

CRIMINAL CASES REVIEW COMMISSION

CODE OF BEST PRACTICE FOR COMMISSIONERS

**RULES OF CONDUCT FOR COMMISSIONERS TO REPORT
CONFLICTS OF INTEREST**

AND

CODE OF CONDUCT FOR COMMISSION STAFF

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INTRODUCTION

Background

1. In 1991, as part of the Government's concern about standards in public life, the Treasury produced a model Code of Best Practice for Board Members of Public Bodies, which could be modified to take account of the particular characteristics and circumstances of the public body concerned.
2. The Government also established the Nolan Committee, to look into standards in public life, in November 1994. The Committee first reported in 1995, and again in May 1996. Although the Committee is best known for its recommendations relating to the conduct of Members of Parliament, by far the greater part of its work has concerned public bodies, and in particular Non-Departmental Public Bodies.
3. The Government responded to the Nolan Committee recommendations with a series of Command Papers, culminating in a White Paper of February 1997. The White paper brings together the sectoral responses made by government to the Nolan Committee reports, and endorses new (January 1997) guidance issued by the Treasury on codes of practice for board members of public bodies.
4. The Treasury's January 1997 guidance requires the Chairman and other Commissioners to declare any personal or business interests which might conflict with their responsibilities as Commissioners. It suggests that the Commission, in consultation with its sponsor department (in the Commission's case, the Home Office) should draw up rules of conduct for members to ensure that such conflicts be identified at an early stage and appropriate action be taken to resolve them.
5. The Treasury guidance recommends that the Commission's rules of conduct provide for establishing a register of Commissioner interests appropriate to the Commission's activities, which should be open for public inspection and published at least once a year. The guidance further recommends that the Commission consider whether or not the register should include non-pecuniary interests of members that relate closely to the Commission's activities, and the interests of close family members and persons living in the same household as the Commission member.
6. In the light of the Treasury guidance, the Commission has revised its Code of Best Practice for Commissioners and produced rules of conduct to ensure that conflicts are identified and dealt with.

Code of Best Practice and Rules of Conduct

7. Details of implementation and issues are:
 - Issue 1 of the enclosed Code and Rules of Conduct was approved by the Commission on 9 July 1997, which was the date of implementation.
 - A minor amendment was incorporated into Issue 2 (issued to staff in October 1999.)

- Reference to the Guide to Professional Conduct of Solicitors was updated and incorporated into Issue 3, which was approved by the Commission on 20 February 2001.
- Amendments to paragraphs 8, 10, 28 and 39 of the Code of Best Practice for Commission Members and paragraph 22 of the Code of Conduct for Commission Staff were made following the 17 March 2003 Commission meeting. Issue 4 was approved by the Commission 20 January 2004 and circulated to staff on 2 February 2004.
- Amendments were made throughout the document following the introduction of the Commission's new organisation structure in January 2005 and to reflect the change of name from Commission Member to Commissioner. Issue 5 was approved by the Commission on 17 January 2006 and circulated to staff on 14 February 2006.

Register of Financial and Other Interests

8. The categories of interests included in the Register of Financial Interests were taken from those published for MPs, and were agreed with the Home Office. The Register includes non-pecuniary interests of Commissioners that may relate to the Commission's activities.
9. The Commission will make its Register of Interests available upon request. A form is included for Commissioners to complete and update annually, and whenever changes occur.

CODE OF BEST PRACTICE FOR COMMISSIONERS

(Issue 5 approved by the Commission on 17 January 2006)

1. This document sets out a Code of Best Practice for Members (Commissioners) of the Criminal Cases Review Commission (The Commission). The Code has been agreed with the Home Office (The Department) and will apply from 9th July 1997.

Public Service Values

2. The Commission:
 - aims to observe the highest standards of propriety, impartiality, integrity and objectivity in its stewardship of the grant-in-aid provided to the Commission, and management of its operations;
 - aims to maximise value for money through delivery of services efficiently and economically, within its resources, and with independent validation of performance actually achieved wherever practicable;
 - is accountable to Parliament, users of services, individual citizens and staff for its activities, the stewardship of its grant-in-aid, and the extent to which key performance objectives and goals have been met;
 - aims, in accordance with the Government's policy on openness, to comply with the principles of the Citizen's Charter and the Code of Practice on Access to Government Information.

Relationship with the Home Office

3. The Home Secretary is answerable to Parliament for the policies and performance of the Commission, including its use of resources and the policy framework within which it operates. The respective roles of the Department and the Commission are set out in the Department's Management Statement for the Commission, supplemented by a Financial Memorandum specifying the terms on which the Commission receives and spends its grant-in aid.

Role of the chairman

Communication

4. Communications between the Commission and the Home Secretary will normally be through the Chairman except where the Commission has agreed that another Commissioner should act on its behalf. An individual Commissioner has the right of access to the Home Secretary on any other matter which he or she believes raises important issues relating to his or her duties as a member of the Commission. In such cases the agreement of the rest of the Commission should normally be sought.

5. The main point of contact between the Commission and the Department on day-to-day matters will normally be the Commission's Directors or other member of staff who is authorised to act on behalf of the Commission.

Briefing of new Commissioners

6. The Chairman should ensure that all new Commissioners are fully briefed on the terms of their appointments, and on their duties and responsibilities. They should be given a copy of this Code of Best Practice; other relevant background material such as the Commission's Management Statement and Financial Memorandum; its latest Corporate Plan and Annual Reports and Accounts; the Treasury's memorandum "The Responsibilities of an NDPB Accounting Officer"; the Treasury's handbook "Regularity and Propriety"; notes and other information describing the Commission's organisational structure, and statutory basis of operation under the Criminal Appeal Act 1995; and the rules and procedures of the Commission.

Training

7. The Chairman should encourage new Commissioners to attend a suitable induction course on the duties of board members of public bodies.

Particular responsibilities

8. The Chairman has particular responsibility for providing effective strategic leadership, in:
 - formulating the Commission's strategy for discharging its statutory duties;
 - encouraging high standards of propriety, and promoting effective, efficient and economical use of staff and other resources;
 - ensuring that the Commission, in reaching non-case-specific decisions, takes proper account of guidance provided by the Home Secretary or his Department;
 - communication of the views of the Commission to the general public; and
 - providing an assessment of performance of individual Commissioners when they are being considered for reappointment to the Commission or appointment to another public body.
9. The Chairman should ensure that the Commission meets regularly throughout the year and that minutes of meetings accurately record decisions taken.

Corporate Responsibilities of Commissioners

10. Commissioners have corporate responsibility for ensuring that the Commission complies with any statutory or administrative requirements for the use of its grant-in-aid. Other important responsibilities of Commissioners include:
- ensuring that high standards of corporate governance are observed at all times;
 - contributing to, and approving, the development of the overall strategic direction of the organisation within the policy and resources framework agreed with the Home Secretary;
 - monitoring performance against agreed strategic objectives and goals;
 - ensuring that the Commission operates within the limits of its statutory authority; within the limits of its delegated authority agreed with the Department; and in accordance with any other conditions relating to the use of its grant-in-aid;
 - ensuring that, in reaching non-case-specific decisions, the Commission has taken into proper account any guidance issued by the Department;
 - implementing the Commission's Freedom of Information policy, including prompt response to public requests for information.

Responsibilities of Individual Commissioners

11. Individual Commissioners should be aware of their wider responsibilities as Members of the Commission. They should follow the Seven Principles of Public Life set out by the Nolan Committee. The principles are attached at Appendix 1. Commissioners must:
- undertake on appointment to comply with the Code of Practice that is adopted by the Commission and with rules relating to the use of public funds;
 - act in good faith and in the interests of the Commission;
 - not use information gained in the course of their public service for personal gain or for political purposes, nor seek to use the opportunity of public service to promote

- their private interests or those of connected persons, firms, businesses or other organisations; and
- ensure that they comply with the Commission's rules on the acceptance of gifts and hospitality.

12. Commissioners, whether full or part-time, should not occupy paid party political posts or hold sensitive or high-profile unpaid roles in a political party. Part-time Commissioners are free to engage in political activities, provided that they are conscious of their general public responsibilities and exercise proper discretion. On matters directly affecting the Commission, they should not make political speeches or engage in other political activities. Full-time Commissioners should abstain from controversial political activities.
13. The restrictions in paragraph 12 do not apply to Commissioners who are local councillors, or to Peers in relation to their conduct in the House of Lords. The position of Peers is covered in the publication "Non-Departmental Public Bodies: A Guide for Departments".
14. The Queen may remove a Commissioner from office if she is satisfied that the Commissioner has failed to perform his/her duties to the required standards, by virtue of the provisions set out under sub-paragraphs (a)-(d) of paragraph 2 (7), Schedule 1 to the Criminal Appeal Act 1995.

Strategic planning and control

15. The process of preparing the Commission's corporate plan provides an opportunity for agreeing, with the Home Secretary, or with officials acting on his behalf, the policy and resources framework within which the Commission will discharge its duties; and for determining its strategic objectives and goals.

Delegation

16. To the extent permitted by the Criminal Appeal Act 1995, under which the Commission was established, responsibility for day-to-day management matters should be delegated to staff as far as is practicable, within a framework of strategic control.
17. The Commission may also delegate, properly, responsibility for specified matters to individual Commissioners, or committees of the Commission. The Commission has internal guidance covering which matters may be delegated to staff and those reserved for decision by the Commission. The latter include issues of corporate strategy; strategic objectives and goals; major decisions involving the use of financial and other resources; and personnel issues including appointments and standards of conduct.

Handling conflicts of interest

18. The Chairman and other Commissioners should declare personal or business interests whenever they conflict with their responsibilities as Commissioners.

19. The Commission, in consultation with the Department, will maintain rules of conduct for Commissioners which ensure that such conflicts are identified at an early stage and that appropriate action can be taken to resolve them.
20. The Commission will make available upon request its Register of Commissioners' Financial and Other Interests. The Register will include declared non-pecuniary interests which relate closely to the Commission's activities. The categories of pecuniary interests to be included in the Register are:
 - remunerated directorships in public and private companies, including directorships which are unremunerated, but remunerated through another company in the same group;
 - employment, office, trade, profession or vocation which is remunerated or in which the Commissioner has any pecuniary interest, including membership of Lloyds; and
 - shareholdings: interests in shareholdings held by the Commissioner, either personally or with or on behalf of the Commissioner's spouse or dependent children, in any public or private company or other body which are:
 - greater than 1% of the issued share capital of the company or body; or
 - less than 1% of the issued share capital but more than £25,000 in nominal value.

The nature of the company's business in each case should be registered.

21. Non-pecuniary interests to be included in the Register of Interests include membership of clubs or other organisations that relate closely to the Commission's activities, for example, civil rights groups such as Liberty and Justice, and clubs and other organisations associated with the criminal justice system, or a component part of the system, for example the Law Society, and local law societies.
22. The Register of Interests will be made available upon request. Commissioners should update the Register of Interests as soon as changes occur.
23. In the absence of specific statutory provisions the common law requires:
 - that members of public bodies should not participate in the discussion of, or determination of, matters in which they have a direct pecuniary interest; and

- that when an interest is not of a pecuniary kind, Commissioners should consider whether participation in the discussion or determination of a matter would present a danger of bias. In considering whether a real danger of bias exists in relation to a particular decision, Commissioners should assess whether they, a close family member¹, a person living in the same household as the Commissioner, or another organisation with which the Commissioner is connected are likely to be affected more than the generality of those affected by the decision in question.

This paragraph does not preclude the Commission from deciding to issue an indemnity in the terms of paragraph 28 below.

24. Where, in accordance with the above, Commissioners do not participate in the discussion of a matter, they should normally withdraw from the meeting.
25. Commissioners should declare as soon as practicable after a meeting begins if they have an interest, pecuniary or other, in a matter being considered. They should also disclose any interest in it of which they are aware on the part of close family members and persons living in the same household as the Commission Member. In addition, Commissioners should consider whether they need to disclose relevant interests of other persons or organisations which might reasonably influence the Commissioner's judgement.
26. Commissioners must facilitate compliance with Financial Reporting Standard 8 for material transactions with related parties to be disclosed in financial statements. "Related parties" in FRS 8 include close members of the family of the individual, who are identified for the purpose of the standard 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 the reporting entity.

Personal liability of Commissioners

27. Legal proceedings initiated by a third party are likely to be brought against the Commission. In exceptional cases, proceedings (civil or, in certain circumstances, criminal) may be brought against the Chairman or other individual Commissioners. For example, a Commissioner may be personally liable if he or she makes a fraudulent or negligent statement which results in loss to a third party. Commissioners who misuse information gained by virtue of their position may be liable for breach of confidence under common law, or may commit a criminal offence under insider dealing legislation.
28. The Government² has indicated that individual Members who have acted honestly, reasonably, in good faith and without negligence will not have to meet

¹ Close family members include personal partners, parents, children (adult and minor), brothers, sisters and the personal partners of any of these.

² Treasury Guidance on Codes of Practice for Board Members of Public Bodies, paragraph 27, updated by DAO(GEN) 2/99.

out of their own personal resources any personal civil liability which is incurred in execution or purported execution of their functions, save where the person has acted recklessly. This paragraph provides this indemnity to Commissioners, subject to the provisions of the Criminal Appeal Act 1995, and obviates the need for the Commission to issue individual indemnities to Commissioners. Commissioners who need further advice should consult the Commission's legal advisers.

Openness and Responsiveness

29. Subject to the confidentiality provisions under the Criminal Appeal Act 1995, Commissioners and their staff should conduct their dealings with the public in an open and responsible way, and ensure full compliance with the principles of the Citizen's Charter and the Commission's policy on Freedom of Information. They should take account of the Nolan Standard of Best Practice for Openness.
30. The Commission should ensure that it can demonstrate that it uses resources to good effect, with propriety, and without grounds for criticism that public funds are being used for private, partisan or party political purposes. It will need to act consistently with the nature of its business and the possible need for confidentiality on commercial or other grounds, always subject to the rights of Parliament and the Comptroller and Auditor General to obtain information. The Commission has internal procedures for dealing with complaints, including those on failure to provide information.

Accountability for Commission grant-in-aid.

31. Commissioners have a duty to ensure the safeguarding of its grant-in-aid and the proper custody of assets which have been publicly funded. The Commission must take appropriate measures to ensure that it at all times conducts its operations as effectively, efficiently and economically as possible, with full regard to the relevant statutory provisions and the relevant guidance in Government Accounting.
32. Commissioners are responsible for ensuring that it does not exceed its powers or functions, whether defined in the Criminal Appeal Act 1995 or otherwise, or through any limitations on its authority to incur expenditure. Advice on these matters is provided by the Commission's Directors and its legal advisers.

Annual Report and Accounts

33. The Commission must ensure that it includes a full statement of the use of its grant-in-aid in its Annual Report and Accounts. Such accounts should be prepared in accordance with the Accounts Direction issued by the Home Secretary and such other guidance as may be issued by the Department and the Treasury.

34. The Annual Report should describe the Commission’s activities; state the extent to which strategic objectives and agreed financial and other performance goals have been met; list the names of the current Commissioners and its senior staff, and provide details of remuneration of Commissioners and all senior employees, in accordance with Treasury guidance. It should include information on access to the Commission’s Register of Interests, and it should contain at least a summary of the annual accounts and details as to how to obtain the full accounts.

The Role of the Senior Management Team

35. The Commission’s Senior Management Team has responsibility, under the Commission, for the overall organisation, management and staffing of the Commission and for its procedures in financial and other matters, including conduct and discipline. This involves the promotion by leadership and example of the values embodied in the Nolan Committee’s Seven Principles of Public Life. (See Appendix 1).
36. The Director of Finance and IT has been appointed as its accounting officer. The essence of the role is a personal responsibility for financial propriety and regularity; for the keeping of proper accounts; for prudent and economical administration; and for the efficient and effective use of the Commission’s resources. The Director of Finance and IT has a responsibility to see that appropriate advice is given to the Commission on these matters.
37. The conditions of the Director of Finance and IT’s appointment as accounting officer include:
- in connection with any matter relevant to his responsibilities and duties as Accounting Officer (which include representing the organisation at any PAC hearing), the Director shall have all necessary authority to deal with the matter appropriately, including giving instructions, notwithstanding the matter falls within the responsibility of another Director;
 - where he is not directly involved, the Director must be informed of all key decisions and all organisational and operational issues as they arise, so he can consider if these impact on his responsibilities as an accounting officer;
 - all such arrangements must be clearly documented in a way which is accessible and familiar to all CCRC staff.
38. More detailed guidance on the responsibilities of an accounting officer is set out in “The Responsibilities of a NDPB Accounting Officer”, which covers appearances before the Committee of Public Accounts of the House of Commons. All Commissioners should receive a copy of this document. The Treasury handbook, “Regularity and Propriety”, describes these concepts in a financial context.

Audit

39. The Commission's Audit Committee meets regularly. It consists primarily of Commissioners and is chaired by a Commissioner, other than the Chairman, who has experience of financial matters. The Commission's Director of Finance and IT normally attends audit committee meetings.

The Commission as employer

40. The Commission should comply with relevant employment legislation and employ suitably-qualified staff who will discharge their responsibilities in accordance with the high standards expected of Commission staff. All staff should be familiar with the Commission's objectives and goals. The Commission should adopt management practices which use resources efficiently and economically. The Commission should recruit staff by open competition.
41. The Commission should ensure that its Commissioners and staff have access to expert advice and training opportunities to enable them to exercise their responsibilities effectively.
42. The Commission should ensure that its rules for the recruitment and management of employees provide for appointment and advancement on merit on the basis of equal opportunity for all applicants and staff; and that it implements rules of conduct for its staff using the model issued for executive Non-Departmental Public Bodies by Cabinet Office (OPS) in August 1996, subject to any modifications that may be necessary, and agreed with the Department, to take into account the Commission's characteristics and circumstances.
43. The Commission is responsible for monitoring the performance of the Senior Management Team and senior staff. When considering performance-related pay for the Senior Management Team and senior staff, the Commission should ensure that it has access to the information and advice required to make the necessary judgements.

RULES OF CONDUCT FOR COMMISSIONERS TO REPORT CONFLICTS OF INTEREST

Introduction

1. Appointments to the Commission are made by the Queen on the recommendation of the Prime Minister, subject to the requirements of sections 8(5) and 8(6) of the Criminal Appeal Act 1995 (“the Act”), that “at least one third of the Commission shall be persons who are legally qualified”, and that “at least two thirds of the Commission shall be persons with knowledge or experience of any aspect of the criminal justice system”. Having such experience within the Commission means that there may be times when a potential conflict of interest will arise.
2. Such a conflict could arise in relation to a Commissioner’s past involvement in a particular case. Conflicts of interest could also arise in the conduct of the Commission’s corporate business. A Commissioner with a conflict of interest would need to limit his or her direct involvement in a particular case, or, where the issue arises in relation to a matter of corporate business, from any discussion on it.
3. The Commission wishes to minimise the instances of conflicts arising between Commissioners’ private interests and their public duties, and to ensure that such conflicts do not influence its decision making.
4. Commissioners have a personal duty to raise issues concerning conflicts arising in corporate business either at, or preferably before, a meeting. Should a conflict arise in relation to any specific case before the Commission, the Commissioner should raise the concern immediately it is identified. The Director of Finance and IT will record instances of conflict in a register kept for the purpose.

General Principles

5. Before recommending to the Prime Minister the appointment of a Commissioner, the Secretary of State should satisfy himself that that person will have no financial or other interest that is likely to affect prejudicially the exercise or performance by him/her of his/her functions as a Commissioner.
6. A Commissioner who is directly or indirectly interested in a contract made, or proposed to be made, by the Commission should disclose the nature of his/her interest at a meeting of the Commission; and disclosure shall be recorded in the minutes of the Commission. The Commissioner shall not take part in any deliberation or decision of the Commission with respect to that contract (See, for example, paragraph 22).
7. Notice given at a meeting of the Commission by a Commissioner to the effect that he/she is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of notice, be made with the

company or firm shall be regarded as a sufficient disclosure of his/her interest in relation to any contract so made.

8. A Commissioner need not attend in person at a meeting of the Commission in order to make any disclosure which he/she is required to make under these rules if he/she takes reasonable steps to secure that the disclosure is made by a notice which is brought up and read out at the meeting.
9. The general principle to be applied is that Commissioners must not make use of their appointment to the Commission to further their private interests, or receive gifts, hospitality or benefits of any kind from a third party which might compromise their personal judgement or integrity.

Rules on acceptance of gifts and/or hospitality

10. Commissioners should not give or accept any gifts/hospitality or services which would, or might appear to, place him/her under obligation. Offers of gifts/hospitality or services should be reported to the Director of Administration and HR, using the appropriate form, and recorded by him in a register maintained for that purpose. The register will include: the name of the Commissioner receiving the offer or invitation, details of the gift/hospitality, its originator, the estimated value, whether the offer was accepted or not and, for gifts accepted, its ultimate disposition. The register will be open for public inspection upon request.
11. Gifts and hospitality may be accepted only in the circumstances set out below, and will need to be reported and recorded in the register:
 - Isolated gifts of a trivial character, or inexpensive seasonal gifts such as calendars;
 - Conventional hospitality, provided that it is reasonable in the circumstances.
12. What is normal and reasonable will largely depend on the extent to which a Commissioner is personally involved. For example, there is no objection to the acceptance of an invitation to the annual dinner of an organisation with which the Commission has regular contact, or to working lunches in the course of official visits or business relationships, but it must not be frequent, or lavish. At all times, Commissioners must not give or accept gifts or hospitality in return for, or in anticipation of any action.

Political Activities

14. Commissioners' attention will have been drawn to rules on participation in political activities by the Home Office upon appointment. The rules are:
 - a) Commissioners, whether whole-time or part-time, should not serve as officers carrying out executive duties in any political party;

- b) Full-time Commissioners should abstain from controversial political activity;
- c) Subject to (a), part-time Commissioners should be free to engage in political activities, provided that they are conscious of their general public responsibilities and exercise proper discretion, particularly in regard to the work of the Commission. They should not normally make political speeches or engage in other political activities affecting that work;
- d) Commissioners are free to maintain associations with Trade Unions, Co-operative Societies, trade associations, professional bodies, etc, to the extent that such associations do not conflict with the interests of the Commission;
- e) Any Commissioner who is doubtful about the application of these rules, or about the propriety of any political activity, should seek guidance from the Home Secretary, the Minister responsible for the Commission.
- f) The foregoing rules apply equally to political activity on behalf of the political parties.

Disclosure of Information

14. Commissioners must have regard to Sections 23 and 24 of the Act. Commissioners and past-Commissioners may not disclose or authorise an employee or an investigating officer to disclose any information obtained by the Commission in the exercise of any of their functions unless the disclosure is made or authorised to be made:

- for the purposes of any criminal, disciplinary or civil proceedings,
- in order to assist in dealing with an application made to the Secretary of State for compensation for a miscarriage of justice,
- by a person who is a Commissioner or employee of the Commission, either to another person who is a Commissioner or employee of the Commission or to an investigating officer,
- by an investigating officer to any Commissioner or employee of the Commission,
- in any statement or report required by the Act,
- in or in connection with the exercise of any function under the Act,
- in any circumstances in which the disclosure of information is permitted by an order of the Secretary of State,

- for the purpose of the investigation of an offence, or
 - for the purpose of deciding whether to prosecute a person for an offence.
15. Information may not be disclosed, or authorised to be disclosed, for the purposes of the investigation of an offence, or deciding whether to prosecute a person for an offence, if disclosure is or would be prevented by an obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by virtue of an enactment).
16. By virtue of section 17 of the Act, the Commission may require a person in relation to a public body to produce document(s) or other material, and to allow the Commission to take it away, or make and take away a copy of it in such form as the Commission thinks appropriate. If such a person notifies the Commission that any information contained in the document(s) or other material is not to be disclosed by the Commission without his prior consent, the Commission shall not disclose the information without such consent. Such consent may not be withheld unless the person would have been prevented by any obligation of secrecy, or other limitation on disclosure, from disclosing the information to the Commission, and it is reasonable for the person to withhold his consent to disclosure of the information by the Commission.
17. It is the Commission's policy to be open with those who have a legitimate interest in the operation of the Commission and the Commission's role. The Commission publishes information about its work in its Annual Report. Clarification of Commission policy is provided upon request by the Commission's legal advisers.
18. Agenda and minutes of the Commission and its Committees are treated as private and confidential unless the Commission directs otherwise. The release of information from Commission papers, and the terms of release, are matters for the Commission to determine.
19. Commission papers which are sent to a Commissioner's office or home address will be marked "Private & Confidential" and "To be opened by Addressee only". Commissioners have a responsibility to ensure that all Commission papers and information sent to them be kept safe.

Guidance on potential conflict of interests

a) Professional obligations of lawyer Commissioners

20. In certain circumstances, solicitor and barrister Commissioners may be under a professional obligation to report to their respective professional bodies, misconduct by other solicitors or barristers. The Commission will not interfere with these professional obligations. However, no Commissioner (whether or not they are a lawyer) may release any case papers or material or Commission or Commission Committee papers, without the Commission's express consent.

21. The views of the Law Society and the Bar Council have been sought on whether the Commission's requirements would conflict with a member's professional duty. They have advised as follows:-

The Law Society – Although it cannot grant a waiver of Principle 19.04 set out in the 1999 (8th edition) Guide to Professional Conduct of Solicitors, it considers that solicitor Commissioners who acquire confidential information which indicates that a solicitor had been guilty of serious professional misconduct, are entitled to operate under the Commission's own rules for deciding whether and when such a solicitor should be reported to the Office for the Supervision of Solicitors. It does not see any difficulty with the Commission's requirement that members may not release papers without the Commission's express consent.

The Bar Council - There is no rule in The Bar Council's Code of Conduct which is equivalent to Principle 19.04 of the 1999 (8th edition) Guide to the Professional Conduct of Solicitors. The Council would be content for the Commission to report any misconduct by a barrister which came to light. In these circumstances, the individual barrister is under no duty to report such misconduct him/herself.

22. Lawyer Commissioners are not prohibited from undertaking legal work in their private capacity during their term of appointment to the Commission. However, they should not accept instructions to advise or represent parties involved in any proceedings taken against the Commission. Should they find themselves in such a position, they should withdraw from the case. This also applies to any Commissioner who is instructed or approached to advise in relation to a case submitted, or likely to be submitted, to the Commission for review.

b) Interests in potential contractors

23. If a Commissioner has any financial or other interest, direct or indirect, in a company or firm being considered by the Commission for a contract, he/she should withdraw from the deliberations and the matter be recorded in the minutes. For example, withdrawal would be appropriate if the Commission were considering whether or not to award a contract to a company or firm in which a Commissioner's relative or spouse had a financial or other interest.

c) Conflicts arising in the conduct of casework or case decision-making.

24. Commissioners and the majority of caseworker staff are recruited with experience of one or more aspects of the criminal justice system. It follows that, in particular cases, conflicts of interest may arise.

25. Conflict could arise if the Commissioner carries out investigation work, or is selected to participate in any decision-making in the case, for example to sit on a Committee of at least three Commissioners, as prescribed by the Act, to consider the appointment of an investigating officer, the referral of a case to an appropriate court of appeal, or the decision not to refer the case.

26. It is not always possible to identify all potential conflicts when a case is first received. A Commissioner may have acted as a legal representative of the applicant at some time in the past, for example. This may not be apparent from the information submitted by the applicant or his/her representative. Whenever a Commissioner identifies a potential conflict at any stage of a case in which he/she may be involved, he/she should declare the potential conflict to the Director of Finance and IT. The declaration of potential conflict will be recorded in an internal Register kept for the purpose.
27. Apart from the specific conflicts mentioned above, there will be more generally conflicts arising through family or business connections, membership of clubs and of professional and fraternal associations or through financial interests. Commissioners should draw them to the attention of the Director of Finance and IT as soon as they occur.

Declaring Financial or Other Interests

28. Commissioners are required to provide details of relevant financial interests. The details will be continuously updated in a Register of Interests. The categories to be declared are:
- Directorships (whether remunerated directly or indirectly);
 - Remunerated employment, office or profession, including membership of Lloyds
 - Shareholdings: interests in shareholdings held by the Commissioner, either personally, or with or on behalf of the Commissioner's spouse or dependent children, in any public or private company or other body which are:
 - greater than 1% of the issued share capital of the company or body; or
 - less than 1% of the issued share capital but more than £25,000 in nominal value.

The nature of the company's business should be registered in each case.

29. Commissioners are required to provide details of any non-pecuniary interests that relate closely to the Commission's activities. This should include, for example, membership of civil rights groups such as Liberty and Justice, membership of the Law Society or a local law society, or an organisation associated primarily with the criminal justice system or a component part of the system. The details will be updated continuously and published in a Register of Interests.

Revision of Rules of Conduct

30. The Commission, in consultation with the Department and other interested parties, shall consider whether any amendment is required to the terms of these Rules on an annual basis.

CODE OF CONDUCT FOR COMMISSION STAFF

INTRODUCTION

This document sets out a Code of Conduct for Commission staff. Staff should familiarise themselves with the contents of this Code and should act in accordance with the principles set out in it.

DUTIES AND RESPONSIBILITIES

1. Commission staff have a duty:
 - to discharge public functions reasonably and according to the law; and
 - to recognise ethical standards governing particular professions.

ACCOUNTABILITY

2. The Director of Finance and IT is designated as Accounting Officer, and has overall responsibility, working under the Commission, for propriety in a broad sense, including conduct and discipline.
3. Commission staff should be aware:
 - of their accountability to the Commission;
 - of the respective roles of the Home Office and the Commission, as set out in the Department's Management Statement for the Commission;
 - that the Minister responsible for the Commission, the Home Secretary, is ultimately accountable to Parliament for its independence, effectiveness and efficiency.
4. The Commission has responsibilities as an employer. These are set out in the Commission's Code of Best Practice for Commissioners.
5. Commission staff should conduct themselves with integrity, impartiality and honesty. They should not deceive or knowingly mislead the Commission, the Home Office, Ministers, Parliament or the public.

CONFLICTS OF INTEREST

- a) *Generally*
6. Commission staff should declare personal or business interests whenever they conflict with their responsibilities as staff members. They should not misuse

their official position or information acquired in their official duties to further their private interests or those of others.

b) *Professional obligations of lawyer members of staff*

7. In certain circumstances, solicitor and barrister staff members may be under a professional obligation to report to their respective professional bodies, misconduct by other solicitors or barristers. The Commission will not interfere with these professional obligations. However, no staff member (whether or not they are a lawyer) may release any case papers or material or Commission or Commission Committee papers, without the Commission's express consent.
8. The views of the Law Society and the Bar Council have been sought on whether the Commission's requirements would conflict with a staff member's professional duty. They have advised as follows:-

The Law Society – Although it cannot grant a waiver of Principle 19.04 set out in the 1999 (8th edition) Guide to Professional Conduct of Solicitors, it considers that solicitor staff members of the Commission who acquire confidential information which indicates that a solicitor had been guilty of serious professional misconduct, are entitled to operate under the Commission's own rules for deciding whether and when such a solicitor should be reported to the Office for the Supervision of Solicitors. It does not see any difficulty with the Commission's requirement that staff members may not release papers without the Commission's express consent.

The Bar Council - There is no rule in The Bar Council's Code of Conduct which is equivalent to Principle 19.04 of the 1999 (8th edition) Guide to the Professional Conduct of Solicitors. The Council would be content for the Commission to report any misconduct by a barrister which came to light. In these circumstances, the individual barrister is under no duty to report such misconduct him/herself.

c) *Interests in potential contractors*

9. If a staff member involved in the Commission's contractual arrangements has any financial or other interest, direct or indirect, in a company or firm being considered by the Commission for a contract, he/she should disclose the nature of his/her interest to the Director of Finance and IT. For example, disclosure would be appropriate if the Commission were considering whether or not to award a contract to a company or firm in which the staff member's relative or spouse had a financial or other interest. The staff member is responsible for ensuring that any possible conflicts of interest are identified at an early stage, and that appropriate action is taken to resolve them.

d) *Conflicts arising in the conduct of casework or case decision-making.*

10. The majority of caseworker staff are recruited with experience of one or more aspects of the criminal justice system. It follows that, in particular cases, conflicts of interest may arise.
11. Conflict could arise if the staff member carries out investigation work, or participates in any decision-making in the case.
12. It is not always possible to identify all potential conflicts when a case is first received. A staff member may have acted as a legal representative of the applicant at some time in the past, for example. This may not be apparent from the information submitted by the applicant or his/her representative. Whenever a staff member identifies a potential conflict at any stage of a case in which he/she may be involved, he/she should declare the potential conflict to the Director of Casework. The declaration of potential conflict will be recorded in an internal Register kept for the purpose.
13. Apart from the specific conflicts mentioned above, there will be more generally conflicts arising through family or business connections, membership of clubs and of professional and fraternal associations or through financial interests. Staff members should draw them to the attention of the Chief Executive as soon as they occur.

DISCLOSURE OF INFORMATION

14. Commission staff must have regard to Sections 23 and 24 of the Act. Staff and former staff of the Commission may not disclose or authorise an employee or an investigating officer to disclose any information obtained by the Commission in the exercise of any of their functions unless the disclosure is made or authorised to be made:
 - for the purposes of any criminal, disciplinary or civil proceedings,
 - in order to assist in dealing with an application made to the Secretary of State for compensation for a miscarriage of justice,
 - by a person who is a Commissioner or employee of the Commission, either to another person who is a Commissioner or employee of the Commission or to an investigating officer,
 - by an investigating officer to any Commissioner or employee of the Commission,
 - in any statement or report required by the Act,
 - in or in connection with the exercise of any function under the Act,
 - in any circumstances in which the disclosure of information is permitted by an order of the Secretary of State,
 - for the purpose of the investigation of an offence, or

- for the purpose of deciding whether to prosecute a person for an offence.
15. Information may not be disclosed, or authorised to be disclosed, for the purposes of the investigation of an offence, or deciding whether to prosecute a person for an offence, if disclosure is or would be prevented by an obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by virtue of an enactment).
 16. By virtue of section 17 of the Act, the Commission may require a person in relation to a public body to produce document(s) or other material, and to allow the Commission to take it away, or make and take away a copy of it in such form as the Commission thinks appropriate. If such a person notifies the Commission that any information contained in the document(s) or other material is not to be disclosed by the Commission without his prior consent, the Commission shall not disclose the information without such consent. Such consent may not be withheld unless the person would have been prevented by any obligation of secrecy, or other limitation on disclosure, from disclosing the information to the Commission, and it is reasonable for the person to withhold his consent to disclosure of the information by the Commission.

RULES ON ACCEPTANCE OF GIFTS AND/OR HOSPITALITY

17. Staff members should not give or accept any gifts/hospitality or services which would, or might appear to, place him/her under obligation. Offers of gifts/hospitality or services should be reported to the Director of Finance and IT, using the appropriate form, and recorded by him in a register maintained for that purpose. The register will include: the name of the staff member receiving the offer or invitation, details of the gift/hospitality, its originator, the estimated value, whether the offer was accepted or not and, for gifts accepted, its ultimate disposition. The register will be open for public inspection upon request.
18. Gifts and hospitality may be accepted only in the circumstances set out below, and will need to be reported and recorded in the register:
 - Isolated gifts of a trivial character, or inexpensive seasonal gifts such as calendars;
 - Conventional hospitality, provided that it is reasonable in the circumstances.
19. What is normal and reasonable will largely depend on the extent to which a staff member is personally involved. For example, there is no objection to the acceptance of an invitation to the annual dinner of an organisation with which the Commission has regular contact, or to working lunches in the course of official visits or business relationships, but it must not be frequent, or lavish. At all times, staff members must not give or accept gifts or hospitality in return for, or in anticipation of, any action.

USE OF RESOURCES

20. Commission staff should endeavour to ensure the proper, economical, effective and efficient use of resources.

OFFICIAL INFORMATION

21. Commission staff owe a general duty of confidentiality to the Commission at common law. They are therefore required to protect official information held in confidence. Nothing in this Code should be taken as overriding existing statutory or common law obligations to keep confidential, or in appropriate cases to disclose, certain information. Subject to this proviso, staff should comply with the Commission's policy on Freedom of Information.

STAFF CONCERNS ABOUT IMPROPER CONDUCT

22. If a member of staff of the Commission believes he/she is being required to act in a way which:
 - is illegal, improper, or unethical;
 - is in breach of a professional code;
 - may involve possible maladministration, fraud or misuse of public funds;
 - is otherwise inconsistent with this Code;

he/she should either raise the matter, [in the first instance](#), with the Director of Finance and IT, as Accounting Officer, or else, if the matter involves the Director of Finance and IT, approach in confidence the nominated Commissioner entrusted with the duty of investigating staff concerns about illegal, improper or unethical behaviour. Staff should also draw attention to cases where there is evidence of criminal or unlawful activity by others and may also report cases where they believe there is evidence of irregular or improper behaviour elsewhere in the organisation, but where they have not been personally involved, or if they are required to act in a way which, for them, raises a fundamental issue of conscience.

23. Where a member of staff has reported a matter covered in paragraph 22 above and believes that the response does not represent a reasonable response to the grounds of his or her concern, he or she may report the matter in writing to the nominated official in the Home Office, who will investigate the matter further.
24. Further details can be found in the Commission's Whistleblowing policy.

AFTER LEAVING EMPLOYMENT

25. Commission staff should continue to observe their duties of confidentiality after they have left the employment of the Commission.

The Seven Principles of Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.