

# Inspection service providers' protocol for managing conflicts of interest

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## Introduction

1. Ofsted's 2007–10 Strategic Plan notes that 'Ofsted ... [is] one of the best known and most trusted names in the public sector...' In view of Ofsted's extensive reach, it is particularly important that Inspection Service Providers (ISPs) acting on Ofsted's behalf should be – and should be seen to be – impartial. This means that there is no possibility of actual or perceived conflict of interest on the part of ISPs themselves, their employees or their contracted inspectors.
2. This protocol is designed to deal with actual and potential conflicts of interest, as well as addressing perceived conflicts of interest. It will provide clarity for providers, ISPs and Ofsted and should minimise the potential disruption and the increased workload that result from conflicts of interest. It is framed largely at a strategic level so that the principles can be reflected in the operational arrangements of each ISP. It will be formally reviewed in August 2010 following the first complete year of the new contracts.
3. The protocol reinforces the steps taken to ensure impartiality; to ensure that there is no damage to the reputation of Ofsted or the ISPs; and to avoid the risk of challenge on the grounds of conflict of interest during or after an inspection.
4. This protocol therefore seeks to:
  - protect the reputation of Ofsted and of the ISPs
  - allow the ISPs to continue their corporate business
  - protect the integrity of the inspection process for individual inspections
  - support and reinforce the culture of 'no surprises'.
5. All the ISPs are involved in the delivery of major people-centred services in the education sector; the purpose of this protocol is to describe how Ofsted and the ISPs will collaborate to ensure that inspections are planned and delivered so as to meet these aims.
6. It is inevitable that the ISPs and additional inspectors with the deepest and most up-to-date knowledge and understanding of education will have gained that knowledge from their prior and current work. The contracts with the ISPs and, therefore, this protocol, recognise the value of that knowledge, and the necessity of maintaining its currency, while establishing a clear separation of activities and accountabilities.
7. Separation is secured by ensuring that inspection work is separate and discrete from other work undertaken by ISPs and that the head of the inspection unit (or equivalent), who has management responsibility at operational level, has no

connection with services subject to inspection or regulatory activity in the region, or with any other commercial activities undertaken by the ISP.

8. The protocol also applies to subcontractors employed or engaged by ISPs in respect of the Ofsted inspection contracts. It is the responsibility of each ISP to ensure that subcontractors are aware of their obligations in this respect.
9. In the interests of transparency, this protocol and associated documents are available on the Ofsted website and the websites of the ISPs. As such, they are accessible to all stakeholders, including providers, local and central government (and its agencies).
10. ISPs can be contacted as follows:

	Contact name	Phone number	Email
CFBT 60 Queens Road Reading Berkshire RG1 4BS <a href="http://www.cfbt.com">www.cfbt.com</a>	Carol Glover	01189021625	carolglover@cfbt.com
Tribal 1-4 Portland Square Bristol BS2 8RR <a href="http://www.tribalgroup.co.uk">www.tribalgroup.co.uk</a>	John Haslett	07710392215	john.haslett@tribalgroup.co.uk
Serco Serco Education and Children's Services Boundary House 2 Wythall Green Way Middle Lane Birmingham B47 6LW <a href="http://www.serco.com">www.serco.com</a>	John Gaskin	07730544826	john.gaskin@serco.com

## Contractual requirements

11. In view of the importance of ensuring that there is no actual or perceived conflict of interest, related requirements are incorporated into the ISP's contracts.
12. Ofsted's contracts with the ISPs set out a policy designed to ensure that there is no conflict of interest between Ofsted and the ISPs, while recognising the importance of the ISPs' experience in providing educational services.
13. The contract requires each ISP to ensure that situations do not arise where:

- Ofsted is brought into disrepute or the integrity of the inspection/regulatory services is compromised
  - opportunities afforded by the contract are used for their own benefit, and, in particular, to generate work
  - gifts or hospitality are accepted from organisations that provide education or related services within the inspection and/or regulatory remit of Ofsted
  - bribes, commissions or other financial inducements are solicited or accepted from anyone in the inspection/regulatory services.
14. The ISPs must appoint a senior manager with overall responsibility for managing conflict of interest (called the Senior Compliance Manager) and a manager with operational responsibility for applying and monitoring the policy (called the Compliance Operations Manager). The Senior Compliance Manager will either be a member of the ISP's Board or will report to a duly authorised sub-committee of its Board which is accountable for ensuring impartiality.
15. The contract sets out principles to which each ISP must adhere in circumstances which might give rise to a conflict of interest (or where a conflict of interest might reasonably be perceived). These require the ISP to:
- act in good faith
  - use common sense
  - consider its conduct from the perspective of interested third parties
  - if in doubt, consult Ofsted.
16. The ISPs are responsible for delivering inspection services without conflict of interest. Delivery activities include:
- scheduling (including decisions about the timing of an inspection or regulatory activity)
  - discussions with the provider
  - participating in and/or preparing for an inspection or regulatory event
  - activities following an inspection or regulatory event or quality assurance, including managing complaints.
17. The contracts presume a conflict of interest where someone working on behalf of the ISP is a user, or parent or carer of a person using the provider's services; a relation of an employee of the provider;<sup>1</sup> a member of a board or governing

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<sup>1</sup> That is: spouse, civil partner, sibling, child, grandchild, widow or widower of an employee of the provider.

body of the provider; or a relation of an individual holding office on a board or governing body of the provider.

18. The contract exemplifies circumstances where there may be an actual or implied conflict or interest. These include situations where the ISP, employees or subcontractors have been or are:
  - employed by the provider within five years of the inspection
  - providing goods or services to the provider worth more than £3,000 in any single academic year within three years from the date of the inspection
  - using the services of the provider, such as part-time attendance at a further education college)
  - in possession of a financial interest in an organisation that provides a service to the provider where the value is more than £3,000 in any one year (or related to someone in such a position)
  - involved in an organisation in competition with the provider
  - providing related services (including school improvement) within three years preceding the inspection
  - providing services worth more than £3,000 in any one year which the provider uses as part of its own offer to children/learners/parents/carers (for example, where a school purchases coaching or guidance services or a college has a private nursery on site).
19. The list in 18 above is for illustration only. The overall test is the principles set out in paragraph 15 which must be applied in all circumstances where a potential conflict of interest exists.
20. Before the start of the contract, in September 2009, each ISP will complete a central register of interests, identifying any conflicts (see paragraph 18) and describing how each one will be managed or mitigated to ensure impartiality. In addition, each ISP is required to ensure that all employees and subcontractors complete disclosure forms and the information collected will be held in a register of interests. Subsequently, disclosure forms must be completed as part of the appointment or secondment process. Where reciprocal arrangements are in place, the deploying ISP responsible for the inspection is also responsible for ensuring impartiality.
21. Where any of the principles in paragraph 15 apply and/or the circumstances in paragraph 18 arise, then there is deemed to be a potential conflict of interest.
22. Where the conflict of interest relates to an individual inspector, the ISP must substitute an alternative inspector with similar qualifications and experience.

23. Where the conflict of interest relates to an individual responsible for scheduling, data transfer, management or other support activities for an ISP, the ISP will either reallocate the work or, where this is not possible, arrange for independent verification by another employee. ISPs must ensure that the application of the protocol is integrated with their contracts of employment and disciplinary arrangements.
24. In any other circumstances, reciprocity arrangements apply. In these circumstances, the ISP declaring a conflict of interest will arrange for one of the other ISPs to take on the inspection or regulatory event, provide the report and related materials and will notify Ofsted accordingly. The activity concerned becomes the responsibility of the ISP to whom it has been transferred and will be carried out in accordance with that ISP's processes.
25. In the event that a conflict of interest exists between the provider due to be inspected and all three ISPs, the inspection team will consist of Her Majesty's Inspectors only. The inspection support services will be provided by the ISP for the main contract area.
26. ISPs are required to manage and mitigate risk of conflict of interest by:
  - including relevant information from their registers of interests in inspection databases and scheduling rules
  - separating the management of inspection and regulatory services from other services or activities subject to an Ofsted inspection and/or regulatory regime
  - establishing systems to ensure that information related to particular settings that fall within the Ofsted inspection and/or regulatory regime is kept within the responsible area of the business
  - including appropriate confidentiality clauses in the contracts of all employees and subcontractors to protect intellectual capital
  - providing regular briefings on conflict of interest to relevant employees and subcontractors
  - including provisions relating to breaches of confidentiality and conflict of interest requirements in disciplinary codes and implementing reciprocity arrangements as required.
27. Schedule 15 of the contract is designed to ensure cooperative working between the ISPs and Ofsted, as well as among the ISPs themselves. This is particularly relevant to addressing conflict of interest in terms of handling communications; the provision of reciprocal arrangements; and scheduling and risk assessment.
28. Ofsted makes the final decision about whether an activity or circumstance is, or could be deemed to be, a conflict of interest. ISPs must ensure that the



regional director responsible for the contract area in which the potential conflict of interest is located, is consulted.

## Purpose and principles

29. The appointment of three ISPs to deliver inspections across all inspection remits gives rise to the potential for conflicts of interest at two levels:
  - between ISPs, their other work in the education and skills sectors and their inspection work
  - between individual inspectors and their inspection work.
30. Bearing in mind the provisions in Contractual requirements, no action should be taken before, during or after the inspection that might impair or appear to impair the objectivity of the inspection or the report, thereby leading to legitimate complaint and consequent damage to the reputation of Ofsted or the ISPs.
31. ISPs must have secure procedures for ensuring that conflicts of interest are managed effectively at corporate and individual level.
32. Where an ISP is identified with being wholly or significantly accountable for the quality of provision in an institution; accountable for outcomes within the inspection framework; or could reasonably be regarded as being significantly connected with the management of the institution or setting (for example, provision of interim staff to leadership or senior management posts who are likely to be in post at the time of the next inspection or regulatory visit), reciprocity arrangements will be instigated. In these circumstances, the ISP declaring a conflict of interest will arrange for one of the other ISPs to take on the inspection or regulatory event, provide the report and related materials and will notify Ofsted accordingly. The activity concerned becomes the responsibility of the ISP to whom it has been transferred and will be carried out in accordance with that ISP's processes.
33. Conflicts of interest will be handled in five stages:
  - disclosure at individual level for employees, contracted inspectors and trustees (as board members)
  - the identification of responsibilities and accountabilities for employees, contracted inspectors and trustees (as board members)
  - the evaluation of potential conflicts of interest against agreed principles and criteria
  - mitigation where a connection exists
  - reciprocity where there is a conflict that cannot be managed or mitigated within one organisation.

34. At individual level, whether an employee or contracted member of the workforce, a conflict of interest will be presumed if any of the criteria in 18 are met.
35. Additionally, in moving to a regionally based workforce in delivering all remits, ISPs will be required to deploy some inspectors outside their region and some from other regions within their own inspections. This protocol underpins the joint working procedures that have been agreed and will be implemented from September 2009.

### **Ofsted will support this protocol in the following ways**

36. Provide opportunities for the scheduling personnel nominated by each ISP to contribute to scheduling activity on a regular basis so that:
  - providers, where a corporate conflict of interest may arise, are identified
  - inspectors with specialist skills in demand can be deployed nationally, subject to satisfying individual conflict of interest requirements.
37. Draw on the common register of known conflicts of interest (see paragraph 44 ) to identify providers where a conflict of interest exists and to re-allocate those providers to another ISP (or ISPs) prior to providing draft annual schedules for each of the ISPs.
38. Ensure that the management of new actual or perceived conflicts of interest is a standing agenda item at Contract Programme Board meetings and that, where necessary, relevant strategies to address them are agreed.
39. Meet with the ISP-nominated contacts in advance of the publication of the final schedule to confirm that all actual conflicts of interest, together with those activities that may be perceived as a conflict of interest, have been managed effectively.
40. Provide a forum for regular discussion of:
  - the operational and management information requirements associated with reciprocal inspections
  - the extent to which the volumes of work transferred between ISPs are in balance
  - the use of Ofsted scheduling resources when required.
41. Agree data exchange mechanisms that facilitate exchange and analysis of data, and quality assurance activities in the appropriate region.
42. Provide inspection teams constituted entirely by HMI in the event that a provider has a conflict of interest with all three ISPs.

43. Develop a joint communications strategy with ISPs to ensure that:
  - all stakeholders know about this protocol and have a clear understanding of the reasons for the arrangements
  - providers across all inspection remits that are subject to reciprocity arrangements have a clear understanding of the reasons for the arrangements.

## **ISPs will ensure impartiality in the following ways**

44. Ensure that work undertaken on behalf of Ofsted is separate and discrete from other work undertaken by ISPs and that the head of the inspection unit (or equivalent), who has management responsibility at operational level, has no operational connections with services subject to inspection or regulatory activity in the region, or with any other commercial activities undertaken by the ISP.
45. Establish a common register of known conflicts of interest, updating it as new conflicts of interest are identified and reviewing it formally on a biannual basis, by the end of March and September each year in advance of Ofsted scheduling.
46. Ensure that Ofsted is informed in advance about bids for new work that could result in actual or perceived conflicts of interest with inspection work.
47. Ensure that Ofsted has access to the register of conflicts of interest.
48. Nominate named contacts and deputies with responsibility for managing scheduling and deployment across regions.
49. Establish and maintain working procedures to regularly review and identify existing and new settings where an actual or perceived conflict of interest exists.
50. Maintain inspector databases for all remit inspectors that facilitate the sharing of information between ISPs about inspectors authorised to work nationally in remits other than maintained schools.
51. Provide representation at the appropriate Ofsted forum for regular discussion of the operational and management information requirements associated with reciprocal inspections.
52. Ensure that, where reciprocal arrangements are in place, the inspecting ISP:
  - takes responsibility for all operational and quality aspects of the inspection and its impact on all associated Key Performance Indicators
  - uses its own systems and processes to deliver reciprocal inspections.

53. Support Ofsted in the development of a joint communication strategy, including with parties subject to reciprocal inspections (see paragraph 42).

## **Procedures to address corporate conflicts of interest**

54. If an actual or potential corporate conflict of interest is identified when inspections are being planned for the year, the following procedures will be instigated:
- the ISPs and Ofsted will agree which ISP will be responsible for the inspection(s)
  - once it has been agreed that an inspection is the responsibility of a particular ISP, that inspection becomes wholly their responsibility and will contribute to the Key Performance Indicators for that ISP.
55. If a corporate conflict of interest is recognised and declared once inspections have been planned for the year, the following procedures will be instigated:
- the ISP declaring the conflict of interest will contact the Ofsted Regional Director responsible for the region in which the inspection is primarily located
  - the ISPs will arrange for an alternative ISP to take responsibility for the inspection(s) having due regard for cost-effectiveness
  - the final decision rests with the regional director responsible for the contract area in which the conflict of interest has been identified
  - once it has been agreed that an inspection is the responsibility of a particular ISP, that inspection becomes wholly their responsibility and will contribute to the Key Performance Indicators for that ISP.
56. In the event that all three ISPs are deemed to have a conflict of interest, the inspection or regulatory activity will be carried out exclusively by HMI.

## **Other measures to secure impartiality**

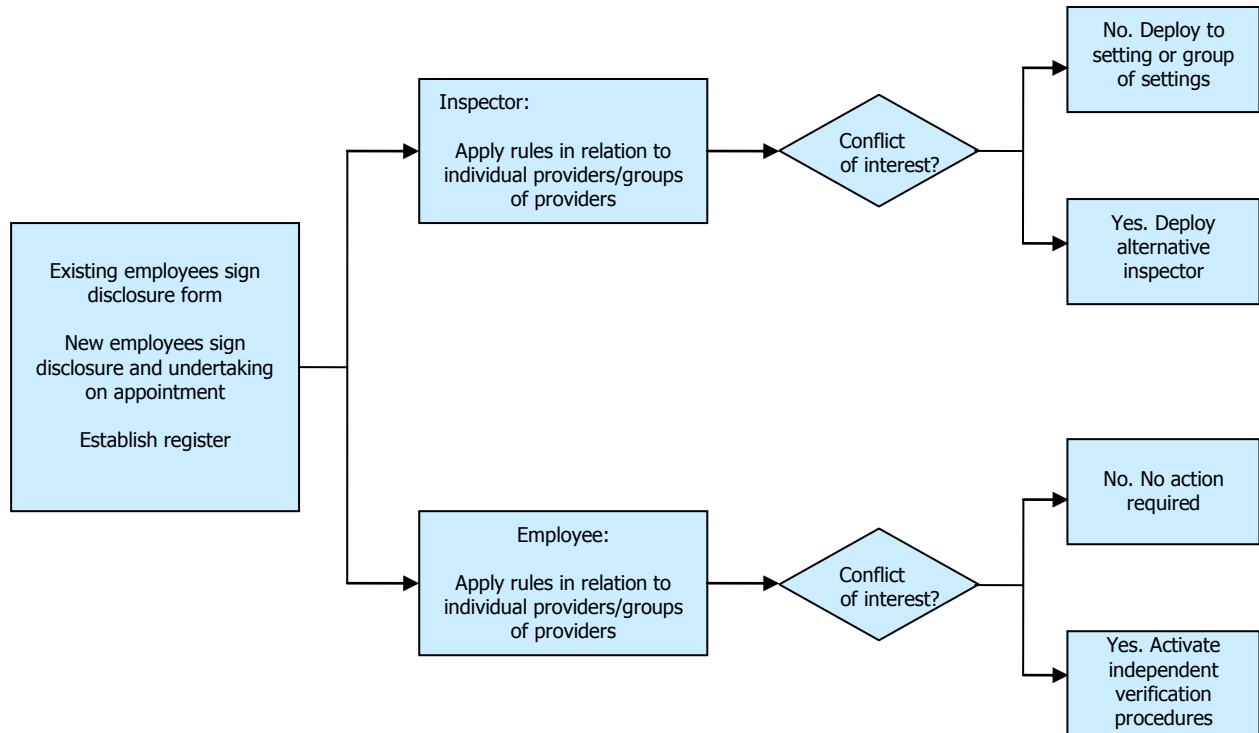
57. Given that the ISPs were selected, in part, for their experience in education, it follows there can be no objection to ISPs providing services to institutions and settings outside their contract area. (It cannot be assumed, however, that services offered outside the contract area are not accessed by institutions and settings within it, or that the work of an ISP is restricted to a single contract area.) It would also be unreasonable to expect ISPs not to pursue new commercial opportunities within their contract area. In some cases, ISPs may wish to pursue new commercial opportunities that are national in scope.
58. ISPs will not offer or provide services in their contract area (including as part of a wider geographical offer) that:

- focus on the inspection or regulatory process itself (for example support for the preparation of self-evaluation documents)
  - could reasonably be regarded as being significantly connected with the management of the institution or setting (for example provision of interim staff to leadership or senior management posts who are likely to be in post at the time of the next inspection or regulatory visit).
59. Prior to tendering for any new contracts in the education and skills sectors, the ISPs will first seek the advice of their company's Senior Compliance Manager. Where no conflict is identified, they will proceed as usual. Where a potential conflict is identified, the organisation will notify Ofsted of the situation and of the action planned to mitigate the conflict. Appropriate actions will depend on the particular case, but will include updating the conflict of interest register (see flowchart 2b in Annex A).
60. ISPs will ensure that confidential information relating to inspection or regulatory activities (see paragraph 16) is not disseminated beyond the operational management of the inspection unit.
61. ISPs will ensure that additional inspectors understand the requirements under the confidentiality clause in their contract to protect intellectual property of the provider(s) being inspected.
62. The register of conflicts of interest will be held by Ofsted and will inform the scheduling of inspections. It will include all work undertaken by the ISPs that generates, or has the potential to generate, a conflict of interest. It will be formally updated biannually. Bids by ISPs for work in the future will not be held in the register because of the commercial confidentiality of the information. However, ISPs will keep Ofsted informed about future bids (in confidence) via the Contract Programme Board and the information will be used to inform the scheduling of inspections if appropriate.
63. It is recognised that from time to time and possibly in response to freedom of information requests, Ofsted may be required to release details of the register of conflicts of interest into the public domain. Bidding details will not be released.

## Annex A

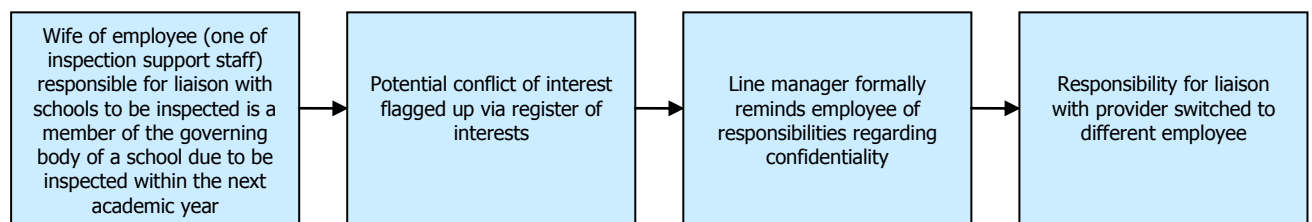
### Individual/employee conflicts of interest

Flowchart 1a



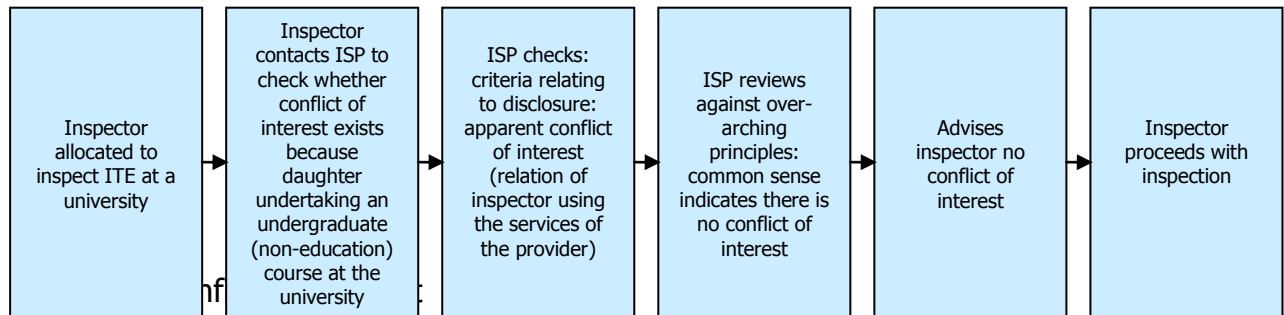
### Example 1

#### Flowchart 1b – Employee conflict of interest: membership of school governing body



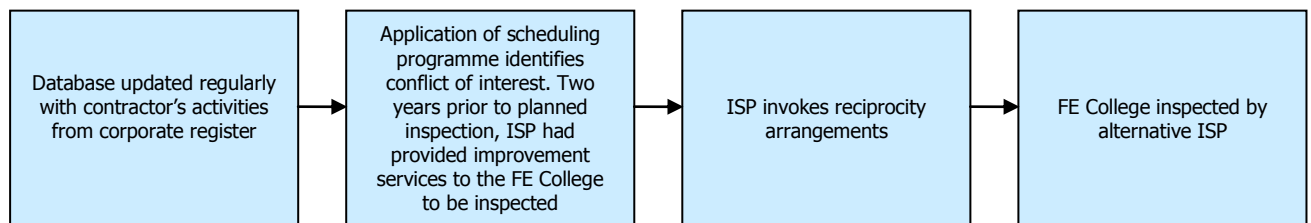
## Example 2

### Flowchart 1c – Inspector conflict of interest: user of provider’s services



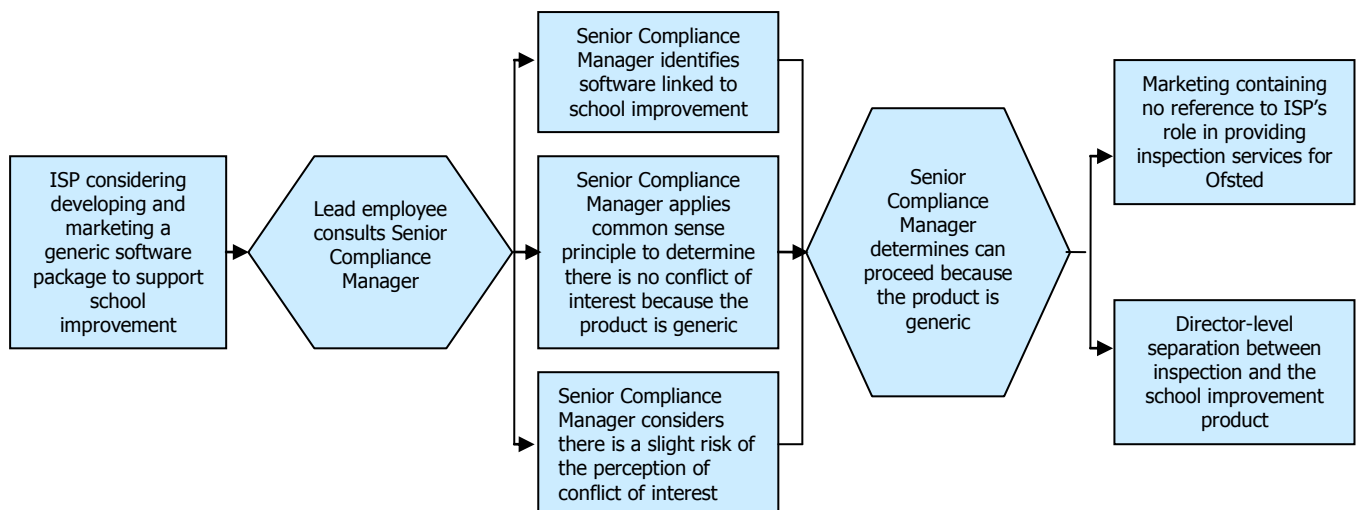
## Example 1

### Flowchart 2a – Corporate conflict of interest: inspection of a further education college



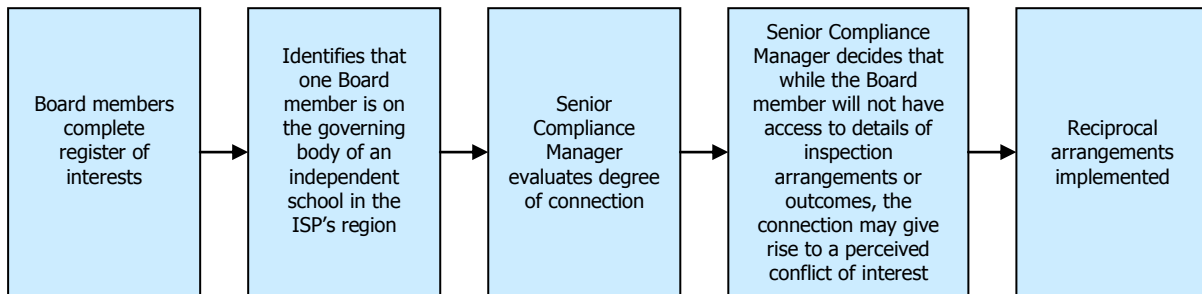
## Example 2

### Flowchart 2b – Corporate conflict of interest: decision about whether new business represents a conflict of interest



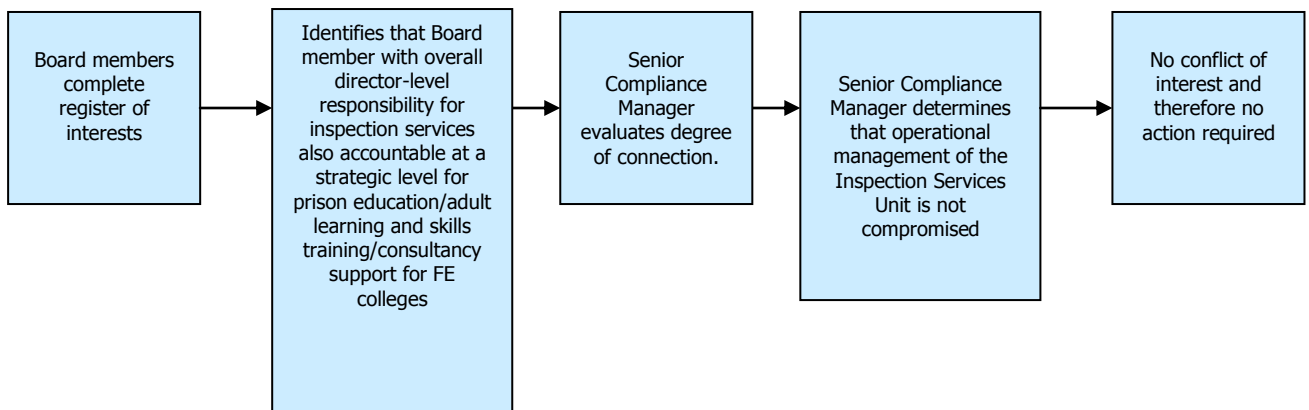
## Example 3

### Flowchart 2c – Corporate conflict of interest (Board member)



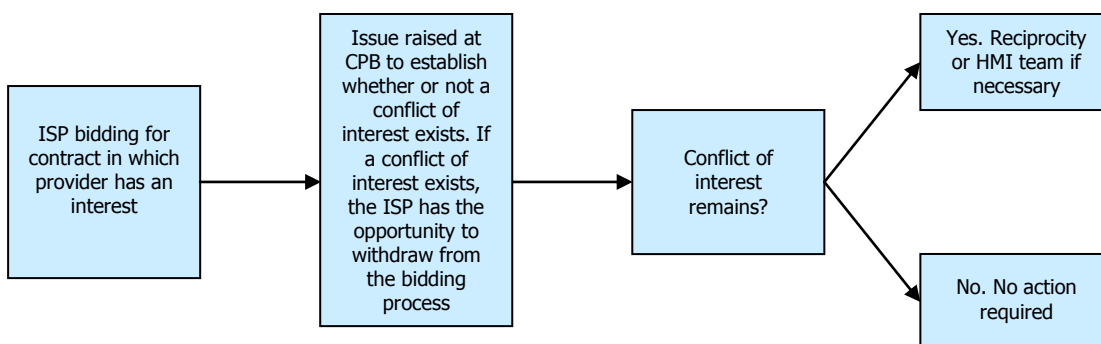
### Example 4

#### Flowchart 2d – Corporate conflict of interest: management of inspection service



### Example 5

#### Flowchart 2e – Corporate conflict of interest: bidding for additional contracts





## Annex B. Declaration of interest form

In accordance with the protocol agreed with Ofsted, please complete this form to disclose interests in an individual or corporate capacity which may be in conflict, or be perceived to be in conflict with the provision of inspection and/or regulatory services.

Please complete one of these forms for each service where you believe you have a relevant interest.

<b>Name:</b>
<b>Capacity:</b> (personal or role in organisation/subcontracting or partner organisation)
<b>Name and location of service/provider:</b>
<b>In relation to each service/provider: nature of connection/relationship:</b>
Parent/carer of user of service
Relation of an employee of the provider <sup>2</sup>
Member of board/governing body of the provider
Relation of an individual holding office on board/governing body of the provider
Employed by the provider within six years of the inspection/regulatory activity
Provided goods or services to the provider worth more than £3,000 in any single academic year within three years from the date of the inspection
Used the services of the provider (such as part-time attendance at an FE college)
Has a financial interest in an organisation providing a service to the provider where the value is more than £3,000 in an academic year (or is a relation to someone in such a position)
Involvement in an organisation in competition with the provider
Provided related services (including school improvement) within three years preceding the inspection
Provided services worth more than £3,000 in a single academic year which the provider uses as part of its own offer to children/learners/parents/carers (such as where a school purchases coaching or guidance services or a college has a private nursery on site)
May be seen to have an interest (please specify)
Duration of connection (and expiry/termination date where applicable):

<sup>2</sup> That is: spouse, civil partner, sibling, child, grandchild, widow or widower of an employee of the provider.

## Corporate conflict of interest register: draft format

In accordance with Schedule 12 to the contract and paragraphs 13 and 15–18, this register reflects the declaration of interests, including any gifts or hospitality received by [trustees], board members, other relevant employees and ISPs which cannot be mitigated internally through procedures outlined in paragraphs 21 and 22..

<b>Name and capacity:</b>
<b>Name and location of service/provider:</b>
<b>Nature of connection/relationship:</b>
Start and finish dates
Mitigating actions by ISP (including reciprocity where relevant)