

Examples of conflicts of interest in business are far from hard to find. In one example, an investigation highlighted that a COO had engaged his wife to undertake a human resources review and subsequently made payments to a company owned by his wife, of which he was the company secretary. Payments over two years totalled nearly £100,000. There was no conflicts of interest system, no clear procurement controls and totally inadequate separation of duties. The payments were also not disclosed as a related-party transaction.

The issue of employing relatives comes up repeatedly when looking for potential conflicts. Take, for example, the case of the senior manager who employed his wife and also his daughter, son and the former finance officer's son. The senior manager's daughter was engaged as a consultant for 11 months at a cost of nearly £56,000, yet this figure was not declared in the accounts as a related-party transaction. Investigators were subsequently told that it was apparently *not clear* from the guidance what constituted a 'close relative' – the trigger for a declaration. The senior manager's son was employed for five months and paid around £19,000, and his wife was paid £6,000 for consultancy. The senior manager resigned and became the subject of a police investigation.

In a third example, a contract for facilities

management services was awarded to a supplier without any justification. It subsequently came to light that the manager knew the supplier who was awarded the contract well. Both were involved in another company together. Clearly, the manager should have had no involvement in awarding the contract, but made no declarations of a conflict.

What are conflicts of interest? While there are several formal definitions, such conflict occurs when circumstances create the risk that an individual's judgements or actions are impaired or influenced as a result of other interests, or considerations. Invariably, such conflicts involve the exploitation of a role or position for personal, familial,

related-party or similar gain – a gain that can be financial, favour or other form of benefit.

Clearly, a conflict of interest can range widely in severity, and can be actual or perceived, but just the perception alone can be damaging, as it goes to the very heart of an organisation's corporate governance.

The corporate shield

As the examples above show, conflicts of interest can represent a very significant issue for organisations, embracing the kind of activity that any organisation should be trying to avoid, ranging from fraud, bribery, crime and price fixing right through to ethics, bias, nepotism, discrimination, reputational damage and questions of integrity. Moreover, major organisations and public bodies can also face a legal challenge over decisions, including contract awards. Often, such conflicts can have long-term and wide-ranging consequences, particularly where the conflict has resulted in the choice of a poorly performing or relatively costly supplier.

However, despite these issues, organisations – that may have an otherwise generally effective compliance programme – often find conflicts of interest simply too challenging an area. This can have the direct result that their conflicts of interest activities are virtually non-existent, notional, ineffective or inconsistently applied.

In recent years, most organisations have invested

CLOSE ENCOUNTERS

DISCLOSING CONFLICTS OF INTEREST CAN BE MADE EASIER FOR EMPLOYEES, SAYS KEITH READ, BUT ORGANISATIONS SHOULD BE SENSITIVE ABOUT THE LEVEL OF SEVERITY

heavily in their anti-bribery and corruption programmes. However, it could be argued that such investment is largely in direct response to legislative developments, such as the UK Bribery Act, Foreign Corrupt Practices Act and similar statutes, which, although differing in detail, have very similar core requirements.

Arguably, the situation is different when it comes to conflicts of interest. Some countries, such as the US, adopt a generally rules-based approach to conflicts of interest; some, such as the UK, take a broadly principles-based approach and others take no specific approach, or an approach that is a by-product of other legislation.

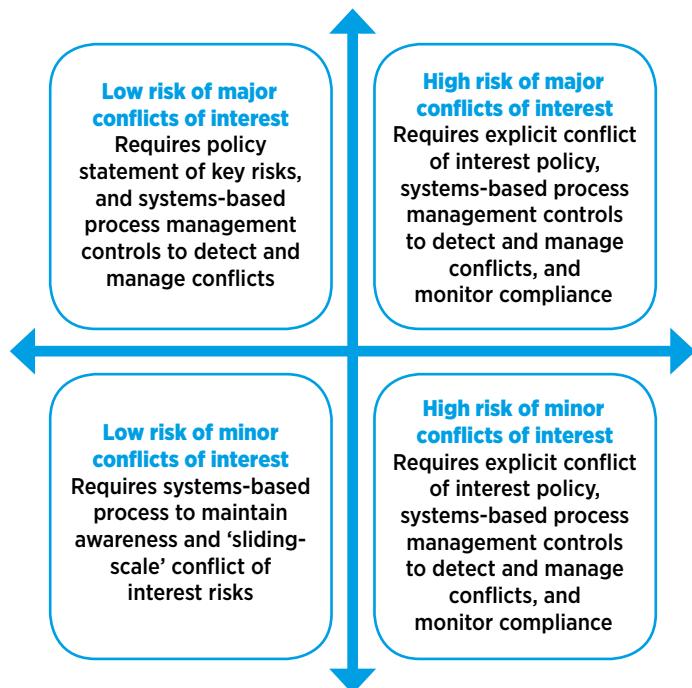
Whatever the approach, the *direct* legislative drive for a conflicts of interest programme is variable, with the consequence that organisations often expose themselves to completely unnecessary risk, by failing to realise the benefits of an effective conflicts of interest programme. Without question, this is a crucial element of an overall compliance programme and, when properly joined up with other compliance activities, represents an effective compliance corporate shield.

As the examples above have already shown, there is invariably a link between conflicts of interest and corruption, in all its types. However good an organisation's anti-bribery and corruption programme, without a comparably effective conflicts of interest programme, the organisation will, without doubt, be exposed. That exposure can be both direct and indirect, with bribery being one typical consequence of the conflict.

Challenge and opportunity

Many organisations recognise that conflicts of interest

DEGREES OF RISK AND CONFLICT



are a key element of their overall compliance and ethics programme, but discover that the practicalities of managing conflict of interest day to day can be challenging.

There is an argument that conflicts of interest disclosure programmes can go too far and have unforeseen consequences. One example I have come across occurred within an

risk-assessment approach that takes into account the severity of a conflict of interest (see matrix above).

This type of approach enables a clear focus to be initially established on the highest conflict of interest risks – typically, in senior management, procurement and in-country managers – before extending the process

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organisation of 150,000 people. What came to light in this example was a single mother with three children working part-time in a local burger bar for additional cash, who became hugely distressed – understandably – at the prospect of disclosure leading to the loss of her second (but very low-risk) occupation – one on which she depended.

Clearly, this was not the intended result of the disclosure programme and it is an incident that ultimately resulted in a rethink and a

further. However, simple analysis of likely annual turnover in employees, roles, responsibilities, reporting arrangements and personal or professional relationships indicates that keeping the conflicts of interest system up to date is inevitably very challenging, particularly when the full 'request-reminder-escalation-feedback-decision' cycle involved in managing conflicts of interest is taken into account.

It is here that, increasingly, conflicts of interest

management systems are coming into their own. Crucially, these systems are straightforward and non-threatening, which makes it easy for employees to be thorough and forthcoming in their relationship disclosures. As key employees' roles, reporting lines and relationships change, disclosures can be requested automatically, quickly updated and automatically flagged should clearance need to change. This significantly reduces the administrative burden of redundant disclosures and minimises the time and effort required of employees. This in turn leads to more high-quality disclosures containing fuller *genuine* information, in a relatively simple and easy-to-understand format.

This data can then, crucially, be linked with an organisation's compliance reporting, whistleblower hotline and training systems, and core HR data to create an effective reporting tool with visibility of the wider picture on conflicts, and potential misconduct. Linked to effective compliance communications, managing conflicts of interest then moves from 'chore' to essential tool in the corporate governance armoury – such that employees are alert to the potential for a perceived or actual conflict.

But how far would you go? It is generally relatively straightforward within local laws to identify companies and directorships registered to individuals, and then compare that to their conflicts of interest disclosure, if they have made one. Had a conflicts of interest management system been in place, that would likely have gone some way in exposing the COO in the first example above – well before the contract was placed and the £100,000 paid. ↗

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