

POLICE, FIRE AND CRIME COMMISSIONER FOR ESSEX

BUSINESS INTEREST – STAFF DECLARATION

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Reviewed By	G Myddelton	July 2019
Policy owner	P. Brent-Isherwood	
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Version history

Version Number	Date	Reason for review	Comments
1.0	November 2012		First publication
1.0	February 2016	Update review	No amendments required
1.1	September 2017	Update review	Policy updated
1.2	July 2019	Update review	Amended to reflect change to PFCC Updated to reflect new GDPR legislation Updated Policy Owner

1. About This Policy

This policy explains and reiterates how the Police, Fire and Crime Commissioner for Essex (PFCC) will provide a clear process in considering business interests.

The policy applies to all PFCC staff, volunteers, contractors and consultants working on behalf of the PFCC regardless of working hours/patterns, terms of employment, or role.

2. General Principles

All PFCC staff have a contractual obligation to ensure that they do not place themselves in a position where duty and private interests conflict. PFCC staff may be permitted to undertake additional employment where this does not conflict with the interests of the PFCC and is not considered to put the health and safety and / or welfare of the individual at risk. Staff wishing to take on or continue additional employment and / or business interests are required to obtain permission to do so, using the procedure set out in section 12 of this policy.

Notifications of business interests are considered by the PFCC Chief Executive. Staff must complete a notification form (see Notification of Additional Employment/Business Interest/Services and Reservist Commitment Form). There is also an ongoing requirement for staff to review their notification on an annual basis and make any necessary updates to the notification in the event of their circumstances changing.

3. Data Protection and Information Security

This policy is compliant with the requirements of the General Data Protection Regulation (GDPR), Data Protection Act 2018 and with the continued protection of Essex Police and PFCC systems and information assets.

4. Human Rights

When applying this policy and making any decisions in relation to an application or notification, it is imperative that account is taken of the Human Rights Act 1998 and in particular Article 8 – the right to a private and family life. Any interference in that right (and a refusal is potentially an interference) must be lawful, necessary and proportionate. It is imperative that all decisions are recorded fully and address the individual applicant's human rights.

5. Equality and Diversity Implications

This policy applies equally to all members of staff, contractors and consultants working on behalf of the PFCC. There are not considered to be any implications in regard to race, ethnicity or any other protected characteristics that would affect the consideration or interpretation of this policy.

6. Health and Safety

This policy is compliant with the requirements of Health and Safety legislation and internal Health and Safety procedures. Where there is a concern on health and safety grounds about the efficiency and / or wellbeing of the individual, taking account of the nature of the business interest and aggregated hours of that interest, the interest may be limited or excluded as a result. The nature of the individual's role within the PFCC's office will also be taken into account when considering a business interest.

7. Working Time Regulations 1998

The PFCC, in meeting his / her obligations under the Working Time Regulations 1998, needs to ascertain from the individual whether their business interest activity may be regarded as working time for the purposes of determining aggregate working time. This is because the

provisions of the Working Time Regulations are not limited to working time with one organisation. Any individual with an external business interest is required to provide information concerning the nature, duration and time spent on any extra work undertaken so that the PFCC can assess whether such work combined with the individual's normal scope of duties conflicts with the Working Time Regulations.

8. Statement of Policy

The PFCC is required to have checks in place to ensure staff do not have a conflict of interest which could arise through a business interest or secondary employment. Staff have a contractual obligation to ensure that they do not place themselves in a position where duty and private interests conflict. Extract from Staff Statement of Particulars – Terms and Condition of Employment:

“Not to subordinate your duty to your private interests or put yourself in a position where duty and private interests conflict. You may be permitted to undertake additional employment where this does not conflict with the interests of the PFCC or adversely affect your performance.”

Requests will be considered in a flexible manner. Wherever possible, reasonable applications will be allowed. Competing careers or business interests that interfere with an individual's ability to perform their role, particularly if they are in a designated post, will not be considered appropriate. A designated post is defined as one where opportunities for corruption are high and there could be substantial risk of serious damage to the PFCC were it occupied by a person who was corrupt, dishonest, unethical or vulnerable to any of these things. The job description will indicate whether a particular post has been classified as a designated post.

9. Long Term Sickness

Permission for individuals to continue with a business interest whilst off long-term sick (for a period of 28 days or more) or on recuperative duties will be suspended. Permission will be reinstated (if appropriate) when the individual returns to work.

Individuals on restricted duties and working full hours required by their employment terms may continue with their declared business interest.

10. Application Criteria – PFCC Staff

When considering whether a business interest of a staff member is compatible with the individual remaining within the PFCC's employment, if the answer to any of the following criteria is “yes”, the business interest will not generally be allowed:

1. Is the member of staff, or any member of their immediate family cohabiting with them, engaged in any business, paid, or voluntary activity that may conflict with the PFCC or Essex Police?
2. Is the member of staff a member of any of the following, non-exhaustive list of organisations, and if so does any of 3. to 8. apply in respect of their membership of those organisations?;
 - a. a body to which the member of staff has been appointed or nominated by the PFCC either as a representative or in a non-representative role,
 - b. a public authority or body exercising the functions of a public nature,
 - c. industrial and provident, or Co-operative Societies,
 - d. Charities (or bodies directed to charitable purposes),
 - e. Private Clubs or secret societies,

- f. Bodies whose principal purposes include the influence of public opinion or policy, such as local or national pressure groups or lobbying organisations,
 - g. Trade unions or professional associations,
 - h. School governing bodies.
3. Does the business interest interfere with their ability to perform their duties for the PFCC?
 4. Does the member of staff hold a designated post?
 5. Is the business interest in direct competition with the business strategy of the PFCC?
 6. Does the member of staff hold any beneficial interest in land owned by or included within the PFCC's estate?
 7. Does the business interest involve the member of staff or any immediate family member bidding for or gaining a grant/contract/subcontract for goods or services with the PFCC or Essex Police?
 8. Does the interest conflict with any political restriction placed on the member of staff? By law, political restrictions are applied to the vast majority of staff working in the PFCC's office to ensure that the public do not become confused by statements made by employees that might be interpreted to be on behalf of the PFCC when spoken in a private capacity and vice versa. If a post is one to which a political restriction applies, this will be detailed in the individual's contract.

The criteria above are not intended to be exhaustive as cases may arise which would require further issues to be considered, but should be used as a general guide to whether or not business interests are compatible with the individual concerned remaining in the employment of the PFCC. If the staff member holds a designated post, their business interest application will be subject to a higher level of scrutiny.

11. Non-compliance with this policy

It is important that the PFCC is able to manage effectively any real or potential conflicts of interest. Not only can conflicts bring decision-making into disrepute but often the perception of conflict alone can cause concern and lead to reputational damage, including undermining public confidence.

Failure to recognise and declare relevant interests may give the impression that the organisation or individual is not acting in the public interest. If left unresolved, conflicts of interest can lead to criminal consequences.

There is a potential risk of legal challenge to PFCC decisions where a decision-maker has a conflict of interest, especially where that conflict is not acknowledged or declared¹

Where a member of PFCC staff is found to have an undeclared interest this will be investigated and may be considered a breach of the Code of Conduct which could result in disciplinary action.

12. Application Procedure – PFCC Staff

All PFCC staff who are intending to undertake (or retain on appointment) additional employment and / or relevant business interests must complete the application form accompanying this policy. The form should be submitted to the individual's line manager who will provide a recommendation to the PFCC Chief Executive as to whether the application should be approved or not.

¹ Article 6 of the European Convention on Human Rights and Articles 41 and 47 of the EU Charter of Fundamental Rights enshrine the principle that decisions should be made free from actual and apparent bias

The Chief Executive will consider whether the additional employment / business interest is compatible or incompatible with the applicant's work on behalf of the PFCC. The applicant will then be notified in writing of the decision.

Staff will be required to review and update their declarations annually. Staff are also required proactively to update their declarations in the event of a change of circumstances (for example, in the event of them ceasing to undertake additional employment and / or a business interest that has previously been approved). Staff on P.O. grades and above must submit a nil return where no business interest is declared.

13. Appeal Process – PFCC Staff

When an application is refused, the staff member has a right of appeal. Where the staff member wishes to appeal, he/she may do so by giving notice in writing, together with copies of the case documentation, to the PFCC within 10 working days of receiving notice of the Chief Executive's decision, or within such longer period as the PFCC may allow. Any extension of time should be sought from, and approved by, the PFCC within the initial 10 day period.

If an appeal is lodged, the PFCC will require the Chief Executive to submit, within 10 working days, a notice providing full reasoning for the decision, together with copies of any supporting documentation.

The PFCC will thereafter give the individual opportunity to provide his/her written comments within a further 10 working days, before determining whether the additional employment / business interest is compatible or incompatible with the individual's role within his / her office.

The PFCC's decision will be final.

14. Roles and Responsibilities

Individuals must provide sufficient information on the application form to enable the full extent and implications of the additional employment / business interest to be assessed. It is important to note that any changes to the interest, for instance changes in working time or the nature of the interest, would necessitate a fresh application form. All individuals should notify the Chief Executive if their additional employment or business interest changes. This is to ensure continuing compatibility.

Where considered necessary the Essex Police Corporate Vetting Unit will carry out vetting procedures proportionate to the application and advise any conflicts of interest to the PFCC Chief Executive.

The Chief Executive will consider cases that represent a potential conflict of interest as described above.

The application and the Chief Executive's decision will be retained on the individual's personal file.

There is no special staffing or training requirement for the implementation of this policy.

This policy and the supporting procedure have been based on and are consistent with, the existing Essex Police staff policy which has been developed in consultation with the Professional Standards Department, Head of HR, the Police Staff Council, and Chief Officers.

15. Monitoring/Evaluation

The adherence to and the effectiveness of this policy and associated procedure will be monitored by the PFCC Chief Executive.

This policy will be reviewed biennially by the PFCC Chief Executive.