

## Chapter 3

### **Principles for managing post-public employment problems**

*This chapter presents a set of principles for preventing and managing the post-public employment problems reviewed in the previous chapter. This chapter outlines comprehensive guidelines and alternative solutions that policy makers can consider as they work to prevent and manage post-public employment conflict of interest and to counter probable offences.*

## Introduction

Governments experience particular challenges as they work to develop effective legal frameworks, policies and practices to prevent and manage post-public employment problems as such problems generally arise when former public officials have moved beyond the control of government, having left the public sector.

Experience shows that there is no one best approach to fostering integrity. This is also true when dealing with post-public employment problems: each country needs to develop its own post-public employment system for dealing with its specific and particular post-public employment problems as well as anticipate emerging issues. Consequently, each country's post-public employment system must be tailored to the particular problems it faces and to the demands of its political, legal and administrative systems.

The relative importance of the five problem areas – examined in Chapter 2 – varies both within a single public sector and from one country to another. However, it is commonly thought that managing and monitoring post-public employment offences is more difficult than managing other types of conflict of interest as restrictions can be imposed much more easily on current officials than on former ones. Therefore, alternative solutions – such as incentives to encourage voluntary compliance with high standards of integrity – are more important in managing post-public employment problems than other conflict-of-interest situations.

## Designing the Post-Public Employment Principles

This section introduces the Principles for Managing Post-Public Employment Conflict of Interest in the Public Service – hereafter referred to as the Post-Public Employment Principles – which identify essential components of a comprehensive post-public employment system.

The Post-Public Employment Principles were designed to provide a point of reference against which policy makers and managers in public sector organisations can assess the strengths and deficiencies of current post-public employment systems in light of their existing and anticipated needs. As explained later, policy makers and agency managers can choose those principles that best meet their specific requirements and then implement them through appropriate regulations, policies and practices.

The Post-Public Employment Principles are fundamentally based on the problem areas reviewed in Chapter 2 and on the restrictions and prohibitions on post-public employment examined in the OECD survey on “Avoiding Conflict of Interest in Post-public Employment” (OECD, 2006). The Post-Public Employment Principles have been developed on the basis of the core principles contained in the OECD Guidelines for Managing Conflict of Interest in the Public Service (OECD, 2004) (hereafter referred to as the OECD Conflict of Interest Guidelines) that provide a common framework for managing conflict-of-interest situations in the public service.

Several of the principles shown under the four core principles of the OECD Conflict of Interest Guidelines pertain to the post-public employment issue, generally speaking. For example, under “Supporting transparency and scrutiny” a principle notes that “[p]ublic officials’ private interests and affiliations that could compromise the disinterested performance of public duties should be disclosed appropriately, to enable adequate control and management of a resolution.” One specific principle, under “Serving the public interest”, addresses directly the post-public employment issue by stating that “[p]ublic officials are expected not to take improper advantage of a public office or official position which they held previously, including privileged information obtained in that position, especially when seeking employment or appointment after leaving public office.”

Box 3.1 lists the principles included in the OECD Conflict of Interest Guidelines under the following core principles:

- serving the public interest;
- supporting transparency and scrutiny;
- promoting individual responsibility and personal example;
- engendering an organisational culture which is intolerant of conflicts of interest.

While the Post-Public Employment Principles are tailored to meet the specific challenges posed by post-public employment problems, they share the spirit and intent of the broader OECD Conflict of Interest Guidelines. The Post-Public Employment Principles provide a general framework that can be tailored by policy makers and managers to fit their specific public sector or agency context and needs.

The Post-Public Employment Principles are grouped into four functional categories:

1. The first category involves problems that arise primarily while officials are **still working in the public sector** (Principles 1-5).
2. The second category entails problems that arise primarily **after officials leave government** (Principles 6-9).
3. The third category focuses on the duty of current officials to **avoid preferential treatment** of former public officials (Principles 10-12).

### Box 3.1. OECD Principles for Managing Conflict of Interest

The OECD Guidelines for Managing Conflict of Interest in the Public Service contain the following Principles that public officials are expected to observe when dealing with conflict of interest matters in order to promote integrity in the performance of official duties and responsibilities.

#### Serving the public interest

- Public officials should make decisions and provide advice on the basis of the relevant law and policy, and the merits of each case, without regard for personal gain (i.e. be “disinterested”). The integrity of official decision making, in particular in the application of policy to individual cases, should not be prejudiced by the religious, professional, party-political, ethnic, family, or other personal preferences or alignments of the decision-maker.
- Public officials should dispose of, or restrict the operation of, private interests that could compromise official decisions in which they participate. Where this is not feasible, a public official should abstain from involvement in official decisions which could be compromised by their private-capacity interests and affiliations.
- Public officials should avoid private-capacity action which could derive an improper advantage from “inside information” obtained in the course of official duties, where the information is not generally available to the public, and are required not to misuse their position and government resources for private gain.
- Public officials should not seek or accept any form of improper benefit in expectation of influencing the performance or non-performance of official duties or functions.
- Public officials are expected not to take improper advantage of a public office or official position which they held previously, including privileged information obtained in that position, especially when seeking employment or appointment after leaving public office.

#### Supporting transparency and scrutiny

- Public officials and public organisations are expected to act in a manner that will bear the closest public scrutiny. This obligation is not fully discharged simply by acting within the letter of the law; it also entails respecting broader public service values such as disinterestedness, impartiality and integrity.
- Public officials private interests and affiliations that could compromise the disinterested performance of public duties should be disclosed appropriately, to enable adequate control and management of a resolution.
- Public organisations and officials should ensure consistency and an appropriate degree of openness in the process of resolving or managing a conflict of interest situation.
- Public officials and public organisations should promote scrutiny of their management of conflict-of-interest situations, within the applicable legal framework.

### Box 3.1. OECD Principles for Managing Conflict of Interest (cont.)

#### Promoting individual responsibility and personal example

- Public officials are expected to act at all times so that their integrity serves an example to other public officials and the public.
- Public officials should accept responsibility for arranging their private-capacity affairs, as far as reasonably possible, so as to prevent conflicts of interest arising on appointment to public office and thereafter.
- Public officials should accept responsibility for identifying and resolving conflicts in favour of the public interest when a conflict does arise.
- Public officials and public organisations are expected to demonstrate their commitment to integrity and professionalism through their application of effective conflict-of-interest policy and practice.

#### Engendering an organisational culture which is intolerant of conflicts of interest

- Public organisations should provide and implement adequate management policies, processes, and practices in the working environment to encourage the effective control and management of conflict-of-interest situations.
- Organisational practices should encourage public officials to disclose and discuss conflict-of-interest matters, and provide reasonable measures to protect disclosures from misuse by others.
- Public organisations should create and sustain a culture of open communication and dialogue concerning integrity and its promotion.
- Public organisations should provide guidance and training to promote understanding and dynamic evolution of the public organisation's established rules and practices, and their application to the working environment.

Source: OECD (2004), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD, Paris

4. Finally, Principle 13 involves non-governmental employers and underlines the **responsibility of private firms and non-profit organisations to avoid post-public employment problems** when employing former public officials.

Some of these principles – for example “prohibiting the use of insider information” – are aimed at a particular problem area whereas others, such as “announcing an official’s intention to leave the public sector”, pertain to more than one problem area. Thus, each problem area should be carefully assessed in terms of the relevant principles that could prove useful in preventing, managing, monitoring and enforcing it.

## Post-Public Employment Principles

The Principles for Managing Post-Public Employment Conflict of Interest in the Public Service (the Post-Public Employment Principles) organise essential components of a post-public employment system within a comprehensive and coherent structure. The Principles provide a point of reference against which policy makers and managers in public sector organisations can review the strengths and weaknesses of their current post-public employment system and modernise it in light of their specific context, including existing needs and anticipated problems.

### ***Problems arising primarily while officials are still working in government***

1. Public officials should not enhance their future employment prospects in the private and non-profit sectors by giving preferential treatment to potential employers.
2. Public officials should, in a timely manner, disclose their seeking or negotiating of employment and offers of employment that could constitute a conflict of interest.
3. Public officials should, in a timely manner, disclose their intention to seek and negotiate employment and the acceptance of an offer of employment in the private and non-profit sectors that could constitute a conflict of interest.
4. Public officials, who have decided to take up employment in the private and non-profit sectors, should, where feasible, be excused from current duties that could constitute a conflict of interest with their likely responsibilities to their future employer.
5. Before leaving the public sector, public officials who are in a position to become involved in a conflict of interest should have an exit interview with the appropriate authority to examine possible conflict-of-interest situations and, if necessary, determine appropriate measures for remedy.

### ***Problems arising primarily after public officials have left government***

6. Public officials should not use confidential or other “insider” information after they leave the public sector.
7. Public officials who leave the public sector should be restricted in their efforts to lobby their former subordinates and colleagues in the public sector. An appropriate subject matter limit, time limit or “cooling-off” period may be imposed.
8. The post-public employment system should take into consideration appropriate measures to prevent and manage conflict of interest when public officials accept appointments to entities with which the officials had

significant official dealings before they left the public sector. An appropriate subject matter limit, time limit or cooling-off period may be required.

9. Public officials should be prohibited from “switching sides” and representing their new employer in an ongoing procedure on a contentious issue for which they had responsibility before they left the public sector.

### ***Duties of current officials in dealing with former public officials***

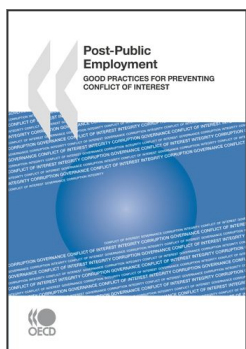
10. Current public officials should be prohibited from granting preferential treatment, special access or privileged information to anyone, including former officials.
11. Current public officials who engage former public officials on a contractual basis to do essentially the same job as the former officials performed when they worked in a public organisation should ensure that the hiring process has been appropriately competitive and transparent.
12. The post-public employment system should give consideration on how to handle redundancy payments received by former public officials when they are re-employed.

### ***Responsibilities of organisations that employ former public officials***

13. Private firms and non-profit organisations should be restricted in using or encouraging officials who are seeking to leave or who have left government to engage in activities that are prohibited by law or regulation.

### ***Bibliography***

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