

Conflict of Interest Policy

POLICY NO:

POL/566

VERSION:

Version 1

SHORT DESCRIPTION:

This policy establishes the conflict of interest obligations for all members of Council staff.

RELEVANT TO:

All staff including employees, contractors, consultants, volunteers, labour hire, outworkers, cadets, apprentices, trainees, work experience students, other individuals and groups undertaking activities for or on behalf of Council.

RESPONSIBLE OFFICER:

Chief Legal and Governance Officer

RESPONSIBLE OFFICE:

Governance

APPROVED BY:

Executive Management Team

DATE PUBLISHED:

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**NEXT SCHEDULED
REVIEW DATE:**

2025

RELATED DOCUMENTS:

Local Government Act 2020
Local Government (Governance and Integrity) Regulations 2020
Charter of Human Rights and Responsibilities Act 2006
Employee Code of Conduct
Councillor Code of Conduct
Conflict of Interest Declaration Form
Manningham Risk Management Strategy
Manningham Risk Management Policy
Manningham Fraud and Corruption Control Policy
Manningham Fraud and Corruption Control Plan
Public Interest Disclosure Procedures
Governance Rules

1. PURPOSE

This policy sets out the conflict of interest (COI) obligations of all Manningham City Council staff that arise from the Staff Code of Conduct, individual contracts of employment, and the Local Government Act 2020 (the Act).

The purpose of this policy is to assist Council staff in effectively identifying, disclosing and managing any actual, potential or perceived COI in order to protect staff integrity, manage risk and compliance with legislative obligations.

2. SCOPE OF POLICY

This Policy applies to any member of Council staff and for the purpose of this Policy, the definition of member of Council staff includes:

- an employee
- a consultant, contractor or an employee of a contractor whose work is used to inform Council or delegate decision making
- an employee of a labour hire company who has been assigned to work in a particular business or part of the organisation or municipality
- an outworker
- a cadet, apprentice or trainee
- a student on work experience
- a volunteer
- any other person who is representing Council in its delivery of services.

3. POLICY STATEMENT

All Manningham City Council staff have a duty to put the public interest above their private interests when carrying out their official functions. They are expected to:

- identify, declare and manage any COI effectively;
- apply good practice principles and incorporate the effective management of any COI into their business as usual practices;
- abstain from any decision-making process in which they could be compromised, or appear to be compromised;
- report any COI truthfully and completely as soon as they are identified;
- record any COI on the approved standard COI declaration form.

4. GUIDANCE

Having competing interests is not a problem in itself as long as it is identified and managed effectively. The obligation to disclose a COI is a personal responsibility. A staff member must monitor their own circumstances and identify their COI.

4.1 What is a conflict of interest

A COI arises in circumstances where a staff member's public duty is influenced, or can be seen to be influenced, by a private interest.

Private interests include both financial and non-financial interests, and can include the interests of family members and close friends or associates. They can be positive or negative interests—personal dislike towards someone can be just as relevant as loyalty to them.

The Act requires staff to proactively consider a broad range of interests and consider those interests from the viewpoint of an impartial, fair-minded person. The intent is to move from a compliance approach to a principles-based approach with personal integrity and transparency in public office as the foundations. The shift away from prescribing every type of conflict of interest enables a broader range of interests to be considered, especially those that are difficult to define, such as those that arise due to a friendship.

4.1.1 Conflict of interests under the Act

Two types of COI are defined in the Act:

General conflict of interest

A general COI is any matter that an impartial, fair-minded person would consider that private interests of a member of staff or contractor could result in them acting in a manner that is contrary to their public duty.

Material conflict of interest

A material COI is any matter where an affected person would gain a benefit or suffer a loss depending on the outcome of the matter. The benefit may arise or the loss may be incurred directly or indirectly and in a pecuniary or non-pecuniary form.

An affected person, for the purposes of a material COI, includes:

- a member of Council staff ;
- a family member of the staff member;
- a body corporate of which the staff member or their spouse or domestic partner is a director or a member of the governing body;
- a business partner of the staff member;
- a person for whom the staff member is a consultant, contractor or agent;
- a beneficiary under a trust or an object of a discretionary trust of which the staff member is a trustee;
- a person from whom the staff member has received a disclosable gift (as defined in the Act – currently most gifts with a value over \$500).

There are some exemptions from these provisions, which mean that a COI does not exist if:

- the COI is so remote or insignificant that it could not be reasonably regarded as capable of influencing the actions or decisions of the relevant person in relation to the matter;
- the interest that would give rise to a COI is held in common with a substantial proportion of the residents, ratepayers or electors of the municipal district and does not exceed the interest held by the other residents, ratepayers or electors;
- the relevant person does not know the circumstances that give rise to the COI, and could not be reasonably expected to know those circumstances;
- the interest only arises because the relevant person is the representative of the Council on a not-for-profit organisation that has an interest in the matter and the relevant person receives no personal advantage from the not-for-profit organisation;
- the interest only arises because a family member of the relevant person is a member but not an office-holder of a not-for-profit organisation; or
- the interest only arises because the relevant person is a member of a not-for-profit organisation that has expressed an opinion or advocated for an outcome in regard to the matter.

4.1.2 Potential and perceived conflict of interest

A COI can be actual, potential or perceived. For good practice governance, it is important to consider circumstances which do not give rise to a statutory COI but still create a perception that a staff member has been influenced by external interests.

It is particularly important for staff to address risks of perceived COI because they are the most likely to be overlooked or underestimated. An important consideration when identifying and managing COI is whether a reasonable and fair minded person would consider that a private interest is likely to influence the public duty to the extent that it would create a risk for the organisation or undermine public sector values. Being able to identify these risks will assist staff and managers in taking appropriate steps to protect the public interest.

Potential conflict of interest

A potential COI refers to circumstances where it is foreseeable that a COI may arise in the future and steps can be taken now to mitigate any risk.

Perceived conflict of interest

A perceived COI arises where a reasonable person might think that an employee could be unduly influenced by a private interest, even if the employee is confident of their own objectivity.

4.2 Identifying conflicts of interest

Self identification

Staff are best placed to identify if and when a conflict or potential conflict exists. They are at the coalface of relationships and practices that can influence the delivery of programs and services. It is imperative that any COI is managed transparently and effectively.

Whilst COI may occur in any part of Council, some functions and activities pose higher risks than others and may require increased vigilance. These high risk areas include recruitment, procurement, infringements and prosecutions, permits and approvals and grants.

Examples of COI that may arise in these high risk areas are:

Risk	Example
Procurement	Where a staff member has access to detailed pricing and contractual information about a supplier and is friends with a person operating a similar business.
Recruitment	Where a staff member is on a selection panel and interviews a family member or friend.
Infringements and prosecutions	Where a staff member is responsible for enforcement of Council's local laws and is friends with the part owner of a building company operating at a site that has been subject to public complaints.
Permits and approvals	Where a staff member responsible for assessing planning permit applications is allocated an application nearby to their parents' home.
Grants	Where the domestic partner of a staff member involved in developing grant guidelines is an artist who is likely to apply for a future grant.

Independent identification

Council shall undertake a range of measures to identify COI and ensure the obligations of the Staff Code of Conduct are well communicated and understood.

These include:

- Staff in high risk areas shall be required to make proactive attestations in relation to COI, such as declarations by panellists at the commencement of tender and recruitment processes;
- Two yearly eLearning training (or other mechanisms) shall be conducted to ensure the Staff Code of Conduct and COI obligations are communicated and understood; and
- COI detection measures shall feature as part of the internal audit program and compliance plan program.

4.3 Declaring conflicts

All staff members have a positive obligation to declare a COI in writing. This includes any perceived, potential, general or material COI. The COI declaration form is available in the intranet Document Bank. You may submit this form to the Governance Team via the intranet online form or by downloading a hard copy. Hard copies can also be obtained from Governance.

In consultation with your direct Manager, you will be required to provide the following information:

- Your name
- Whether you have a general, material, potential or perceived COI
- The matter to which the COI arises
- Short description of the nature of COI
- How the conflict will be managed.

These declarations will be recorded in the conflict of interest register by the Governance Team. The declarations will remain confidential unless required to be disclosed by law and shall be available to direct line management, the Chief Legal Officer and the Chief Executive Officer (CEO).

4.4 Managing conflicts

Management of COI occurs according to a six-part management process known as “register, restrict, recruit, remove, relinquish or resign”.

Strategy	Action
Register	Details of the existence of a possible or potential COI are formally advised and recorded.
Restrict	Restrictions are placed on the staff member’s involvement in the matter.
Recruit	A disinterested third party is appointed to oversee part or all of the process that deals with the matter.
Remove	The staff member does not participate at all in the matter. This is a requirement where an actual conflict of interest is declared in accordance with the Act.
Relinquish	The private interest concerned is relinquished.
Resign	The interest is such that it is incompatible with the person’s employment with the Council and the person resigns.

The applicable risk management strategy to be applied depends on the particular circumstances of the COI. In most cases, one of these strategies shall be sufficient, but it may also be appropriate to implement two or more measures.

By way of illustration, the following examples are provided:

- The domestic partner of a staff member is a planning consultant who regularly makes applications to Council on behalf of their clients. The staff member has an administrative role in the planning team, but is not involved with assessing applications. The member of staff registers this perceived COI on the COI register.
- A member of staff has authority to assign projects to contractors who have been appointed to a panel following a tender process. The staff member's father is an employee of one of the appointed contractors. The interest is managed by restricting the staff member so that they are not permitted to be involved in the development of the applicable program and cannot participate in project management or payments in relation to projects assigned to any of the companies on that panel. Other staff may continue to do so, but reporting lines are altered to ensure the conflicted staff member is not indirectly involved.
- A town planner has been assessing a permit application for many months, when an objection to the application is received from a friend. As it is not practicable to remove the planner at that point, another planner is recruited to assess the objection and to review the planner's assessment of the application to ensure that the objection has not been treated inappropriately. The COI must be included in the delegation report or Council report and note the actions taken to remove the planner from the assessment of the objection.
- A staff member from Council's Infrastructure Services team is assigned to an interview panel, only to discover that a friend has submitted an application. The staff member is removed from the panel before the interview process and an alternative member of the team takes their place.
- A staff member is about to embark on a procurement process for a new computer system, and realises that they have a significant shareholding in one of the likely tenderers. Before the process begins, the staff member relinquishes their interest by selling their shares in the company at market value.
- The domestic partner of a member of staff is offered a senior management position with Manningham Council which would put them as the direct line manager of their partner. After exploring alternative roles in the Council, the staff member determines that there are no suitable positions in other parts of the organisation and that the COI will be difficult to manage and therefore resigns.

5. RESPONSIBILITIES

All Staff

- Ensure that they do not allow their private interests to interfere with the discharge of their public duty.
- Identify and disclose any COI in accordance with this policy as soon as practicable after it arises.
- Make disclosures truthfully and completely, submitting them to Council's Governance team for inclusion on the COI register.
- Seek advice from their direct manager, supervisor or the Governance team if they are unsure about the nature of their interests.

Managers and Supervisors

- Assist staff to assess and manage risks associated with COI.
- After becoming aware, that one of their staff has a COI ensuring that the COI has been declared in accordance with this policy and that appropriate COI management strategies have been established.
- Ensure measures put in place to manage the COI are documented and any necessary system controls have been implemented.

Governance Team

- Responsible for the administration of Council's COI regime including maintaining a register of COI declared in accordance with this policy.
- Receive COI declarations and ensure they are included on the COI register.
- Notify the relevant line manager of declarations as they are received to ensure appropriate measures are put in place to manage the COI.
- Ensure the COI register is available only to the Executive Management Team and others where required by law (such as the Local Government Inspectorate).
- Issue an annual reminder to all staff of their obligation to declare COI in accordance with this policy.
- Review this policy in accordance with the policy review cycle.

Chief Executive Officer

- Receive any staff member's written declaration of COI.
- Provide written notice of their own COI to the Mayor.
- Forward declarations to the Governance team for inclusion in the COI register.
- Ensure written records are retained for a period of three years.
- Notify the Chief Municipal Inspector as soon as practicable after becoming aware of a failure to declare a COI and deal with the matter in accordance with the Staff Code of Conduct.

Whistleblowers

- Any person who considers that a COI may not have been declared or managed appropriately should speak up and notify their manager or Council's Public Interest Disclosure Coordinator. Council will take decisive action against employees who discriminate against or victimise those who speak up in good faith.

6. FAILURE TO COMPLY

Where the CEO forms the view that a breach of the law has taken place, they will report the matter to the appropriate authority and fully cooperate with any subsequent investigation.

If a member of Council staff fails to disclose a COI in accordance with the Act, the CEO must notify the Chief Municipal Inspector as soon as practicable after they become aware of the failure and deal with the matter in accordance with the Disciplinary Policy.

All members of staff will be provided with procedural fairness through this process. Contractors may be subject to contract renegotiation, including termination.

7. ADMINISTRATIVE UPDATES

From time to time, circumstances may change leading to the need for minor administrative changes to this policy. Where an update does not materially alter this policy, such a change may be made administratively. Examples of minor administrative changes include changes to names of Manningham Council departments or a minor amendment to legislation that does not have material impact. Where any change or update may materially change the intent of this policy, it must be considered by the Executive Management Team.