Guernsey Financial Services Commission

Conflicts of Interest – Fiduciary

Thematic Review – 2025

Contents

Glossary of Terms

Term	Description
Bailiwick	Bailiwick of Guernsey
CMP	Compliance Monitoring Programme
Code of Corporate Governance	The Finance Sector Code of Corporate Governance
Commission	The Guernsey Financial Services Commission
Conflicts	Conflicts of Interest
Fiduciary Law	The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020
Fiduciary Rules	The Fiduciary Rules and Guidance, 2021
GIFCS	The Group of International Finance Centre Supervisors
Principles of Conduct	The Principles of Conduct of Finance Business
TCSP	Trust and Corporate Service Provider

Executive Summary

In the first half of 2025, the Commission reviewed a selection of fiduciary and investment licensees to understand the types of conflicts of interest they encountered, as well as considering the controls used by licensees to identify and manage conflicts of interest. The Commission recognises that conflicts often arise as part of licensees doing business, particularly in a relatively small jurisdiction. This report sets out the thematic review findings for fiduciary licensees.

The Commission's findings indicate that licensees, on the whole, have adequate controls in place to meet the required regulatory standards. The review highlighted a number of examples of good practice, and some areas that licensees should consider when next enhancing their policies, procedures and controls.

What did the Commission find?

A) Licensees reported a wide variety of types of conflicts of interest

The potential for conflicts of interest to arise within the fiduciary sector, and especially as a trust service provider, is heightened due to the overarching fiduciary duty to act 'en bon père de famille' which may not always align with the interests of the licensee; such as, the balancing of directors' duties against trustees' fiduciary duties. Licensees communicated a broad range of conflicts that they have encountered, or may encounter, which reflects the inherent conflicts of interest within the sector.

A non-exhaustive list of the types of conflicts reported by licensees during the review has been included at the Appendix for licensees to consider.

B) Licensees took appropriate steps to identify and manage conflicts of interest

Most licensees were aware of the importance of identifying circumstances contributing to, or potentially giving rise to, conflicts of interest involving their business, clients and/or staff. The Commission noted that some licensees appeared to be overly focussed on conflicts involving the board of directors, and would encourage firm to consider conflicts that exist throughout the business.

When conflicts are identified, the Commission stresses the importance of licensees implementing appropriate controls to manage and monitor those conflicts.

C) Licensees used different approaches to recording conflicts of interest

In addition to identifying and managing conflicts of interest, an important area for licensees to consider is how they record such conflicts. The Commission found that licensees generally recorded conflicts of interest in an appropriately detailed conflicts register. However, not all licensees appropriately recorded the specific controls that had been implemented to manage each conflict within their conflicts of interest registers.

D) Overall, licensees had implemented a control framework to ensure conflicts of interest are identified and managed

The Commission found that licensees generally have policies that are proportionate to the nature, scale and complexity of their businesses. Licensees tend to embed their conflicts of interest policies and procedures through periodic training and establishing a healthy compliance culture.

Most licensees also include specific tests within their compliance monitoring programme ("CMP") to monitor the effectiveness of their control framework for conflicts of interest.

Background

Thematic reviews are used by the Commission as a tool to gather information on specific aspects of the Bailiwick's financial services industry. A thematic review also provides a means by which the Commission can share observations with industry on good practice and areas to consider, and engage with a wide selection of regulated entities.

Conflicts of interest can be straightforward and apparent, such as when an individual has a close personal relationship with a supplier, or where an individual is acting in multiple roles with conflicting duties, but they can also be intricate, involving multiple, overlapping issues stemming from a firm's business model, client base and the interests of individuals within the firm.

The Commission recognises that conflicts often arise as part of licensees doing business, particularly in a relatively small jurisdiction. Licensees must therefore be aware of risks concerning conflicts of interest and have sufficient controls to identity and manage conflicts. When conflicts of interest are not effectively identified and managed, it can lead to significant harm.

Current legislation and international standards

GIFCS updated its Standard on the Regulation of Trust and Corporate Service Providers in 2018. Below is a summary of the parts of GIFCS's key standards relevant to this thematic review.

Corporate Governance

- Regulators should require that a TCSP has embedded within it a robust corporate governance culture and framework. The Regulator should have in place an approval process for the direction and management of a TCSP which requires that:
  - Boards establish, implement, document and maintain an effective conflicts of interest policy for both the Board and the TCSP, which sets out the standards of expected behaviour including, amongst other matters, the treatment of any non-compliance with the policy.

Conduct

- The Regulator should require that a TCSP's policies and procedures reflect its duty to clients over the referrers of those clients and maintain the highest standards of ethical behaviour in order to avoid conflicts of interest so as to always act in the best interests of the client.
- The Regulator should require that a TCSP has clearly established policies and documented procedures to either avoid any conflict of interest arising or, where a conflict arises, to keep adequate records of such conflicts and ensure fair treatment to its clients by disclosure of the conflict, internal rules of confidentiality, declining to act, or otherwise.

Bribery and Corruption

- The Regulator should prohibit TCSPs from:
  - Boards soliciting, receiving or accepting bribes or gifts, inducements, rewards or advantage that is likely to conflict with the TCSPs' duty to any client, to facilitate breach of the regulatory framework or to facilitate the commission of an offence under any law applicable to the TCSPs or to the person offering the bribe, gift, inducement, reward or advantage.

These standards are embedded into the regulatory regime through the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, the Principles of Conduct of Finance Business (the "Principles of Conduct"), the Finance Sector Code of Corporate Governance (the "Code of Corporate Governance") and the Fiduciary Rules and Guidance, 2021 (the "Fiduciary Rules").

Scope

The Commission sent questionnaires to 37 fiduciary licensees, which represented approximately 25% of the total population of primary and personal fiduciary licensees.

The Commission is pleased to note that there was a 100% response rate.

The Commission then met with a sample of the firms analysed to further discuss their approach to identifying and managing conflicts of interest.

Approach

The thematic review consisted of six stages:

1. The Commission considered international standards relevant to conflicts of interest; specifically, the GIFCS standards referenced in the Background section, as well as the relevant laws, regulations, instructions, rules, codes, guidance, and other documents in respect of conflicts of interest.

2. The Commission held meetings and roundtable discussions with industry representatives and other financial services regulators to gain a broad understanding of current practices pertaining to conflict risk management and the implications of the current regulatory regime.

3. Questionnaires were sent to a selection of primary and personal fiduciary licensees in order to gather initial information regarding conflict identification and management controls, and types of conflicts of interest that the licensees had identified.

4. A desk-based review of the information provided in response to the questionnaire was undertaken, which was used to inform discussions during the interview stage.

5. A selection of firms analysed were invited to attend an interview to discuss their responses to the questionnaire and wider issues regarding conflicts of interest.

6. The inspected firms provided their policies, procedures and registers relating to conflicts of interest, as well as relevant CMP tests, which were analysed by the Commission.

Analysis

1) Types of conflicts of interest

As part of the questionnaire, licensees were asked to report the different types of conflicts they had identified they may encounter, or had encountered, in their businesses. On average, the analysed firms reported five types of conflicts they had identified as impacting, or which could potentially impact, their businesses.

Based on the data received during this thematic, the Commission has compiled a list of the types of conflicts reported by licensees (see Appendix) and identified the following general themes of the conflicts that could be encountered by licensees.

- Role & duty – conflicts that arise when individuals or entities have competing loyalties. For example, where a director holds multiple roles across different entities to which they owe duties.

- Personal or financial incentive – conflicts that involve circumstances in which individuals or firms may benefit financially or personally (for example via gifts, retrocessions, or their vested interests) from decisions they make or influence in ways that conflict with their duties.

- Relational – conflicts that occur when personal relationships, either internal or external, could undermine objectivity or professional judgment.

- Client-related – conflicts that arise when the interests of different clients may be treated unequally and ultimately affect fair outcomes for all clients.

- Structural and governance – conflicts that stem from a firm's structure or ownership potentially influencing decisions improperly, or challenges arising from a firm's legal or regulatory environment.

When considering whether a conflict of interest exists from a set of circumstances, it is equally important for licensees to consider the perception of those circumstances by external parties. For example, a licensee should consider whether a conflict exists where an interest it has could be seen by an external party to influence its judgement or decision making, even if it does not.

As part of its supervisory and enforcement functions, the Commission has historically identified instances where licensees have not appropriately identified and/or managed conflicts of interest or did not have an effective control framework to mitigate conflicts of interest.

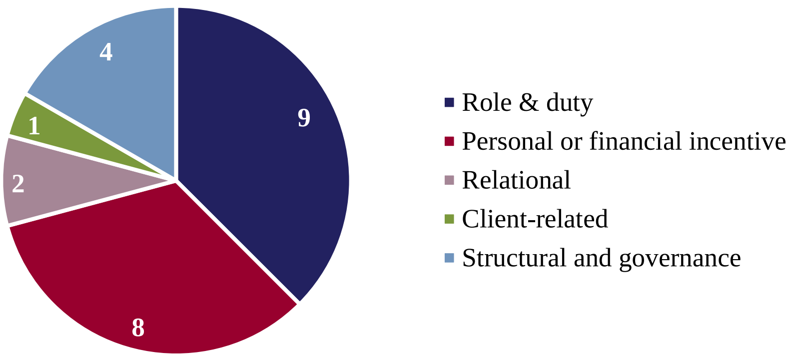

Figure 1 – Types of conflicts that have formed part of either an enforcement action or a Risk Mitigation Programme since 2019 for fiduciary licensees.

Whilst the above graph shows the nature of conflicts that have formed part of recent enforcement actions or Risk Mitigation Programmes, the Commission also sought to understand from licensees directly which types of conflicts they considered posed the most material risk to their business. The following are the key conflicts identified by fiduciary licensees.

Individuals from the licensee acting in roles within client structures

The most commonly reported conflict related to licensees or their employees' holding roles within a client structure, which is a fundamental part of most fiduciary licensees' service offering. For example, this can be where a licensee appoints employees or corporate bodies to act as directors or hold official roles on companies, trusts or foundations constituting client structures. More than half of the licensees noted this as a key risk given the inherent conflict that may arise between the interests of the licensee and interests of the client. This is especially pertinent in the case of trust service providers, when fiduciary duty to beneficiaries must be considered alongside directors' duties, in respect of both companies within client structures and the licensed fiduciary itself. Licensed fiduciaries have a duty to be impartial and not unfairly place their interests above those of their clients.

In our interviews with licensees, it was observed that all licensees understood that they must not unfairly place their interests above those of their clients. Some examples provided by licensees of how such conflicts have been managed include:

- During board discussions of underlying client entities about the licensee's performance or remuneration, the conflicted individual abstained or recused themselves from such discussions.

- Where more than one corporate director was provided to the same client entity, different individuals acted on behalf of those corporate directors to maintain and demonstrate clear segregation and independent decision making.

- Where disputes between licensee and their clients caused conflicts of interest, licensees occasionally sought legal advice on how to manage the conflict and documented their rationale for doing so. When engaging with law firms, licensees ensured that any instructions received clearly specified for whom the law firm acted.

Client-related conflicts

Another conflict identified by licensees as posing a material risk to their businesses was where different clients have competing interests. Such examples can include:

- Competing interests of multiple parties within the same trust structure, for example where there are multiple beneficiaries with differing interests; and

- Instances where a licensee is acting for two separate client entity structures whose interests are directly opposed, for example, transactions between different client entities.

Managing the interests of all beneficiaries

From the thematic data, disputes amongst beneficiaries are not uncommon in the fiduciary sector, highlighting the importance of managing the interests of all beneficiaries within a structure. One example provided was where a licensee acted as trustee of a trust where the settlor was also part of the beneficiary class. The licensee recognised the potential risk that, as trustee, it could favour the settlor / beneficiary, given they had settled the trust and paid the trustee fees for establishing the structure, without taking into account the interests of the wider beneficiary class. To manage the conflict, the licensee ensured that the reasons for all actions relating to the structure were clearly documented and subject to a four eyes process.

CASE STUDY

Conflict – Company X is owned by four trusts. One of the trusts is the majority shareholder of Company X and the other three trusts are minority shareholders. Licensee A administers Company X and each of the trusts. A dispute arose between the beneficiaries of the majority shareholder and minority shareholders. Licensee A identified this as a conflict of interest given its role in acting for both the majority shareholder and minority shareholders.

Outcome – Licensee A ultimately obtained legal advice regarding the dispute, including the conflict of interest, which included a recommendation to attempt to exit one of the relationships in order to manage the conflict of interest.

The Commission notes that, whilst in this case the decision was made by the licensee to exit one of the relationships, this may not be the only course of action, which should be decided on a case-by-case basis. The Commission further notes that exiting a trust relationship is not an easy course of action and is not a decision to be taken lightly, and that any decision taken to exit one relationship in this scenario will require consideration of the conflicts of interest inherent in making the decision as to which client to exit.

Acting for two separate client entity structures

A licensee outlined an example where it provides administration to two or more clients operating in the same or similar market, giving rise to the potential risk of the clients competing for the same assets, or the licensee potentially favouring one client over the other. It was observed that licensees managed such conflicts by:

- Disclosing the conflict to the affected parties as soon as the licensee becomes aware of its existence. This may help minimise the effect of the conflict.

- Ensuring ethical walls are in place to ensure the two clients are separately administered with information barriers so that decisions impacting the clients can be taken independently.

- Obtaining legal advice, where necessary, to ensure the conflict can be managed. Some licensees identified that following legal advice, suitable controls could not be implemented to manage the conflict. The licensee subsequently considered whether it would be appropriate to exit one of the client relationships.

Personal or financial incentive

Section 2.3(d) of the Fiduciary Rules states, “licensees must not solicit, receive or accept bribes or gifts, inducements, rewards or advantage that are likely to conflict with the licensees’ duty to any client.” It was apparent that licensees are avoiding inducements, such as retrocessions, in order to avoid any perception of giving certain clients preferential treatment and to maintain integrity, impartiality in decision-making, and trust with their clients.

Less than 20% of fiduciary licensees considered the risk of conflict of interest stemming from inducements and other financial incentives as a major risk to its business. One licensee explained the risk of being influenced by potential inducements is mitigated by discussing fee proposals or fee amendments for clients within a governance committee. By delegating the responsibility of setting fees to a group of people (rather than just one individual), comprising of individuals who may not be on the board of client entities, this mitigates the risk of decisions being made under the influence of an inducement.

The inspected firms generally stated that it would be rare for an individual or the firm to receive a gift. Nevertheless, their policies specified the appropriate procedure that should be followed for the gift to be disclosed to the appropriate member in the compliance team of the licensee, who will then note the gift on the register and assess compliance with the licensee's policy. Many licensees also had a threshold within which a gift, offered or received during the course of business, of a certain value or higher must be approved by the board, before it can be accepted and logged into the firm's register.

As shown in Figure 1, enforcement cases in the past have highlighted instances where conflicts of interest failures from inducements and other forms of financial gain have crystallised.

CASE STUDY

Conflict – In lieu of payment of fees, Licensee B accepted shares in one of its client entities and several employees also received shares as a reward for services. The purported value of the shares gifted to each employee was several million dollars. The UBO of the client had the right to unilaterally remove shares from shareholders at any time, thus potentially giving the UBO the ability to exercise control over Licensee B.

Outcome – As part of an enforcement case, it was found that, although the gifts of shares were recorded on Licensee B's conflicts of interest register, no attempt had been made to avoid or minimise the direct conflict of interest posed by accepting shares and no effective management of the conflict was found to be in place.

The Commission is also conscious that conflicts may arise where client structures, for example trusts, approach the end of their life. In such circumstances, there is a risk that the licensee may be incentivised to prolong the life of the structure and continue to charge fees.

AREA TO CONSIDER

Licensees should be mindful of considering the viability of structures having regard to the value of the remaining assets, especially in the context of appropriately discharging their fiduciary duty.

Vested interest of director/employee in a client or service provider

A conflict may arise where a party (such as the licensee, its group, a director or an employee) is able to benefit, either financially or otherwise, from influencing an undertaking with a client or service provider to the licensee, in which they have a vested interest.

The Commission observed examples where directors or employees had shareholdings in a company owned by a client company administered by the licensee. Licensees reported implementing the following controls to manage such conflicts:

- Segregation of duties, where an unconflicted client director leads the administration for the administered client company, so there are no direct touch points with the conflicted individual in the day-to-day administration of the client company.

- Ethical walls to restrict information flows between areas of the business and limit exposure of confidential client information to the conflicted employees of the licensee.

- Internal procedures and controls to ensure the individuals that have signing authority for the administered client companies are unconflicted. This ensures that decisions are made through independent judgement given the fiduciary duties owed to the client company.

- The affected directors recuse themselves from any discussion and decision-making involved with the client company.

- Obliging directors to disclose any new interests outside of the licensee on an annual basis.

CASE STUDY

Conflict – Licensee C has a sister company within the group that provides ancillary services to its fiduciary offering. It may refer clients to the sister company and has identified such as a commercial conflict of interest as the group would financially benefit from the referrals.

Outcome – Licensee C sought legal advice to ensure that client referrals to its sister company are in the best interests of its clients. As part of any referral, Licensee C discloses its relationship with the sister company to the client, ensures that clients are aware that alternative providers may be appointed, sets fees at market rate or better, and periodically reviews referrals to ensure continued ongoing appropriateness.

Multiple supervised roles within a licensee or group

Another prevalent conflict reported by licensees was where an individual holds multiple supervised roles within a licensee or group, including, but not limited to, shareholder, director, compliance officer (CO), money laundering compliance officer (MLCO) or money laundering reporting officer (MLRO).

The Commission acknowledges there may be inherent tension between the short-term commercial objectives of a shareholder or director, the independent oversight of compliance, and the reporting obligations of a MLRO, which can create complex circumstances that can, or could be perceived to, challenge an individual's ability to act impartially. It is recognised, particularly for smaller licensees, that the appointment of an individual to multiple roles may be necessary, and therefore it is important that adequate controls are implemented.

CASE STUDY

Conflict – The director, CO, MLCO and MLRO of Licensee D could no longer act in those roles due to unforeseen circumstances. To ensure the roles of CO, MLCO and MLRO were fulfilled in the short term, another director who was also a shareholder of Licensee D and had client facing responsibilities, was appointed to those roles. Licensee D identified this as a conflict due to the director's multiple roles with competing interests. To manage the conflict, the CMP was carried out by another member of the compliance team and the results reviewed by an independent third-party compliance service provider.

Outcome – Licensee D subsequently made new appointments to the roles of CO, MLCO and MLRO.

During this review, the Commission commonly found that where an individual was acting as a director as well as CO/MLCO/MLRO, the individual had no client facing duties in order to manage any potential conflicts. While this alone can be an effective mitigation action, licensees are reminded to assess the conflict, consider the potential consequences, and determine the best approach to take in order to ensure the segregation of conflicting duties.

Personal relationships

Personal relationship conflicts, which may be romantic, familial, social, or financial in nature, were identified as another key conflict of interest risk experienced by a number of licensees. Such personal relationships may exist with third parties, for example, a friend or family member of an employee/director being a client or service provider. Other personal relationships may also exist within the licensee themselves, for example between colleagues.

Close personal relationships can, or could be perceived to, influence decisions that may not be in the best interests of the licensee and/or its clients, and may hinder the objectivity or independence of those individuals, particularly where one individual has managerial or supervisory responsibilities over the other.

Many firms have a section on internal disclosures within their conflicts of interest policy that obliges those with interpersonal relationships within the office to divulge that information if it could cause a conflict for the firm. Several licensees noted that the conflicted staff are placed in separate reporting lines or prevented from exclusively acting together in decision making. If reporting lines or roles of employees change within the firm, then it is imperative that controls are in place to allow for its identification, so that appropriate changes can be made to ensure conflict walls remain functioning.

CASE STUDY

Conflict – Licensee E employs two family members that work in the same team – Individual A who is a manager and Individual B who is an administrator. To ensure independent decision making, Individual C, who is also a manager, must review and sign off on work carried out by Individual B.

Outcome – Licensee E identified via CMP testing that Individual C had left the team and that Individual A had been reviewing the work of Individual B. Licensee E restructured the team to segregate the reporting lines of the related individuals, and increased awareness of the conflict amongst the team concerned.

The Commission found certain licensees had identified conflicts arising from shareholder directors of the licensee having close personal relationships, such as being related. This presented a risk that the individuals were, or could be perceived to be, insufficiently independent of each other and could unduly influence the licensee's decision making to the detriment of the interests of other stakeholders. Licensees had implemented measures such as:

- Appointing independent directors on the board and requiring majority board agreement for approval for key decisions.

- Establishing policies that prevent the individuals from acting together in decision making, and setting terms of reference to make board and committee meetings non-quorate if only the related individuals are present.

- Preventing the individuals from counter signing each other's work via an authorised signatory.

GOOD PRACTICE

During the induction of new employees, several licensees detailed how they disclosed material conflicts that exist within their business to ensure staff were aware of the conflict and how the licensee manages that conflict.

2) Identification, management and record keeping

It is clear from the above section that there is a wide variety of types of conflicts that licensees could encounter. It is therefore important that licensees implement appropriate controls to be able to adequately identify, manage and record conflicts as and when they arise.

Identification

Identifying conflicts of interest is an integral part of ensuring that fiduciary licensees can fulfil their fiduciary duty to their clients. The Commission found that licensees seek to identify any conflicts during client onboarding as well as through ongoing periodic reviews or when trigger events occur. Data collected suggested that licensees take steps to identify conflicts regarding to employees, both at the initial employment stage and through periodic declarations thereafter, or ad hoc declarations when an employee's circumstances change. Periodic declarations were often on an annual basis, however the Commission observed some firms requiring quarterly to half-yearly declarations, which was appropriate to the nature, scale and complexity of the licensee. In some cases, firms also conducted screening checks on clients and/or staff using public sources, such as Companies House or social media, as another means to verify declared interests and identify potentially undisclosed conflicts.

It appeared that some licensees had not considered all conflicts that may reasonably impact their businesses. Some licensees focussed solely on director-specific conflicts and had not considered firm-specific conflicts, such as conflicts that may arise from being part of a group, or conflicts involving other members of staff. The Commission recognises that the risk of conflicts arising is inherently higher for board members given their decision-making powers, however conflicts exist throughout a licensee's business, for example close personal relationships of junior staff members, and are not exclusive to board members.

AREA TO CONSIDER

Licensees are encouraged to consider all types of conflicts of interest reported via the review (as per Appendix) to the extent that they may impact their businesses.

Management

Licensees should implement procedures to either avoid any conflict of interest arising or, where conflicts do arise, manage or minimise them. Figure 2 shows the most common controls that licensees reported as having used to avoid or manage conflicts.

The Commission noted that some licensees used controls within their information security frameworks to manage certain conflicts, such as the configuration of user access controls or network segregation to enforce information barriers to safeguard confidential information.

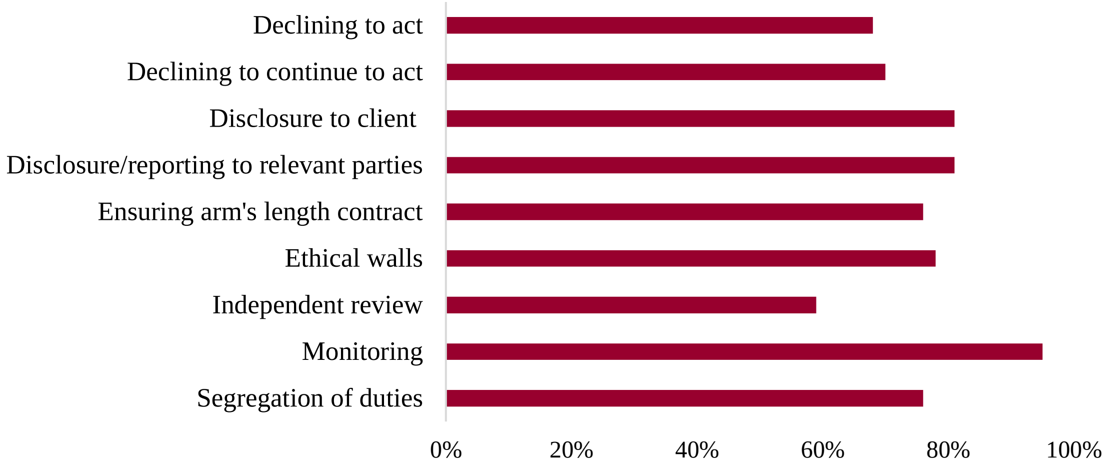

Figure 2 - Percentage of licensees that reported using various controls to manage conflicts of interest

The Commission observed that fiduciary licensees were willing to consider engaging with third parties for assistance on specific issues regarding conflicts of interest. This was most commonly observed in relation to disputes involving clients where the firm needed to maintain impartiality, either due to clients taking legal action against the licensee, or where there were competing interests between beneficiaries in a structure.

Record keeping

Licensees are required to keep records of any conflicts of interest and how they are managed. It was pleasing to note that almost all of the analysed firms reported that they maintained both a conflicts register and gifts and hospitality register, which were most commonly maintained by a senior member of the compliance department.

The below graph shows the most common items that licensees recorded on their conflict registers.

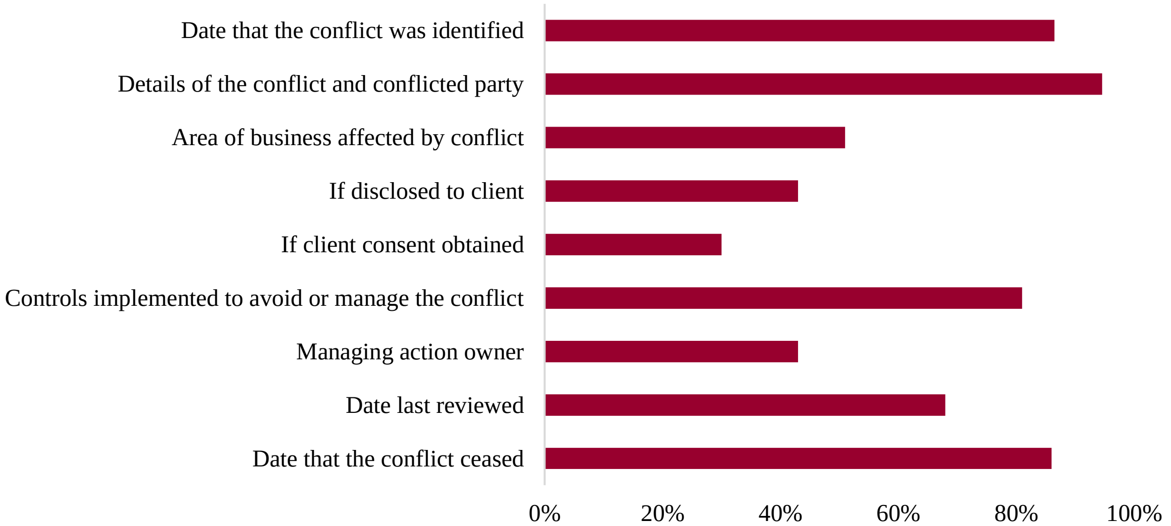

Figure 3 – Percentage of licensees that reported having the above items on their conflicts registers

The Commission was encouraged to find that conflicts of interest registers generally contained adequate information, however not all licensees recorded how the conflicts were managed as required by the Fiduciary Rules.

AREA TO CONSIDER

Licensees should document the specific controls that they implement for each conflict recorded within the conflict of interest register.

In addition to a conflicts of interest register, the Commission found that some licensees also maintained separate registers of interests (such as, but not limited to, close personal relationships, significant financial interests, and company directorships) for their directors and employees. Licensees recognised that some of these interests had the potential to influence future decisions, but this was not always reflected in their conflicts of interest register.

AREA TO CONSIDER

Licensees should determine whether any interests recorded in separate registers constitute a conflict of interest and if so, whether these should be documented in their conflicts of interest register to provide greater oversight.

3) Governance and oversight

Control framework

Licensees are required to implement policies regarding conflicts of interest that are appropriate to the nature, scale and complexity of their businesses. It was encouraging to note that almost all licensees had formal policies and procedures in place in relation to conflicts of interest. The Commission will be following up with licensees that reported not having an appropriate policies and procedures.

The majority of licensees reported the board as being ultimately responsible for the conflicts of interest policy and procedures, but a specific individual within the compliance department having oversight the day-to-day operation of the policy. The majority of licensees conduct at least an annual review of the conflicts of interest policy, with any amendments to the policy then approved by the board. It is for licensees to decide upon an appropriate timescale in which to review its policies, on a risk-based approach, to ensure that the policy and procedure remains appropriate and fit for purpose.

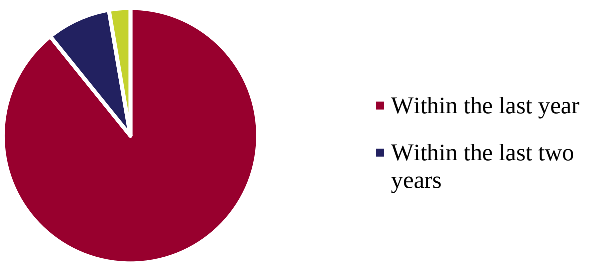

Figure 4 – Timeframe in which licensees reported having last reviewed their conflicts policy.

The Commission found that most licensees defined conflicts of interest clearly and included relevant examples within their policies. Some licensees emphasised, within their policies, the importance of how circumstances may be perceived to be a conflict of interest. Additionally, licensees generally included within their policy possible circumstances in which a conflict of interest should be disclosed to a client.

GOOD PRACTICE

The Commission considers it is good practice for licensees to integrate client disclosure considerations into their policies and procedures to ensure sufficient transparency with clients.

The data collected indicated that most policies set out the process for reporting conflicts of interest within the firm, including identifying the relevant individual at the licensee to receive conflict disclosures. The Commission was reassured to note that where licensees had appropriate policies and procedures relating to conflicts of interest, the policy applied to all employees of the licensee, i.e. there were no individuals that were exempted from declaring any conflicts.

Additionally, most policies also outlined the consequences for any non-compliance by employees with the policy. It was noted that formal disciplinary actions would likely be instigated in such situations, however this would be assessed on a case-by-case basis depending on the materiality of the conflict. This is an important requirement of the Code of Corporate Governance that encourages all employees to meet the standards of expected behaviour in relation to conflicts.

All licensees further confirmed that they had a specific gifts and hospitality policy, which was either a separate policy or part of a wider policy such as the licensee's anti-bribery and corruption policy. The median minimum value of gift or hospitality to be declared was approximately GBP90, which included several licensees that had set no minimum value.

The Commission found that boards of licensees had varying levels of oversight of conflicts of interest. Most licensees reported that boards approved the conflicts of interest policies; in some cases, this was delegated to a sub-committee which appeared appropriate to the nature, scale and complexity of those licensees. It was clear that boards would routinely review registers and receive management information, predominantly regarding CMP results, pertaining to conflicts of interest at periodic board meetings.

Embedding

The Commission sought to understand how licensees embed their conflicts of interest policies and procedures. Licensees explained that staff training, often at induction and then annually, was fundamental. Where annual training was not provided by licensees, a risk-based approach was taken and training was provided on a less frequent basis or not at all.

AREA TO CONSIDER

Licensees should consider the content and frequency of staff training on conflicts of interest in line with the nature, scale and complexity of their businesses.

Some licensees also reported that more frequent and/or enhanced training was provided to the board to reflect their decision-making authority and higher risk of exposure to conflicts. The Commission understands that enhanced training tended to focus on the legal requirements for directors in relation to managing conflicts of interest, for example directors' duties and the disclosure of interests.

All licensees confirmed that policies and procedures regarding conflicts were easily accessible to all employees should they need to be referred to. The inspected firms also indicated that the importance of establishing the right culture in effectively embedding the policy, particularly in relation to staff being able to confidently report potential conflicts of interest.

Testing

Nearly all licensees reported having specific tests relating to conflicts of interest as part of their CMP. Such tests were commonly carried out on an annual basis, however there was a variety of responses as shown in Figure 5.

Some licensees reported that their CMP tests had previously identified issues in relation to their controls for conflicts of interest. These issues generally involved instances where the existing register was not deemed sufficiently detailed, but also included situations where the conflict register had not been updated, or the policy had not been reviewed within the required timeframe. These findings illustrate the importance of CMP testing as a second line of defence in ensuring a licensee's control framework is operating effectively.

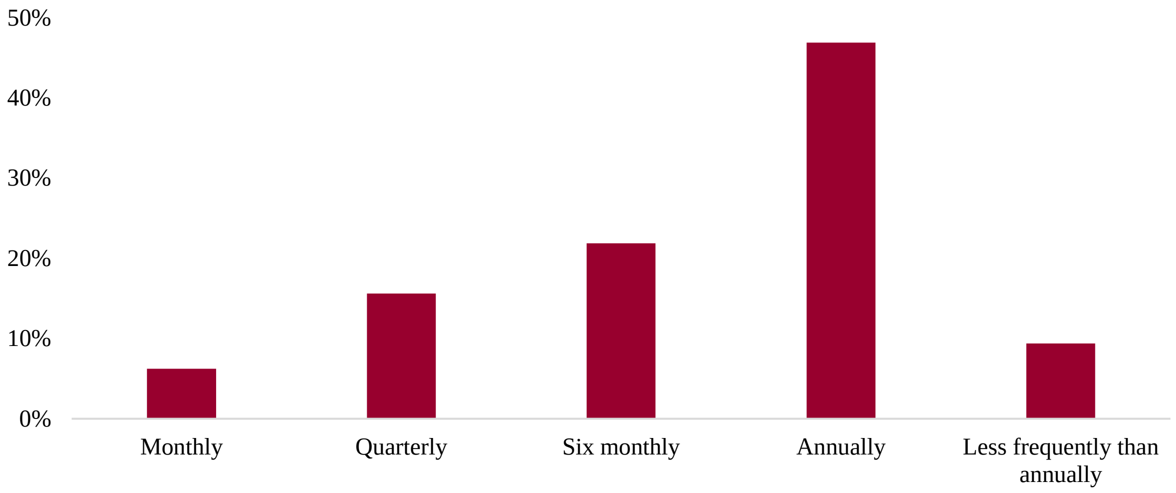

Figure 5 – Frequency of CMP tests that related to conflicts of interest as reported by licensees.

There was a diverse set of responses from the inspected firms regarding the content of such CMP tests, ranging from a review of the conflicts of interest policy and its compliance with the relevant rules and reviewing the conflicts register for completeness and accuracy, to more detailed tests such as sampling board minutes to assess disclosure of interests and reviewing any instances of disclosure of conflicts to clients.

Of the licensees that submitted examples of their CMP tests regarding conflicts, the Commission found that the tests were relevant to the requirements of the Fiduciary Rules and that actions had been recorded to remediate any issues found.

Conclusions

The Commission was encouraged to find most licensees had considered a range of conflicts of interest that they had encountered, or may encounter, when carrying on fiduciary business. The types of conflicts that fiduciary licensees identified as posing the most material risk to their business included:

- licensees or their employees acting in roles within client structures (for example, an individual acting as director of a licensee and also as a director, trustee or foundation official of a client structure) where there is an inherent conflict between a director's fiduciary duty to both the licensee and the client;
- competing client interests – for example, conflicts arising between clients and the licensee, or directly between clients;
- personal or financial incentives – for example, inducements, or the vested interests of employees creating a conflict;
- where an individual holds multiple supervised roles within the licensee or group; and
- personal relationships of employees with either internal or external parties that may hinder independent decision making.

The Fiduciary Rules require licensees to be impartial, not to unfairly place its interests above those of its clients and ensure fair treatment between clients. The Commission found that licensees clearly understood the inherent conflict between a director's fiduciary duty to both the licensee and the client, and the importance of ensuring that a licensee does not unfairly place its interests above those of its clients.

Some licensees were found to have focused mainly on director-centric conflicts. Licensees should consider whether other types of conflicts that were reported via this thematic review (see Appendix) exist within their business.

Overall, the controls used by licensees to identify and manage conflicts of interest met the Commission's expectations in most cases. It was apparent from the review that licensees are cognisant of the importance of identifying conflicts arising from clients and staff at an early stage and implementing appropriate measures to mitigate any conflicts and ensure that they are always acting in the best interest of their clients. The broad range of measures used by licensees to manage or mitigate the risks stemming from conflicts of interest provided a strong indication that licensees are conscious of the risks associated with conflicts of interest and the importance of managing these risks.

Nearly all licensees that participated in the review had conflicts of interest and gift and hospitality registers. The registers varied in substance, but generally contained sufficient information to provide oversight of identified conflicts of interest. The Commission noted that not all licensees were appropriately recording how they were managing conflicts within their conflicts of interest registers.

Licensees have generally established adequate policies and procedures that comply with the requirements of the Fiduciary Rules, the Principles of Conduct and the Code of Corporate Governance. Staff training was widely utilised to embed the licensee's control framework.

CMP testing was found to have been conducted appropriately in testing the effectiveness of licensees' controls, with any findings prompting enhancements to licensees existing policies, procedures and procedures.

The Commission expects firms to review the types of conflicts of interest in their business and the effectiveness of their management of them in light of the information in this report.

Appendix

The following is a list of the types of conflicts that licensees reported, as part of this thematic review, as having encountered or which they may encounter. It is not an exhaustive list of all types of conflicts and licenses should continue to consider all conflicts of interest as and when they may arise.

Role & Duty

- Individuals or corporate entities acting in roles within client structures
- An individual holding multiple supervised roles within a licensee or its group
- Multiple services provided to the same client (by licensee or group)
- Vested interest of director/employee in a competitor of the licensee
- External commitments (e.g. an individual holding directorships unrelated to a licensee or acting for industry bodies)
- Legal action brought against the licensee by a client
- Dual representation by a licensee in transactions (e.g. a representative of the licensee signing an agreement on behalf of the licensee and one of its clients)

Personal or Financial Incentive

- Vested interest of director/employee in a client
- Vested interest of director/employee in a service provider to the licensee
- Revenue generation:
    - Onboarding unsuitable clients
    - Prolonging the life of an unviable structure to continue to attract fees
    - "Churning"
- Financial gain:
    - "Personal account dealing" by an employee or the licensee
    - Inappropriate use of sensitive information by a licensee or employee
    - Diversion of investment opportunities from a client to a licensee or employee
    - Remuneration influencing decision-making (e.g. revenue-linked bonuses)
- Inducements:
    - Gifts or hospitality
    - Retrocessions

Relational

- Personal relationships with external third parties (e.g. service providers, clients or competitors)
- Personal relationships within the licensee (e.g. between colleagues)
- Personal relationships leading to access to private or sensitive information

Client-related

- Balancing the interests of clients that are invested in the same assets
- Competing client interests:
    - Clients that are competitors
    - Clients that are party to the same transaction
    - Clients that are in commercial or legal dispute with each other
- Prioritisation and allocation of investment opportunities and resources between clients

Structural and Governance

- Intragroup influence (e.g. parent company exerting pressure)
- Shareholder-director influence
- Conflicts arising from overlapping or conflicting legal and regulatory obligations