

July 2006

DBM 03 /2006

TO: MEMBERS OF INDEPENDENT MONITORING BOARDS IN PRISONS AND IMMIGRATION SERVICE ESTABLISHMENTS

cc: Governors and Directors at Prison Establishments
Managers of Immigration Removal Centres
Clerks to the IMBs

Dear Board Member

GUIDANCE FOR MEMBERS OF INDEPENDENT MONITORING BOARDS ON HANDLING CONFLICTS OF INTEREST

The following guidance is intended to assist Board members to identify possible conflicts of interest which might arise as a result of their membership of the Board and how to handle any potential or actual conflicts.

2. One of the key features of IMBs is their independence from the systems they monitor. This is given statutory force by the Prison Rules which provide for disqualification for membership or termination of appointment where an actual or potential conflict of interest exists. In 1995 the Committee on Standards in Public Life set out seven principles which should underpin the actions of all those who serve the public in any way and which further emphasised the importance attached to impartiality, integrity and objectivity on the part of public appointees (see Annex A).

Dealing with actual or perceived conflicts of interest

3. Policy on handling actual or perceived conflicts of interest is governed by the relevant Prison Rules and Cabinet Office Guidance on Public Appointments.

4. Prison Rule 74¹ states that -

Any person, directly or indirectly interested in any contract for the supply of goods and services to a prison, shall not be a member of the board of visitors for that prison and any member who becomes so interested in such a contract shall vacate office as a member.

¹ See also Young Offender Institution Rule 72 and Detention Centre Rule 58.

Rule 74 is written in absolute terms which means that there is no option but disqualification for membership or termination of appointment for any actual or potential conflicts of interest which fall within the Rule's definition.

5. Discretion may, however, be applied to actual or potential conflicts of interests which fall within the definition of Rule 75(3)². This states that-

The Secretary of State may terminate the appointment of a member if he is satisfied that-

(e) there is, or appears to be or could appear to be, any conflict of interest between the member performing his duties as a member and any interest of that member whether personal, financial or otherwise.

6. The Secretariat must deal with Rule 75(3) cases on the basis of transparency, proportionality and risk management. In other words, it must ensure that everyone knows that the potential for a conflict of interest exists so that all reasonable steps can be taken to avoid the Board member(s) being influenced, or appearing to be influenced, by their private interests or other public interests in the exercise of their public duties.

7. Awareness of, and alertness to, potential conflicts of interest - however remote they might appear – are key to this issue. At all times, if there is the slightest suspicion that there might be a potential conflict, the Secretariat should be asked for advice.

8. Each case is considered individually. The Secretariat will explore with the Board member, or applicant, how far the conflict might affect their ability to contribute effectively and impartially on the Board and how this might be handled. Options might include:

- Organising the duties of the Board to enable the Board member in question to withdraw from the monitoring or the discussion or determination of particular matters or avoid contact with a particular prisoner.
- Arranging a sabbatical.
- Arranging a transfer to another Board on a temporary or permanent basis.
- The member to give up the interest in question.

9. It will not be possible to resolve every actual or perceived conflict of interest, for example:

- if reorganising duties or arranging sabbaticals or transfer is impracticable;
- if the actual or perceived conflict of interest is not establishment or prisoner specific, for example the Board member is/becomes a prison service employee or an employee of that part of NOMS that deals with commissioning and contestability within the Prison Service or a serving police officer.

In such cases termination of the Board member's appointment or disqualification from appointment may be the only practicable course.

² See also Young Offender Institution Rule 73 (1A)(d).

What you should do if an actual or perceived conflict of interest arises

10. All Board members and prospective board members should be open and honest and declare any personal or direct or indirect pecuniary interests, connections or obligations which may, or may be *perceived* to, influence their actions, decisions or judgement or make it difficult to fulfil their duties fairly. This should normally also include such interests of close family members and of people living in the same household³.

11. Although the integrity of the individual is not in question, it is necessary for the standing of the individual Board member and the whole Board that members of the public have confidence in their independence and impartiality. Even a perceived conflict of interest on the part of a Board member can be extremely damaging to the Board's reputation and it is therefore essential that these are declared and explored in the same way as an actual conflict would be. The fact that a Board member acted impartially may be no defence against accusations of potential bias.

12. Prospective Board members will be asked to give details of any potential conflicts of interest as part of the application process. Each case will be considered individually and the interview panel will explore with the applicant how far the conflict might affect their ability to contribute effectively and impartially on the Board and how it might be handled if they were to be appointed.

13. Declarations from existing Board members should be made in writing to the appropriate Appointments Officer in the Secretariat (see Annex C) and copied to the Chair of the Board. Members may discuss the matter with their Chair in the first instance. The Secretariat will consider each case on its merits and, in conjunction with the Board member, identify how the potential, actual or perceived conflict of interest might be resolved.

14. A declaration of any interest should also be made at any Board meeting if it relates specifically to a particular issue under consideration, for recording in the minutes (whether or not a Board member also withdraws from the meeting).

15. Chairs of Boards scheduled for Triennial Review are asked to check and declare that no member is disqualified from membership by virtue of the Prison Rules governing conflicts of interest.

16. Board members who fail to declare a known conflict of interest may be deemed to be in breach of the IMB Code of Conduct and will be subject to the IMB discipline procedures. Any Board member who refuses to co-operate in trying to resolve the conflict of interest will make themselves liable to the termination of their appointment.

Conflicts of Interest rising from Board Activities

17. The preceding paragraphs deal with connections and obligations which are a consequence of non-Board relationships and activities which may influence an individual's role as a Board member or make it difficult to fulfil Board duties fairly. However, Board members should also be alert to the risk of conflicts of interests arising from Board activities, in particular the Board's presence in meetings, on

³ Indirect pecuniary interests arise from connections with bodies which have a direct pecuniary interest or from being a business partner or, or being employed by, a person with such an interest. Close family members include personal partners, parents, children (adult and minor), brothers, sisters and the personal partners of any of these.

working groups or committees that have been established by prison service management or others with responsibility for matters that directly or indirectly affect individuals held in custody or detention.

18. The key consideration is whether the Board's presence enhances or impairs its capacity to monitor independently and objectively. If the Board plays a part in developing or amending policies or procedures, its ability to monitor the implementation and effect of those same policies or procedures with impartiality will be compromised.

19. On the other hand, if the Board is to monitor effectively it needs to know and understand the priorities and objectives of those who have responsibility for any service or programme which affects the prisoners in its prison. It also has a duty to ensure that those who have such responsibilities are kept accurately informed of what is actually being delivered to those prisoners on their behalf.

20. It is thus for the Board to decide when it would on balance be beneficial for it to be present at such meetings. When a Board member does attend it should always be made clear to the organisers and everyone else present that he or she is there as an observer. As such the Board member must play no part in decision making and take care not to voice opinions or make reports in a manner which might later conflict with or appear to conflict with the Board's performance of its independent monitoring role.

21. If in doubt, Boards should consult their National Council representative or the Secretariat (Anne-Marie Stephens on 0207 035 2270 or Mike Paice on 020 7035 2260).

Norman McLean
Head of the IMB Secretariat

Simon Nieboer
National Council

The Seven Principles Underpinning Public Life

In 1995, the Committee on Standards in Public Life defined seven principles, which should underpin the actions of all who serve the public in any way. These are :

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| 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 other 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. |

EXAMPLES OF ACTUAL OR POTENTIAL CONFLICTS OF INTERESTS INVOLVING BOARD MEMBERS OR PROSPECTIVE BOARD MEMBERS

A Board member who worked for a charitable trust that provided a service (running the visitors centre, albeit not under a commercial contract) to the prison. The Board member was considered to have an interest in the service delivered by the Trust to the prison which made it impossible for her to discharge, or be seen to discharge her Board responsibilities, in an objective and impartial way (Rule 74).

A Board member whose prospective son-in-law was involved in providing technical work under commercial contract to the prison. The Board member was considered to have an interest in the service delivered (Rule 74).

An applicant who had the contract to supply newspapers to the prison (Rule 74).

Board members who have been appointed to their local NHS Trust boards as non-executive directors. If the NHS Trust is a supplier of services to the prison the Board member is regarded as having an interest in the contract to supply services (Rule 74).

An applicant who was teaching on a course run by the local probation office for prisoners from a number of establishments (Rule 75(3)(e)).

A serving immigration officer who applied to join the Board of a prison which at times holds foreign nationals detained under powers flowing from immigration legislation. There were concerns about the potential conflicts of interest if the individual had to deal with immigration detainees in his role as Board member (Rule 75(3)(e)).

A Board member whose brother-in-law was held on remand at the prison where she was a Board member (Rule 75(3)(e)).

A Board member who was asked by his church to undertake a pastoral role at the prison (Rule 75(3)(e)).

An applicant who had a family member working in the prison (Rule 75(3)(e)).

An applicant who had served as a prison visitor in the establishment for many years (Rule 75(3)(e)).

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