

# Dealing with conflicts of interest head-on

Since inception, the National Lotteries Commission (NLC) has generated significant attention concerning whether or not it fulfils its mandate in an ethical way. Understandably, given South Africa's well-known debates on corruption, state capture and maladministration, the questions that arise most frequently surround the way in which the NLC manages or prevents conflict of interest.

While the ongoing media scrutiny has presented challenges, the NLC welcomes the stakeholder critique and sees it as an opportunity to reassess how the organisation is communicating with its stakeholders on matters of ethics, as well as providing an opportunity to reflect on internal processes. In this way, these challenging critiques inform the NLC's ethics and anti-corruption strategy.

The ethical obligations of the NLC are linked to its mandate, which firstly gives it the power to do good. Secondly, the mandate of the NLC enables it to protect the public.

To carry out these mandates, the NLC engages and works with a complex ecosystem of stakeholders. And its duties involve working with large amounts of public money, exchanged across this ecosystem, heightening the risk of unethical behaviour. The NLC therefore takes conflict of interest and ethics seriously, as demonstrated below.

## WHAT IS A CONFLICT OF INTEREST OR A CONFLICT OF CIRCUMSTANCE?

At the NLC, a conflict of interest is considered to be a conflict between the public duty and the private interest of any NLC Official, in which the official's private-capacity interest could improperly influence the performance of his or her duties and responsibilities. A conflict of interest therefore involves a conflict between the official's personal interests (what they could gain, not necessarily financially) and their public duty as a civil servant and is to be avoided as much as is reasonably possible.

A conflict of duty happens when a person is required to fulfil two or more roles that may clash with each other. It can be an actual, potential or a perceived conflict of duty. For example, an NLC board director may also hold a position as a public servant, or they may be a member of the board of another public entity or body. A conflict of duty may also arise through a director having official duties in respect of other government bodies, community and professional associations or non-governmental organisations. An example would be an NLC employee or director who is a lay preacher, and his/her church applies for NLC funding, and s/he does not declare that they are the leader of the church.

## DEALING WITH DIFFERENT TYPES OF CONFLICTS?

### 1. POTENTIAL CONFLICTS OF INTEREST OR CIRCUMSTANCE OR DUTY

A potential conflict exists when an NLC employee has interests that are not directly relevant, however, it is reasonably foreseeable that in the future, personal interests could become relevant interests (that is, these may interfere with his/her objectivity). The intensity of the conflict of interest is of such an extent that the conflict of interest falls within the NLC materiality and risk framework. In this case, the Commissioner can determine whether or not she has the appetite to tolerate the risk, with the level of risk subjected to regular reviews.

An example would be an NLC employee or their spouse being a director of a charitable organisation that has applied for or previously received funding from the NLC. This must be declared. If this information is not declared, there is a potential violation of labour and/or criminal law. Another example would be a child of an employee or directors of the NLC applying for a tender or employment in the organisation.

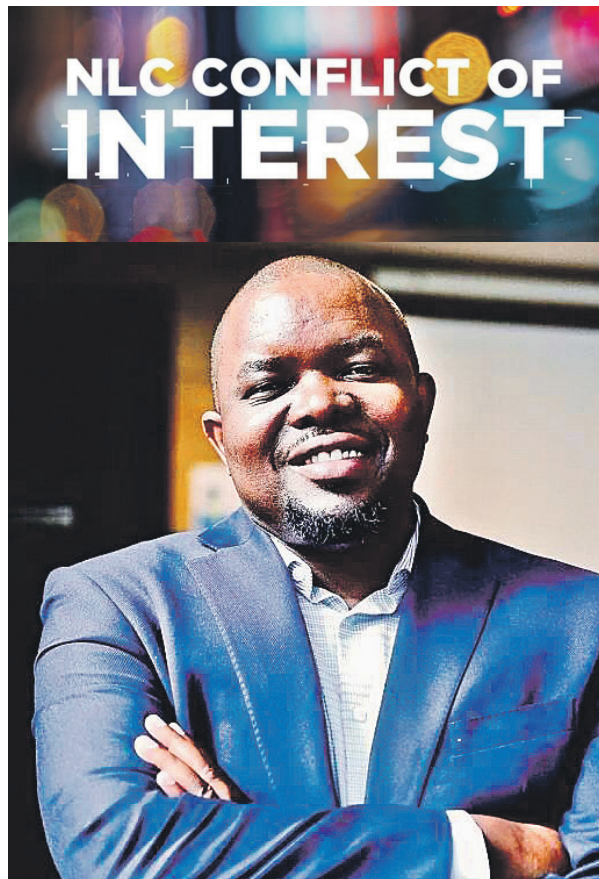
### 2. PERCEIVED CONFLICTS OF INTEREST OR CIRCUMSTANCE OR DUTY

A perceived conflict of interest is one in which a reasonable person would think that the official's judgement is likely to be compromised. A perceived conflict of interest involves a situation that may develop into an actual conflict of interest. The intensity of the conflict of interest is of such an extent that the conflict of interest falls within the NLC materiality and risk framework and requires in-depth investigation. The Commissioner can determine whether or not she has the appetite to tolerate the risk and establish how this risk will be managed going forward based on the recommendations arising from a comprehensive assessment report.

An example would be an NLC employee or their spouse being an owner of a charitable organisation that has formally applied for NLC funding. This must be declared. If this information is not declared, there is a potential violation of labour and/or criminal law. Another example would be a spouse or child of an employee or executive of the NLC being a director of a company that has received a tender in the organisation.

### 3. ACTUAL CONFLICTS OF INTEREST OR CIRCUMSTANCE OR DUTY - MANAGEABLE

This involves an NLC employee or director that has existing private interests that are relevant (which will interfere with objectivity). The intensity of the conflict of interest is of such an extent that the conflict of interest can be managed responsibly. Management of the conflict of interest can take the form of recusal or non-involvement in the decision-making process.



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An example would be an NLC employee that is a stakeholder in a charitable organisation that has applied for NLC funding. This must be declared. If this information is not declared, there is a potential violation of labour and/or criminal law.

### 4. ACTUAL CONFLICTS OF INTEREST OR CIRCUMSTANCE OR DUTY - FUNDAMENTAL

This situation would involve an NLC employee or director who has existing private interests that are relevant (will interfere with his/her objectivity). The intensity of the conflict of interest is of such an extent that it cannot be managed and must be disposed of or ceased. An example would be an employee or directors of the NLC being a director of a company that has received a tender in the organisation. Alternatively, a child of an employee being offered employment in a department where their parent works (without this being declared) would constitute an actual conflict of interest, circumstance or duty.

## THE CRITICAL IMPORTANCE OF MANAGING OR PREVENTING CONFLICTS OF INTEREST

Conflicts of interest, conflicts of circumstance or conflicts of duty that go unnoticed and that are therefore not managed appropriately, can undermine the integrity of NLC employees and the reputation of the NLC. Also, depending on the extent of the conflict of interest in question, these matters can constitute fraudulent or other criminal conduct.

Indeed, even a perceived conflict of interest could undermine public trust in the decision-making of the NLC. It is essential to recognise that citizens and the State (as the ultimate employer of public officials) are entitled to trust that officials will provide a professional, ethical service, unaffected by personal or private interests. Where this principle is not observed, trust in government and public institutions suffer. Maintaining trust must therefore be a critical priority for public organisations, governments and individual civil servants.

Trust can be protected and improved, by ensuring that there is no improper connection between an official's public functions and their private interests, including the interests of related persons or organisations, for example, by making the official's relevant private-capacity interests known to their organisation, and, for high-level officials, to the public at large.

## THE NLC CONFLICT OF INTEREST MANAGEMENT FRAMEWORK

The NLC recognises that all public officials have private interests of some kind in their capacity as private citizens. It is not unlawful to have personal interests. In fact, it is a constitutional right. It becomes problematic, however, when one's private interests clash with their public obligations.



Corruption, in this context, is understood as actual abuse of public office for private advantage or gain. If a conflict of interest is left unresolved, it has the potential to result in corrupt conduct, abuse of public office/power, breach of trust and other unlawful action or inaction. For example, in a situation where a public official abuses his/her position and access to resources for personal gain, the official obtains an improper benefit or advantage in their capacity as a private citizen, constituting a corrupt act. Should that happen, public confidence in the integrity of the NLC would be seriously damaged. An example would be where an NLC employee receives funding from the NLC in their private capacity and uses the proceeds to go on a family holiday or to buy a luxury vehicle.

The NLC conflict of interest management framework therefore provides that conflicts between private interests and public duties of NLC employees must be correctly identified, appropriately managed and effectively resolved.

## WHAT IS THE NLC PROCESS TO MANAGE CONFLICTS?

All NLC employees and leaders must annually disclose their interests or as soon as the facts change.

Upon lodgement of annual disclosures of conflicts of interest or when the employees' information changes, the NLC Ethics Office facilitates the transfer of information onto the NLC Conflict of Interest (COI) Barometer. The Ethics Office plays no role in scoring, but simply enables the population of the data from the MyDisclosure portal into the COI Barometer.

## WHAT IS THE COI BAROMETER?

The NLC COI Barometer is an interactive tool used to identify and measure the intensity of the conflict of interest or conflict of circumstance or conflict of duty. The assessment criteria serve as a guideline to be used for scoring, which ultimately feeds into the rating instrument based on the answers provided. The rating instrument is based on a set of fixed, predetermined risk factor rules (risk algorithm) for each response to an indicative scenario posed. The rating instrument generates scores in terms of the likelihood that it will occur and the impact if it does occur. The COI Barometer thus calculates a score for each person, and a summative report is generated. The Ethics Office then uses this information to develop a comprehensive assessment report with regards to the specific employee, with recommendations.

## WHAT TYPE OF RECOMMENDATIONS ARE MADE IN THE ASSESSMENT REPORT?

- Where a potential conflict of interest has been identified, the Commissioner is to be informed.
- Where there is a perceived conflict of interest, the Commissioner will seek a legal opinion for an in-depth analysis on whether there is, in fact, a conflict of interest or if the perceived conflict of interest is tolerable.
- Where there is an actual conflict of interest that can be managed, the recommendation is that the employee must be recused from the process or transaction in question.
- Where there is an actual conflict of interest that is fundamental, the employee must dispose of the interest, and the matter must be referred to the legal department for an assurance assessment in terms of the Prevention and Combating of Corruption Activities Act 12 of 2004.

A comprehensive assessment report is subsequently issued with the expectation that employees must rebut or remedy the result of the assessment. The recommendation within the report guides the employee, Divisional Head and the Commissioner on how to manage the conflict of interest or circumstance or duty pertaining to the employee.

## HOW ARE CONFLICTS MONITORED?

Conflicts of interest are identified and managed through regular reviews and the NLC responds proactively to any changes in circumstances of employees. In this regard, the MyDisclosure portal affords periodic reviews and gap analyses against internal and external databases.

## WHAT ARE THE BENEFITS OF THE NLC CONFLICT OF INTEREST FRAMEWORK?

Maintaining trust should be a central priority for any organisation – especially for an entity such as the NLC, which is entrusted with the critical work of protecting the public and distributing funds for social upliftment.

Ultimately, preventing and managing conflicts of interest prevents unethical and/or fraudulent conduct that may tarnish the reputation of the NLC or undermine its ability to perform its mandate optimally. Furthermore, compliance with the framework enhances individual and organisational professionalism, increases transparency and helps ensure confidence in the NLC.

The NLC's conflict of interest framework applies to board members of the NLC, employees, contractors, distributing agencies and anyone who does business with the NLC. While the NLC recognises that no process or framework can be perfect, the organisation commits to doing its utmost to continue learning, and to assertively manage or prevent conflicts of interest to ensure the maximum positive impact results from its activities.