



Treasury  
Solicitor's  
Department

# Conflict of Interest

LEGAL COUNSEL STAY OF EXECUTION POST UNSPECIFIED AMOUNT OF MONEY LAW LORDS  
ADULTERY MEMORANDUM OF ASSOCIATION COURT FEES NOTICE TO QUIT ASSISTED PERSON  
(LEGALLY) RECEIVER LIABILITY ALLOCATION QUESTIONNAIRE ADVERSARIAL REGISTER OF  
JUDGMENTS, ORDERS AND FINES CITIZEN'S ADVICE BUREAU (CAB) RESOLUTION ALTERNATIVE  
DISPUTE RESOLUTION (ADR) COMMON LAW OFFICIAL SOLICITOR LEGAL ADVICE TRADEMARK  
IBID CONFIDENTIALITY BAILIFF COMMERCIAL COURT TESTOR BIND OVER REGISTRY TRUST  
LIMITED COUNCIL ON TRIBUNALS OFFICIAL RECEIVER PLEA AFFIRMATION LANDLORD SPECIAL  
RESOLUTION ALTERNATIVE DISPUTE RESOLUTION THE CROWN COURT CHANCERY NATIONAL  
INSURANCE CONTRIBUTIONS COMMITTAL ATTACHMENT OF EARNINGS ORDER HON SOCIETY OF  
GRAY'S INN PRE-TRIAL HEARING FEES AND COSTS BAIL RECOGNISANCE ADVISORY  
CONCILIATION AND ARBITRATION SERVICE (ACAS) MORTGAGOR HIGH COURT OF NORTHERN  
IRELAND (HC NI) INDUSTRIAL TRIBUNAL ARBITRATOR CHAIRMAN ANTI-SOCIAL BEHAVIOUR  
ORDERS (ASBO) WRITTEN EVIDENCE/STATEMENT NON-SUIT PRESIDENT OF THE FAMILY DIVISION  
SMALL CLAIMS TRACK APPORTIONING PUISNE JUDGE PRIVATE COMPANY SHARE CAPITAL  
DEPONENT PETITION COURTROOM GOING CONCERN FILING DEPOSITION ENTRY OF JUDGMENT  
TRIAL BUNDLE AD HOC HIGH COURT LIMITED COMPANY CAUTION CERTIFICATE OF SERVICE  
DECREE NISI SUSPENDED SENTENCE PERSONAL APPLICATION LICENCE ADMISSION (INCLUDING  
PART ADMISSIONS) PROTOCOL COSTS (CIVIL) ESTATE VICE CHANCELLOR MORTGAGEE  
TRIBUNAL DUBITANTE HON SOCIETY OF INNER TEMPLE LAWYER CROWN COURT PROXY DUE  
DILIGENCE JOINT VENTURE BAR COUNT WITNESS HON SOCIETY OF LINCOLN'S INN EITHER-WAY  
OFFENCE DISCIPLINARY PROCEDURE SUPREME COURT OF JUDICATURE ACTION DISTRICT  
JUDGE NOTICE OF ISSUE OPEN COURT BILL OF INDICTMENT STAMP DUTY GROUP LITIGATION  
ORDERS PRE-TRIAL REVIEW PRACTICE DIRECTION HIGH COURT - QUEEN'S BENCH DIVISION (HC

**Conflict and your best interests**

**Help and guidance**

**Why conflict matters**

**A guide from the Treasury Solicitor's Department**

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## CONFLICT AND YOUR BEST INTERESTS

All lawyers are bound by the rules of their profession to act in the best interests of their client. You would expect nothing less. A lawyer who has only one client would have no difficulty achieving this.

As soon as a lawyer has more than one client, there is a risk that the best interests of one may clash with the best interests of the other. That is what we call a 'conflict of interest'. TSol are duty-bound to prevent it. If we cannot act in the best interests of both clients, we must give up acting for one of them.

Government lawyers are Crown servants. When we act for government departments and agencies, we are in fact acting for the Crown. Any conflict between departments or agencies can be resolved internally. This is how the Crown's best interests are worked out.

The Treasury Solicitor also acts for non-departmental clients. At times, departments want us to represent individual members of staff. When we do, we have to be aware of the risk of conflict and act quickly and decisively if we find it.

## WHY CONFLICT MATTERS

Every lawyer is personally at risk of professional disciplinary action if he or she acts where there is a conflict of interest. We owe it to our colleagues not to put pressure on them to put their careers on the line.

It has wider implications for us all. The government's reputation and standing with the courts is also at stake if it, or we representing it, act contrary to the interests of the administration of justice. That is why the Civil Service code expressly requires all civil servants to uphold those interests.

Acting when conflicted undermines the administration of justice. Resolving any conflict of interest is important for all of us, something we must pull together on.

## INTEREST NOT EVIDENCE

When two people are called upon to give evidence, it often happens that their stories conflict in some respects. Just because they do, it does not necessarily follow that there is a conflict of interest. TSol need to look at how their legal interests are bound up in those stories.

For example, suppose you and another person are both accused of causing an accident at work at 6.30pm and person X says you both left the premises at 5.15pm while you say we left at 5.30pm. In this instance, there is a conflict of evidence. But if person X's defence is that you caused the accident while yours is that person X did, this is more than a conflict of evidence: there is a conflict of interest in the outcome of the proceedings.

## CONFIDENTIALITY AND DISCLOSURE

There is a special kind of conflict that comes about because of two duties we owe to each of our clients. One is a duty of confidentiality: a duty to protect any information the client gives us or we obtain on the client's behalf. The other is a duty of disclosure: the duty to disclose to any client any information we have which affects the matter we are dealing with for the client.

You can see the tension that would arise between these two duties if we act for more than one client in a matter.

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## CROWN FIRST

As Crown servants, our first duty is to serve the Crown to the best of our ability. That does not mean we can give our other clients second best. It only means that if there is a conflict in any case we must find a solution that enables us to continue acting for the Crown.

The Crown, in this context, means all the departments and ministries and all the executive agencies of government. Legally speaking, there can be no conflict of interest between these bodies.

## INQUIRIES

The Treasury Solicitor is often called upon to help with public inquiries. We provide the secretarial support for the inquiry itself. TSol often acts for departments and individual officers who have evidence to put before the inquiry.

An inquiry is more likely to give rise to conflicts of evidence than of interest, because it has no power to punish or award compensation. We must be on our guard, none the less. Sometimes, a witness, or the inquiry itself, wants to blame someone or make allegations of wrongdoing against them. This could damage their reputation and put them at risk of legal action. For TSol to act for the inquiry, the witness and the person they are accusing may not be in the accused person's best interests. It could also damage the public's confidence in the inquiry's independence and fairness.

## WHY NOT JUST GIVE THE WORK TO DIFFERENT LAWYERS?

The problem with simply giving different clients to different lawyers within our organisation is the problem of attributed knowledge. This is the assumption that what one person in an organisation knows, everyone there knows. In order to get round this, special steps need to be taken. One way is to ensure that information confidential to each client is kept from leaking out.

## INFORMATION BARRIERS (CHINESE WALLS)

You may have come across the term 'Chinese wall'. The preferred term now, which avoids the derogatory origins of that expression, is 'information barrier'. In essence, the barrier means that confidential information is confined to one or more members of a team who have no contact other than through formal channels, with anyone representing another client in the matter. The idea is to avoid attributed knowledge.

For the information barrier to work it must satisfy the professional standards which permit us to operate it. It requires rigid discipline and respect: among the lawyers and among the clients too. One breach of the barrier will be enough to destroy it.

## CONSENT

Information barriers cannot always be made to work, particularly if they are not set up immediately. But TSol may be able to continue acting if we can obtain the written, informed consent of all the clients involved. If we think it is possible to proceed on this basis, we will explain to you what is involved and ask you to sign your consent.

When TSol asks you for your signed consent, please respond as quickly as you can. TSol won't be able to get on with your business until we have it.

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## FINDING OTHERS TO ACT

Once it is clear that we cannot act without conflict of interest, TSol may need to advise one or more of our clients that we cannot act for them. This is not a step we will take lightly, particularly where a department has asked us to act for a member of its staff, but it may be unavoidable.

TSol are committed to not leaving the clients high and dry even then. We have made arrangements with tried and tested private lawyers to take over the representation if we can't act. Only, of course, if this is what you want. You remain free to make your own arrangements.

## THE FINAL DECISION

This is one of the rare occasions on which your lawyers must have the final say. We have to abide by the rules for everyone's sake. If conflict is an issue, TSol will always let you know and we will work with you to find the best way forward.

You can help us by alerting us if you think there is a conflict and by working with us when we find one.

Working together, we can find the right solution so that your best interests are never compromised.

Other guides available include:

*Choosing our Counsel, Duty of Candour, Judicial Review and Witness Jargon Buster.*

For an up-to-date list of topics or to suggest new topics please contact:

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