict of interest can ultimately undermine public confidence that the principles of public life such as integrity, objectivity and openness are being followed.
- 7.3. Having a clear approach to managing conflicts of interest improves transparency, ensures accountability and increases public confidence in the decision-making process.
- 7.4. Wherever the Council or its Officers or Members have multiple roles or interests then the potential for a risk of conflict will arise. As the risk cannot be eliminated, anyone involved in any decision-making process should be alert to the risk and know what to do next.

8. What to do if you suspect a conflict has arisen

- 8.1. If an Officer is worried about a potential conflict, they should discuss it with their line manager in the first instance. The line manager should assess the level of risk and consider what, if any, mitigation measures should be put in place. If there is any doubt in the line manager's mind as to whether there is a conflict, they should consult the Monitoring Officer for further advice.
- 8.2. If a Member is worried about a potential conflict, they should discuss the issue directly with the lead Officer for the project in the first instance. If the lead Officer for the project is unsure whether an actual, potential or perceived conflict exists, they should refer the matter to the Monitoring Officer for further advice.
- 8.3. If having considered the risk of exposure to organisational conflict, the line manager, lead Officer or Monitoring Officer considers there is an actual, potential or perceived conflict, then the Council should consider what measures are required to manage the organisational conflict identified.

9. Managing Conflicts of Interest

- 9.1. Public sector organisations in the UK are expected to develop their own approach towards managing conflicts of interest. Systems should reflect the level of risk of exposure to conflicts.
- 9.2. If a conflict is identified, a written record should be kept on the relevant project or issue, confirming which side of the conflict different Officers/Members are on and what measures have been or will be put in place to manage the risk in question.
- 9.3. Where a conflict relates to a third-party organisation or provider, the third party should be given a copy of this policy together with the list of measures being used to manage the risk. You should consider including a formal contractual requirement to ensure standards and processes are understood e.g., a letter of engagement with external solicitors could specify that instructions can only be given by certain members of the legal team.

9.4. There are many measures which could be used to manage a conflict of interest risk. The measures the Council puts in place should reflect the level of risk exposed by the conflict. Not all the measures listed below may be appropriate. If the risk exposure is high, then the Council may need to implement all these measures and/or another solution to adequately mitigate the risk identified.

9.5. Measures for managing organisational conflict risks may include:

- creating an information barrier by appointing separate Officers to represent the interests of each Council. If an information barrier is established, it should be confirmed in writing (by email) to all those concerned so that there is a written record of which side of the conflict the Officers stand. (Where an Officer and their line manager are on different sides of an organisational conflict, consideration should be given to identifying another line manager to support the officer in the conflicting role. Consideration should be given to the long-term implications of an Officer's involvement on one side of the information barrier and potential limitations on future activities);
- maintaining separate case management files for each Council and restricting access to those files to the relevant nominated Officer;
- the use of password encryption to protect important documents;
- listing identified risks on a risk register;
- a requirement restricting verbal communications between Officers on different sides of the conflict so that all communications must be in writing or at least confirmed in writing by email or through the production of file notes;
- a requirement that meetings between Officers on different sides of the conflict be minuted and the content approved by those who were present at the meeting;
- relocating Officers on different sides of the conflict to different office sites or to different parts of the building so that meetings, discussions and telephone calls can take place without Officers on the other side of the conflict overhearing. This is important given the open plan nature of our offices;
- enforcing the Council's clear desk policy;
- engaging with external audit services to ensure the measures taken by the Council are robust and appropriate to suitably manage the risk;
- engaging support from external professional advisors to ensure that competing interests are adequately represented.

9.6. Set out in Schedule 2 of this policy is a list of specific measures which the Council considers necessary to manage the organisational conflicts identified in respect of the areas listed in Schedule 2.

10. Professional regulatory rules

10.1. Officers employed by the Council should ensure that they comply at all times with any rules imposed on them by any applicable professional or regulatory bodies. For

example, solicitors should ensure that they comply at all times with the SRA's Handbook rules on Conflicts of Interest².

11. Sanctions for non-compliance with this policy

- 11.1. Investigations of alleged breaches of this policy will be dealt with under the Council's disciplinary procedures and in line with the Council's Code of Conduct for Employees or the Council's Code of Conduct for Members (as appropriate).

² <https://www.sra.org.uk/solicitors/handbook/code/part2/rule3/>

Schedule 1: Examples of organisational conflicts

Here is a list of some conflicts/potential conflicts which at the time of writing this policy are relevant to HBC and EHDC. This list is not intended to be exhaustive, but it may help Officers and Members to identify issues in the future.

Part A: Delegation by EHDC to HBC of its environmental services function (ES Function)

1. HBC is a shareholder of NORSE South East Ltd, the company engaged to provide environmental services to HBC for the Havant and East Hampshire areas. The interests of NORSE South East Ltd may conflict with the aims or interests of HBC in its capacity as 'customer' and/or HBC's interests under the delegation.
2. A Senior Officer employed by HBC and a Member of HBC are directors of NORSE South East Ltd meaning that their legal fiduciary duty to NORSE South East Ltd may compete with their duty to HBC or residents within the borough of Havant.
3. In addition to the delegation of the ES Function, HBC and EHDC have shared service arrangements. Each Council will have their own interests to protect and will be competing for the use of resources, trying to influence it for its own benefit.
4. The Contract Liaison Manager for HBC's contract with NORSE South East Ltd and the Delegation Agreement is an EHDC employee. The Contract Liaison Manager may have conflicting demands placed upon them. For example, if both Councils needed a particular resource but that resource was limited, the Contract Liaison Manager might be required to decide which Council's interests should come first. Alternatively, if there was potential to make a financial saving for one Council but such saving would lead to a negative financial impact on the other Council, then an organisational conflict would be created and it might be difficult for the Contract Liaison Manager alone to decide what to do.
5. HBC is NORSE South East Ltd's landlord. HBC's interests as a shareholder of NORSE South East Ltd may compete with HBC's interests as landlord and its duty to the residents of Havant.
6. EHDC is NORSE South East Ltd's landlord. EHDC has delegated its ES Function to HBC. HBC is a shareholder of NORSE South East Ltd. EHDC financial interests as landlord may conflict with HBC's financial interests as a shareholder of NORSE South East Ltd and HBC's financial interests under the delegation agreement made with EHDC and the service agreement made with NORSE South East Ltd. EHDC may have its own competing financial interests i.e., a desire to maximise rental income whilst avoiding big increases in the cost of the ES Function.
7. HBC and EHDC share Legal Officers. No Legal Officer could advise both HBC and EHDC on a question of interpretation of the Delegation Agreement.
8. HBC and EHDC share finance officers and consultants. Finance officers may have conflicting demands placed upon them when for example, reviewing and updating the business plan for the ES Function.

Part B: Delegation of Environmental Enforcement Function (EE Function)

1. EHDC is a shareholder of EHCS Ltd, the company responsible for the delivery of the environmental enforcement function in the Havant and East Hampshire areas. The interests of EHCS Ltd may conflict with the aims or interests of EHDC and/or the interests of the delegation.
2. EHDC as shareholder of EHCS Ltd is supported by three regulated Officers who are shared employees. Shared officers may have conflicting demands placed upon them.
3. A Senior Officer employed by HBC and shared with EHDC is a director of EHCS Ltd meaning that their legal fiduciary duty to EHCS Ltd may compete with their duty to HBC, EHDC and/or the residents within the borough of Havant or district of East Hampshire.
4. A Senior Officer employed by EHDC and shared with HBC is a director of EHCS Ltd meaning that their legal fiduciary duty to EHCS Ltd may compete with their duty to EHDC and/or the residents within the district of East Hampshire.
5. A Senior Officer of HBC and a Senior Officer of EHDC act as nominated client representative for EHDC in relation to the EE Function for Havant and East Hampshire areas. Both officers are shared employees of HBC and EHDC. Their duties to each respective Council may compete with the interests of the other Council.
6. The Operations Manager responsible for managing employees of EHCS Ltd engaged in the delivery of the EE Function is an EHDC Officer. The interests of EHDC may conflict with the interests of EHCS Ltd.
7. An EHDC Finance Officer carries out work for EHCS Ltd. The Finance Officer may have conflicting demands placed upon them.
8. EHDC is EHCS Ltd's landlord. EHDC's interests as a shareholder of EHCS Ltd may compete with EHDC's interests as landlord and its duty to the residents of East Hampshire.
9. HBC and EHDC share Legal Officers. No Legal Officer could advise both HBC and EHDC on a question of interpretation of the delegation agreement between them or in respect of any court proceedings taken in connection with the EE Function.

Part C: Eastern Solent Coastal Partnership team (ESCP)

1. HBC is appointed as host employer of the ESCP for the delivery of the coastal defence management services. HBC is itself a recipient of those services. The interests of HBC may conflict with the aims of the ESCP and the interests of the other local authority partners.
2. A Senior Officer employed by HBC is Head of the ESCP. They may have conflicting demands placed upon them.
3. HBC provides HR, legal, administrative and finance support services to the ESCP. The interests of HBC may conflict with the interests of the ESCP and the officers involved in the delivery of those services may have competing demands placed upon

them. For example, if a dispute arose between HBC and the ESCP in respect of any of those support services then no legal officer could advise both HBC and the ESCP.

4. HBC's interests in deciding how much to charge the ESCP for its use of the support services mentioned above may conflict with HBC's interests as a partner of the ESCP.
5. Where HBC has engaged the services of third-party providers for the delivery of services to HBC and the ESCP, the interests of the ESCP may conflict with the rights and obligations of HBC under those third-party contracts.
6. The ESCP rents accommodation from HBC. HBC's interests as a partner of the ESCP may compete with HBC's interests as a landlord.

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Schedule 2: Specific Measures

The following specific measures have been identified by each Council as being necessary to manage the organisational conflicts identified in respect of each of the areas listed below. These measures are in addition to the general measures suggested elsewhere in this policy.

Part A: Measures relating to the Delegation of the ES Function

1. Maintenance of the information barrier established during the negotiation of the delegation agreement relating to the ES Function. In practice, this means:
 - a. that each Council will have a Legal Officer allocated to them to answer any questions which may arise relating to the delegation agreement relating to the ES Function or the ES Function itself;
 - b. that the Supplemental Agreement made between (i) HBC; (ii) Norse South East Limited; and (iii) Norse Commercial Services Limited dated 27th September 2019 (**Supplemental Agreement**) has been placed in the deeds strong room for safekeeping with a covering note clearly marking its financial contents as confidential;
 - c. if EHDC wishes to see a copy of the Supplemental Agreement, it is only entitled to a redacted version. Any financial information should be redacted. If an Officer is unsure whether something is capable of disclosure to EHDC, they should refer the matter to the Contract Liaison Officer in the first instance. If a second opinion is required, the matter should be referred to the Monitoring Officer for their decision.
2. Maintenance of a risk register for the ES Function.

Part B: Measures relating to the Delegation of the EE Function

1. Existence of a shareholder committee comprising of three Members nominated by EHDC Full Council. The Directors of EHCS Ltd have disclosed their conflict of interest to the shareholder committee which has in turn authorised the Directors to act and to participate in the decision-making process.
2. Maintenance of a risk register for the EE Function.
3. Preparation of quarterly accounts in respect of EHCS Ltd for the Section 151 Officer to review.
4. Arrangements are made for the accounts of EHCS Ltd to be externally audited each year.

Part C: Measures relating to the Eastern Solent Coastal Partnership team (ESCP)

1. The ESCP has in place a clear team structure showing the reporting channels for any issues which may arise.
2. The ESCP collectively agrees a business plan and strategy for the allocation of resources on an annual basis so that the Head of the ESCP knows how to prioritise spending across the 4 authorities.

3. Each local authority partner (including HBC) has a client manager with whom the Head of the Coastal Team regularly liaises.
4. Maintenance of a risk register.

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