

ACOBA's approach to recusals

1. This document sets out ACOBA's approach to recusals. It sets out the circumstances in which members should consider recusing themselves from the consideration of an application due to a conflict of interest. This reflects ACOBA's long standing approach.

Background

2. Paragraphs 9 to 11 of the ACOBA Code of Practice (copied below) set out the requirement incumbent on Committee members to **declare potential conflicts of interest** relating to individual applications.

Code of Practice

Declaration of Interests

9. In addition [to a register of interests], members must declare to the Committee relevant interests relating to an individual application. These may include:

- any direct or indirect financial interest in, or connection with, a company or organisation associated with an application; and
- any relationship, friendship or professional or business association with the applicant.

10. If in any doubt the member should declare the interest involved. Any interest which the Committee judges relevant will be formally recorded.

11. Following the declaration of an interest, the member may decide to withdraw from any decision on the application or the Committee may decide that the member concerned must withdraw from any such decision. Withdrawal of a member will be recorded in the advice offered by the Committee.

3. Personal responsibility - The Code places the onus upon each member to make a personal assessment of whether a) there is a relevant interest to disclose and b) if such an interest exists, whether the member considers it appropriate to recuse themselves from the decision-making process in light of that interest.
4. Collective responsibility - Other members of the Committee may offer a view (ultimately it is for the Chair to decide) where they consider the interest would require the member concerned to withdraw from making a decision on the application.

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Consideration

5. When determining whether a conflict of interest exists, there is a balance to strike. An overly cautious approach could lead to members unnecessarily withdrawing from large numbers of cases but, equally, members will want to avoid reasonable public concern that a conflict of interest has arisen in a case where there is a close connection between the member and the applicant or employer.
6. Previously, the Committee agreed on some general principles applied, taken from the [Guide to Judicial Conduct](#), dealing with personal relationships and perceived bias. Noting the situations which may arise are varied and great reliance should be placed on the judgement of the officeholder (conferring with colleagues where possible and appropriate), this guidance included principles that judges must consider when deciding whether to hear a case. The relevant principles the Committee agreed to apply when considering if recusal is appropriate were as follows:
 - a close family relationship with the applicant/employer or the spouse or domestic partner of an applicant/employer.
 - personal friendship with, or personal animosity towards, an applicant/employer (Friendship may be distinguished from acquaintanceship which may or may not be a sufficient reason for disqualification, depending on the nature and extent of such acquaintanceship).
 - A current or recent business association with the applicant/employer. (A business association would not normally include, for example, that of insurer and insured, banker and customer or council taxpayer and council).
7. Members must declare interests. Unless there are good reasons to consider the interest (such as an acquaintanceship or a past working relationship) would call into question a member's ability to remain independent, it should not provide reason to recuse. Of course, distinguishing friendship from acquaintanceship is not always straightforward and ultimately these decisions are a judgement call for members.

The approach in practice

8. The Committee may find it helpful to see some examples of when members should and should not recuse themselves:

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Circumstances in which members <u>should</u> recuse themselves
You have a family relationship with X.
X is the spouse/ child of a close friend.
You know the X socially (eg you have attended social gatherings at X's house).
X has worked directly for you (superior/subordinate).
You have worked directly for X (subordinate/superior).
You or close family members have carried out work for the company or organisation associated with the application.
You or close family members have shareholdings in the company or organisation associated with the application.

Circumstances in which members <u>should NOT</u> recuse themselves (and should certainly register an interest if unsure)
You have attended the same social events as X at the invitation of mutual acquaintances.
You have attended the same work or business events as X.
X is the friend of a friend.
You are casual acquaintances.
You have involvement with X's former department
You sat on a Select Committee with X

9. Members should:
 - a. declare to the Committee relevant interests relating to an individual application by email; and
 - b. consider whether to recuse themselves from applications on a case by case basis, applying their personal judgement and seeking views of the Committee where unsure.

10. Secretariat sending advice notes and papers:
 - a. the Secretariat will endeavour to act on previous notifications of a conflict, and a central list of previous recusals is kept for monitoring.
 - b. members should endeavour to identify cases where there might be a conflict;
 - c. members must ignore and delete any correspondence received once a recusal is confirmed
 - d. the Secretariat will remove the recused member for further correspondence/email chains/access on the drive.
 - e. any recusal will be recorded as a footnote in the advice letter so the applicant is made aware of the recusal when they receive the advice and so that it is clear to anyone reading the advice letter on the website.
 - f. where the Chair is recused, and the letter is from him - the letter will note '*Rt Hon The Lord Pickles was rescued from this application in line*

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with ACOBA's published Code of Practice. This letter contains the Committee's advice, arrived at without his input and which he is sending in his capacity as Chair of the Committee.'

**Committee Secretariat
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