

Is the government getting serious about conflicts of interest?

New procurement note falls short of what is expected to fix a broken system

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On 20 May, the Cabinet Office published an updated Public Procurement Policy [note](#) (PPN) and [accompanying guidance](#). The previous PPN and guidance note have been updated following Brexit. They have also been expanded to clarify obligations on contracting authorities and suppliers to manage conflicts of interest during tender processes, in line with recommendations from National Audit Office in its review of COVID-19 procurement and the Boardman review into Cabinet Office Communications Procurement.

In light of the depth of concern at the government's handling of conflict of interest issues, the new policy note represents a useful clarification of the existing rules and policy frameworks. However, disappointingly, it only introduces minor changes that fall far short of what is needed to fix what is clearly a broken system. Without better rules in place there is a real risk that conflicts of interest, whether actual or perceived, will continue to undermine good governance and negatively affect the public's trust in government.

The publication of the note appears to be a pre-emptive move to fend off any fresh criticism of the government's handling of emergency procurement during COVID-19 ahead of an imminent High Court ruling on the challenge brought by the [Good Law Project](#) over alleged systemic bias in the award of personal protective equipment (PPE), and after Transparency International's [recent report](#) identifying corruption red flags in 20% of the UK's PPE procurement.

How the government handles conflicts of interest has also emerged as a theme from the [Greensill scandal](#) with Business Appointments Tsar, Lord Eric Pickles voicing

“[significant concern](#)” over how former civil service chief commercial officer Bill Crothers worked for the company while still a civil servant. The government’s record has also been flagged by the Council of Europe body Group of States against Corruption (GRECO) which in its [latest report](#) chides the government for failing to address the weak oversight provided by the Independent Adviser on Ministers’ Interests and the Advisory Committee on Business Appointments (ACOBA).

In this context, it is no surprise that the government is keen to give the impression that it is getting to grips with the issue. However, if the government means business on conflicts of interest it must rethink its current approach and introduce additional measures. We urge the government to commit to;

1. Publish conflict of interest declarations made by all senior civil servants, government ministers, special advisers and other political appointees, including members of departmental boards, and publish all future declarations at least annually on an ongoing basis.
2. Clarify the mitigation strategies available for managing conflicts of interest including through establishing ethical walls and recusals. When conflicts are financial, Ministers should be required to divest from firms that get contracts in their sphere of influence, or at least be required to put assets into a blind trust arrangement with copies of the agreement being shared with the Parliamentary Under-Secretary and Independent Adviser on Ministers’ interests.
3. Implement a functioning and enforceable sanctions regime with a range of proportionate measures for individuals who fail to declare - or to properly declare - conflicts of interest.
4. Introduce a legally enforceable supplier code of conduct underpinned by criminal and civil liabilities for failing to declare conflicts of interest.

Procurement Policy Note 04/21 - what’s new?

The previous [2019 policy note](#), its [accompanying guidance](#) and [FAQ](#) focused predominantly on outlining contracting authorities and procurement officials’ legal obligations to handle conflicts of interest underpinned by the [UK’s Public Contracts Regulations](#) (PCRs). In contrast, and in a welcome move, the new guidance attempts to collect in one place additional information from related policy frameworks on handling conflicts of interest such as from the [Civil Service Managerial](#) and [Ministerial Codes](#), as well as the [Supplier Code of Conduct](#) and clarifies the scope of the new guidance to include individuals outside of commercial teams including Ministers and special advisers.

The [guidance document](#) offers additional clarifications for contracting authorities and procurement officials on their responsibilities across six areas of the procurement process:

- **Guidance and training:** staff should receive appropriate information and training on dealing with conflicts of interest, their legal duties under the PCRs and information on mitigation strategies and accurate record keeping.
- **Declarations:** individuals with interests in the procedure (both direct and indirect) should submit accurate conflict of interest declarations on actual or perceived conflicts of interest including on the nature, relevance and scope of interests.
- **Identifying and remedying:** conflicts of interest should be managed from the outset of the procurement procedure and should result in documentation confirming the identification of the conflict and any mitigation steps.
- **Audit and Sanctions:** failure to declare a conflict should be considered as a breach of the contracting authorities' HR processes while the note also clarifies that a failure to uphold the rules may result in legal challenge for breach of the PCRs.
- **Supply-side requirements:** contracting authorities should verify that suppliers have in place systems to prevent, identify and remedy conflicts of interest such as ethical codes of conduct, conflicts of interest policy and are in compliance with the supplier code of conduct.
- **Special situations:** contracting authorities should have in place specific procedures to deal with special situations which may include direct awards, pro-bono work, and employment of civil servants by suppliers which may require additional approval.

How does the note and guidance match up to the Boardman review recommendations?

Boardman's September 2020 review of Cabinet Office's procurement processes and approach to handling conflicts of interest resulted in 28 recommendations, [previously discussed by Spotlight](#), calling on the Cabinet Office to:

- strengthen the department's model for handling conflicts of interest,
- define a clear process for managing risks,
- require separate records for conflict of interest declarations in relation to specific contract awards and
- ensure that guidance makes it clear that the rules apply equally to civil servants, contractors, consultants, special advisers, and other political appointees.

Much of the new procurement note's contents is based on Boardman's conclusion that "stronger enforcement of the existing approach to declarations" was needed. Boardman recommended that all Cabinet Office employees be required to submit a general, annual conflict of interest declaration to be recorded and logged alongside the departmental gift register. This information would then be made available to those responsible for contracts.

In addition, Boardman recommended that those involved in procurement exercises should submit a targeted declaration with additional information relevant to the specific procurement (e.g. information on a family member's connection to the industry or supplier). Responsibility for handling the targeted declarations would be delegated to a civil servant in the budget holder's team responsible for the procurement who would "maintain these declarations and manage the data in accordance with data protection requirements."

The danger with this two-track approach to managing conflicts of interest based on general and targeted declarations is that departmental officials may only gain access to the less detailed general versions, while access to the more detailed declarations with the most pertinent information will be restricted.

Without a standardised, cross-government approach to collecting and handling the targeted declarations there is a risk that they will be left to the whim of individual civil servants influenced by specific departmental cultures.

Cabinet Office's decentralised approach to handling conflicts of interest declarations creates transparency vacuum

Over recent months, Spotlight on Corruption has attempted to obtain conflict of interest declarations made by Cabinet Office employees and suppliers during the COVID-19 procurement emergency through freedom of information (FOI) requests. So far, all of these requests have been rejected. In its response the Cabinet Office stated that it does not hold or has not been able to find the information requested as a result of the decentralised way this information is collected and stored in the Cabinet Office.

In September 2020, we submitted an FOI request to the Cabinet Office for the number of conflict of interest declarations made by Cabinet Office employees, or received by the Cabinet Office from contractors, since March 2020. The Cabinet Office responded that this information was not held. After we made a further FOI request to ascertain where such declarations were held, the Cabinet Office informed us that in line with their conflict of interest policy, the collection of conflict of interest declarations was the responsibility of the [Heads of Management Units](#) and no centralised system existed.

In April 2021, we sent a follow up FOI request for the number of conflict of interest declarations from the Cabinet Office and suppliers broken down by Cabinet Office units, with a request to gather information from the Heads of Management Units. This request was rejected by the Cabinet Office on the basis that information would be stored in “very many files” and collecting it would exceed the cost threshold established in [Section 12 of the Freedom of Information Act](#).

The Cabinet Office has not yet responded to our request for their conflicts of interest policy and the different policies or arrangements within the Management Units for recording conflicts of interest declarations, as well as the Cabinet Office’s records management policy.

As a result of this ad-hoc and opaque decentralised system conflict of interest declarations in effect fall outside of the scope of FOI legislation and are therefore inaccessible. This means that there is no transparency over conflict of interest declarations or accountability for how they are managed.

Is the Cabinet Office being transparent enough about its new conflict of interest policies?

According to the government’s April [response to the Committee of Public Accounts](#) and from some limited information already in the public domain, the Cabinet Office is in the process of strengthening its policy on managing conflicts of interest, as is the Government Commercial Function and the Cabinet Office's Commercial Team. In its response to the Committee, the government has committed to implementing the Boardman recommendations by July this year. Given the lack of information in the public domain and the hints in the policy note regarding the forthcoming policies, it is an opportune time to consider how the system could be set up to prevent conflicts of interest in procurement from continuing to undermine the integrity of government procurement.

In a [letter dated 23 April 2021](#) to the Public Administration and Constitutional Affairs Committee, the Cabinet Secretary, Simon Case, identified the Cabinet Office’s proposed reforms, including that:

- all senior civil servants will be required to declare relevant interests to their permanent secretary on at least an annual basis;
- these returns will be scrutinised by departments’ Audit and Risk Committees;
- departments should publish a register of relevant interests for all members of departmental boards; and

- consideration is underway as to whether new structures need to be established to monitor the overall position, to consider whether the right framework is in place, and to advise on finely balanced cases.

The Chair of the Advisory Committee on Business Appointments, Eric Pickles, acknowledged Case's letter [when he wrote to the Cabinet Office's permanent secretary](#), Alex Chisholm, on 14 May 2021. Notwithstanding the proposed reforms, Lord Pickles emphasised that the lack of transparency remains a significant concern and asked whether the government will introduce what he considered to be the necessary level of transparency:

- *“a clear, published, policy demonstrating how the integrity of decision making in office and any access to sensitive information (whether commercial/regulatory or policy related) in government service is protected in such cases [i.e. Bill Crothers]; and*
- *publication of an appropriate register of interests for senior civil servants, and special advisers in line with the approach taken for departmental board members.”*

What would an effective system look like in practice?

1. Conflict of interest declarations should be accessible to the public and published regularly

All senior civil servants, Ministers, department non-executive board members, special advisers and political appointees should be required to regularly fill in conflict of interest declaration forms with up-to-date information on financial interests, relevant financial, personal or social interests including those of their close relatives. A register of interests for senior civil servants and special advisers should be published alongside the department's gifts and hospitality register.

2. Establish a Central unit to oversee the collection and handling of conflict of interest declarations

Boardman in his [report on the government's handling of COVID-19 procurement](#) recommended the establishment of a secretariat in the Cabinet Office to handle conflict of interest declarations. This unit should be empowered to collect such declarations from across every government department with the information forming the basis of a central, publicly accessible register maintained by the Parliamentary Commissioner for Standards with powers to investigate potential breaches.

3. Clear mitigation strategies including recusal and divestment for when conflicts of interest cannot be managed

Where conflicts of interest have the potential to be in breach of the Regulation 24 on distorting competition or creating unequal treatment among bidders or suppliers then the guidance should provide additional detail on the mitigation strategies available such as recusal from the decision-making process and the establishment of ethical walls. Where conflicts of interest are financial, the guidance should include specific mention of divestment from financial interests as an appropriate and necessary measure to manage a conflict, especially where it concerns Ministers who hold shares in companies that are active in their sphere of influence. Such guidance should be aligned with international best practice as defined by [GRECO](#) and the [OECD](#).

4. Senior civil servants failing to disclose conflicts of interest should be referred to an emboldened Civil Service Commission

Senior civil servants who fail to declare conflicts of interest should be referred to the Civil Service Commission to face an independent inquiry. It is inappropriate that when serious breaches of the rules occur, the fate of senior civil servants is decided by colleagues from the same department. The Commission should be given the powers to conduct independent investigations and impose sanctions including the removal of individuals from their posts. This should include all special appointees, departmental non-executives and advisors.

5. Supplier code of conduct should be legally enforceable

The UK's [voluntary supplier code of conduct](#) should be replaced with a legally enforceable version requiring suppliers to proactively declare conflicts of interest during tender processes or face sanctions for non-compliance.

As the National Audit Office report made clear, suppliers routinely failed to declare conflicts of interest on their tender documents leaving journalists to uncover the connections which prompted the PPE scandal. The new policy clarifies some of the expected behaviours from suppliers including on having systems in place to record, manage and take steps to mitigate conflicts of interest but stops short of introducing any tougher measures on suppliers and views potential breaches as a matter for "In-scope Organisation's HR processes." This approach is too weak and should be replaced.

Spotlight on Corruption has [previously argued](#) that suppliers should comply with requirements of a legally enforceable code of conduct which would create criminal and civil liability for failing to declare conflicts of interest, potentially resulting in law enforcement authorities investigating the most serious breaches. Such a code is already in operation in [Canada](#).

Conclusion - new procurement note is a good start but the system needs strengthening if the UK is serious about tackling conflicts of interest.

The government's procurement note is clearly an attempt to respond to mounting criticism over its handling of conflicts of interest in procurement. However, the guidance largely restates existing rules, with some elaboration of procedural guidance. There is a real risk that it just papers over cracks rather than addressing the broken system.

As experience over the last year has shown, conflicts of interest, both real and perceived, need to be out in the open and not left in the dark to be uncovered by journalists. To achieve this step the system needs to be redesigned on the principle that where necessary, individuals in government must be made to choose between their public responsibilities and personal financial interests.

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Spotlight on Corruption works to end corruption within the UK and wherever the UK has influence.

Our vision is for a society where strong, transparent, and accountable institutions ensure that corruption is not tolerated.

We believe that by holding the UK government to account for enforcing its anti-corruption law and scrutinising the performance of the UK enforcement bodies and the UK courts, we can help end impunity for corruption.