

## Anti-corruption guidelines

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## Anti-corruption guidelines

*These guidelines replace previously applicable anti-corruption guidelines, GD 2017/109, ADM 2017/47. These guidelines are effective from 12 December 2018 and until further notice. The Director-General adopts the guidelines. The authority's legal advisor is the document manager for the guidelines.*

### 1 Introduction

The Swedish Arts Council's starting point in its daily practice is for the activities to meet the requirements on legality, transparency, efficiency, rule of law, predictability, and conformity.

Public administration operates on behalf of the citizens. Therefore, working in public administration carries a particular responsibility to work according to the requirements on correctness and impartiality and fight bribery and other forms of corruption. That way, public trust in the public activities may be maintained. As an employee of or contractor with the Swedish National Council for Cultural Affairs (the Swedish Arts Council), it is a prerequisite to act in such a way that the authority is not discredited.

If you exercise public authority (providing funds) or work in procurement, you shall take extra care in receiving benefits from external parties. The Swedish Arts Council process matters that may have great financial importance to cultural operators and companies applying for grants. Managers and other employees of the Swedish Arts Council, members of the board of directors, as well as members of working, reference, and jury groups and other expert advisors may be subject to external influence when processing or making decisions in various matters. Such influence may sometimes be unlawful and thereby considered a bribe.

On other occasions, an employee or a member may be considered to have a special interest in an application, which disqualifies the person due to conflict of interest. That person shall then not participate in processing the application.

If you are unsure whether something shall be considered a bribe or disqualifying conflict of interest or if it is appropriate to participate in any situation, you shall consult with your immediate supervisor.

All those working within the authority or on behalf of the authority (see the list of relevant parties above) are responsible for complying with the guidelines.

## 2 The mission of the Swedish Arts Council

### 2.1 Business intelligence and more

One important part of the Swedish Arts Council's business intelligence is to monitor the cultural life promoted by the Swedish Arts Council, mainly through grants, on site. This is achieved by, for example, attending performances, openings of exhibitions etc. Such visits may also facilitate the assessment of a certain application or otherwise form a natural part of the authority's activities or upskilling of employees. If so, the immediate supervisor will approve the purchase of tickets to the event. The basic principle is that you shall decline free tickets to paid events from stakeholders receiving grants from the Swedish Arts Council or from potential beneficiaries. Note that it is only in cases where the authority does *not* pay for your ticket that there is a risk of you accepting a bribe (see more in Section 3 to help assess in which cases the gift may still be considered permissible).

#### *Recommendation*

- It is crucial that employees and contractors with the authority does not become indebted to a beneficiary. It is important to always keep in mind that the Swedish Arts Council's provision of funds constitutes exercise of official authority.
- There are strict rules on when a benefit is improper for employees and contractors exercising official authority. The possibilities of accepting benefits are limited as there are especially stringent requirements on integrity protection. The integrity of the service and the mission shall always be protected.
- A meal must never be the primary purpose of the gathering. Caution must be exercised in case of frequent visits to the same organisation or stakeholder.
- It is always the employer that shall cover costs arising in connection with the performance of official duties. Examples of such costs include expenses for meals and lodging, and the participation in seminars, conferences, courses, and other training.
- In cases where an external stakeholder or organisation does not provide the authority the opportunity to pay for attendance, or in cases where it is not appropriate to do so, a special evaluation should be made of the need to attend, who should attend, and to what extent that person shall attend. The review shall be based on the character of the event and the stakeholder's/organisation's relation to the authority's provision of funds.

## 2.2 External representation

In certain cases, the authority needs to be externally represented. This may include invitations from, for example, embassies, but also representation at awards ceremonies and premieres.

The Swedish Arts Council's representation shall in all respects be moderate and relevant. External representation in various situations may only occur when it is connected to the authority's activities and it is important for the authority to be represented. A meal may not be the primary purpose of the gathering. Caution should be taken in case of frequent representation with the same organisation. In cases of representation, the Swedish Arts Council shall, to the extent possible, cover its own costs.

When an invitation is extended to the Swedish Arts Council, a **review** shall be conducted to assess whether the authority should be represented, and if it is reasonable to request an invoice from the external party issuing the invitation.

If you, in exceptional cases, bring an invited partner along when attending an event as a representative of the Swedish Arts Council, the partner shall pay for their own expenses.

With respect to other representation, we refer you to the *Swedish Arts Council's Guidelines for representation*.

### *Recommendation*

- External representation is **relevant** when it is connected to the employee's employment and the authority's activities, providing that it is important for the authority to be represented. The relevance review shall consider that the Swedish Arts Council's provision of funds constitutes exercise of official authority. It is important that employees and contractors with the authority do not become indebted to a beneficiary.
- There are strict rules on when a benefit is improper for employees and contractors exercising official authority. The possibilities of accepting benefits are limited as there are especially stringent requirements on integrity protection. The integrity of the service and the mission shall always be protected.
- A meal must never be the primary purpose of the gathering. Caution must be exercised in case of frequent visits to the same organisation or stakeholder.

- It is always the employer who shall cover costs arising in connection with the performance of official duties. Examples of such costs include expenses for meals and lodging, and the participation in seminars, conferences, courses, and other training.
- In cases where an external stakeholder or organisation does not provide the authority the opportunity to pay for attendance, or in cases where it is not appropriate to do so, a special evaluation should be made of the need to attend, who should attend, and to what extent that person shall attend. The review shall be based on the character of the event and the stakeholder's/organisation's relation to the authority's provision of funds.

## 3 Bribery

### 3.1 What constitutes a bribe?

The law uses the term 'undue advantage' and 'bribe'. There is no definition in the legal text on what is 'undue' (prohibited/unlawful). Instead, what is unlawful is determined based on an overall assessment of all relevant circumstances in the individual case. The courts impose particularly stringent requirements on you as a public sector employee.<sup>1</sup> By 'advantage' is meant that you are treated to, for example, a dinner or offered free tickets to various events.

The determining factor when deciding whether an advantage, or benefit, should be considered undue is if it may be suspected to influence the performance of official duties. It is irrelevant whether you as recipient can show that you have not been influenced by the advantage in your line of work.

One basic principle is that the greater possibility the recipient of a (private) advantage has to benefit the provider of the advantage in any respect, within the scope of their work or commission, the greater the risk of the advantage being considered designed to influence the work or the commission in an unlawful manner.

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<sup>1</sup> The so-called Code of Business Conduct (Code on Gifts, Rewards and other Benefits in Business) states the following: The initial determining factor of whether it is permitted to provide a benefit is the societal sector in which the recipient is employed or a contractor. The code divides these into three levels, which will be dealt with in separate sections below. Section 5 contains the strictest rules, providing that any benefits to recipients in this level are improper (for exercise of public authority and public procurement).

The assessment made in each separate case to determine whether a provided or received benefit is permitted (lawful) or unlawful is described below in Sections 3.2-3.3.

These guidelines mainly cover undue advantages and what you should consider when you are offered something from an external party. However, it is important to remember that the same rules apply when the authority is offering something to someone.

### **3.2 Applicable criminal provisions**

There are several types of bribery listed in the Swedish Criminal Code (Chapter 10, Section 5 a – 5 e of the Swedish Criminal Code). The provisions mainly mean the following:

1. an employee or a contractor may not receive, accept a promise of, or request an undue advantage for the performance of their employment or commission (*taking of a bribe*),
2. it is not permitted to provide, promise, or offer an undue advantage to an employee or a contractor for the performance of their employment or commission (*giving of a bribe*),
3. it is not permitted to receive, accept a promise of, or request an undue advantage to influence someone exercising public authority or making decisions on public procurement or to provide, promise, or offer an undue advantage to someone in order for them to influence the decision-maker in the exercise of public authority or public procurement (*trading in influence*),
4. a business operator must be careful when supplying money or other assets to an authorised representative, agent, partner, or other representatives so the funds are not used for bribes (*negligent financing of bribery*).

In certain cases, taking or giving of a bribe is considered a gross offence, which leads to harsher sentences.

### **3.3 Assessment of whether a benefit is permitted or not**

#### *3.3.1 General*

The question of whether a benefit is permitted or not must be determined based on all significant circumstances in the individual case. Remember that strict requirements are imposed on employees in public administration. An employee of the Swedish Arts Council shall therefore not put themselves in a position where they may even be suspected of having been influenced in an undue manner in their performance of official duties. The evaluation shall include a review of whether a benefit objectively

speaking is intended to influence the recipient's performance of official duties. By 'intended' is meant how the situation in general appears to an outside observer.

Some of the circumstances that shall be especially considered in the assessment are:

1. the group of recipients and the forms for offering the benefit,
2. the position of the giver,
3. the value of the benefit (both financial and personal value), and
4. the nature of the benefit.

### *3.3.2 The group of recipients and the forms for offering the benefit*

It is important that the benefit is provided overtly to you as administrator, and not in secret. The transparency requirement means that a benefit normally shall be addressed to the Swedish Arts Council and not, for example, to your personal e-mail address. You are also at a lower risk of committing bribery if you accept an invitation addressed to an undefined group of people at the Swedish Arts Council rather than to specifically selected individuals.

### *3.3.3 The position of the giver*

If you exercise public authority (providing funding) or work with public procurements, you shall exercise particular caution when receiving benefits from an external party. If anyone wishes to give you free tickets or you are invited to dinner by any organisation or company that has applied for a grant from the Swedish Arts Council, you shall decline the offer.

### *3.3.4 The value of the benefit*

The risk of a benefit being deemed unlawful increases the weaker the link is to the recipient's duties. Thus, it is important whether the benefit has a clear connection to and forms a natural and useful part of the recipient's work. On your part, it may be that it is more relevant to attend a theatrical performance than a football match. If you bring along a relative or a friend to an event, the risk of the offer being considered bribery increases, even if the invitation includes an accompanying person.

## **3.4 It is possible to decline a gift**

Sometimes, a giver may find it rude of the recipient to decline a gift or reward. However, it is usually possible to decline in a polite manner if you also explain the reason why you cannot accept the gift. If you are given a gift, usually during international missions, that you cannot decline out of courtesy, you shall hand over the gift to the Swedish Arts Council as soon as possible. The authority will then determine what to do with it.

### **3.5 A bribe is always a bribe**

An unlawful gift or advantage (bribe) cannot become lawful through the approval of a manager at the Swedish Arts Council. Instead, the manager risks implicating you as an accomplice to bribery (Chapter 23, Section 4 of the Swedish Criminal Code). If, however, the authority pays for the event or the performance, this can never constitute a bribe.

### **3.6 Generally permitted benefits**

Benefits that are not intended to influence decisions and alike but simply intended to foster a good relationship are generally permitted. Examples of such benefits include:

- Occasional working meals of an ordinary character.
- Samples or simpler ornaments and souvenirs of low value.
- Simpler gifts on even-numbered birthdays or in case of illness.

### **3.7 Always unlawful benefits**

Certain benefits are always unlawful. Below are some examples of such prohibited benefits.

- Monetary gifts in cash, securities, and alike.
- Cash loans on especially favourable conditions.
- Guarantee commitments or debt coverage.
- Purchase price or claim, amortisation, or interest forgiveness.
- Bonus arrangements of various kinds, for example when purchasing goods or flights and hotel stays if the advantage falls to the employee and not the employer.
- The private use of vehicles, boat, secondary residence, or similar.
- Fully or partially paid pleasure or vacation trips.
- Fully or partially paid lodging in connection with conferences and meetings.
- Fully or partially paid meals of a value exceeding the cost of a working lunch.
- Offer generally considered unethical.

### **3.8 Upskilling**

The basic principle is that the Swedish Arts Council is responsible for upskilling their personnel and thereby covers the cost of seminars, courses, and alike. However, it may be permitted to, for example, attend a seminar free of charge, if it will benefit the employee in their exercise of official duties. If you receive such an invitation, you shall inform and consult with your immediate supervisor whether it is appropriate for you to participate.

## 4 Disqualifying conflict of interest

### 4.1 General

Conflict of interest provisions are included in Sections 16-18 of the Administrative Procedure Act (SFS 2017:900). Disqualifying conflict of interest are circumstances designed to discredit the impartiality of the administrator of a matter. The fact that there is a conflict of interest does not necessarily mean that someone is biased, it is sufficient that there is a circumstance that may constitute a risk of partiality.

The term ‘administrator’ applies in a wide sense and includes all those within the authority’s organisation that can influence the outcome of a matter. This means that both the Swedish Arts Council’s board of directors and employees as well as members of reference groups, working groups, jury groups, and expert advisors are included.

There is a ‘safety valve’ in the provision that states conflict of interest is disregarded ‘when the issue of impartiality clearly lacks importance’. Situations covered by this rule include cases where the outcome appears evident and where the decision-maker in reality has no choice in the matter. In such cases, it is not possible to act in a biased manner. In case of doubt, conflict of interest shall be considered. This follows from the wording ‘clearly’ in the legal text.

### 4.2 Examples of disqualifying conflicts of interest

There are different types of disqualifying conflicts of interest. You shall abstain from participating in the administration of a matter if the following situations arise.

#### 4.2.1 *Disqualification due to ownership, interest, and kinship*

The matter concerns yourself or your partner, your parents, children, or siblings, or any other related party or the outcome of the matter may be expected to bring particular use or injury to yourself or any related party.

A typical case of disqualification due to interest is that you own shares in a company that is party to a matter. Whether disqualifying conflict of interest shall be considered to exist in this situation depends, *inter alia*, on the size of the shareholdings and the matter’s importance to the company. If you are the principal shareholder in the company, you are normally disqualified. The same applies if a family member or close relative have such a financial interest.

*Case law example of assessment of disqualification due to interest:*

- The world of higher education is small, and most of those working in a particular field of study know each other personally. The members of the

scientific community are used to critically evaluate the efforts of close colleagues, e.g. in peer reviews for staff appointments, and an excessive requirement on claiming conflict of interest in various scientific situations and in the exercise of public authority within the field could affect research and make it difficult to, for example, find expert advisors in matters of appointing staff. A board such as this must have the necessary expertise and the circle of experts may be very limited. A member of a board may not participate in decisions on applications filed by the member themselves or by an institution or company in which they have a significant interest. This was not the case in this matter. However, the board included representatives of the country's foremost expertise in the area represented by the board. The Parliamentary Ombudsman (JO) determined that it would be unrealistic to require that the members of the board would not themselves apply for or accept grants. Nor could institutions or companies wherein members of the board are active be required to abstain from the possibility of receiving grants. (JO 1974 p. 393)

#### *4.2.2 Disqualification of a substitute (Sw. Ställföreträdarjäv)*

You or any related party act as substitute for the person the matter concerns or someone who may expect particular use or injury from the outcome of the matter. This conflict of interest is primarily of importance when you are the administrator of a matter and you are the authorised signatory for a limited company, an association, a foundation, or any other legal person directly affected by the matter.

#### *Case law example of assessment of disqualification of a substitute:*

- In one JO decision, the question was whether members of the board of directors of Sweden's Visual Artists' Fund were disqualified from participating in the fund's decision on awarding organisation grants to the organisations that appointed them. JO found that they were not disqualified and primarily based this assessment on the fact that they neither formally nor otherwise acted as substitutes for their organisation. Furthermore, JO made the assessment that the board members must typically be considered to have such ability to take objective and independent stands that they would not automatically be disqualified according to the general clause in matters concerning the organisations that appointed them. (JO 1988/89 p. 374)

#### *4.2.3 General clause - Disqualification for reasons of discretion and delicacy (Sw. delikatessjäv)*

You shall abstain from participating in the administration if there is otherwise any special circumstance intended to discredit your impartiality in the matter.

Examples of such ‘special circumstances’:

- evident friendship or enmity with party or interested party in the matter,
- financial dependence on a party or interested party, or
- engaged in the matter in such a way that it may easily be suspected that conditions for an impartial assessment are lacking.

Case law regarding the general clause is varied. Simply put, these are either cases connected to the first-mentioned disqualifying grounds in some way or situations without such connection.

One example of evident friendship is that you socialise and for example invite each other home for dinner. It could also be that you as musicians have played together in an ensemble for several years.

*Case law examples of assessments.*

- Disqualification: a member of the ethical committee regulating animal experiments was disqualified when the committee evaluated an application from someone within the same corporate group or from the same institution as the member. (JO 2001/02 p. 361)
- Non-disqualification: the person who chaired a municipal executive board when the board decided on extending a lease agreement between the municipality and a tennis club had a family membership with the club and used to play tennis on the premises covered by the lease agreement. According to the Local Government Act’s provision, equivalent to the Administrative Procedure Act’s general clause, this did not disqualify him. (RÅ 1998 ref. 16)
- Non-disqualification: a member of a social central board was not considered disqualified in a matter of an opinion on a custody issue while the member was living with one of the investigators in the custody investigation forming the basis of the opinion. (JO 1981/82 p. 201)

### **4.3 Risk of disqualifying conflict of interest in the following situations**

There is a risk of disqualifying conflict of interest in the following situations. In these borderline cases, you as administrator should avoid handling the matter even though you are not disqualified in the eyes of the law.

- If you are or have been an employee/contractor with a legal person applying for grants, you should not participate in matters concerning that legal person. The same applies if your closest relatives are employed or contracted with

such an applicant. If someone is on leave of absence from such employment, more restrictiveness is necessary.

- Membership in an association does not generally constitute disqualification. However, it may be inappropriate to participate in such matters if you are a member of the association. And you who hold some form of position of trust on a not too insignificant level in the association shall abstain from participating in the administration.
- It is considered inappropriate for you to have a financial interest in the legal person applying for grants from the Swedish Arts Council. A smaller holding in a publicly traded company does not mean that you are considered to have a financial interest in the business in the eyes of the law, but it does not look good and may trigger suspicions of conflict of interest, why you shall abstain from participating in the administration.
- If you have participated in an investigation that will later be circulated for comment from the Swedish Arts Council, this will not necessarily constitute a conflict of interest. But the extent to which you should participate in the consideration process is often a question of appropriateness. There is nothing to stop you from contributing to the drafting of the comments. However, you should not make decisions on the proposal or act as rapporteur.
- You have as executor appeared a number of times together with someone who is applying for a grant from us in the capacity of representative of a company.

#### **4.4 Effect of disqualification due to conflict of interest**

The basic principle is that a person who is disqualified due to conflict of interest may not take any preparatory action or participate in the decision on the matter. It is therefore crucial that you as administrator, regardless of grounds for disqualification and in all stages of preparation, avoid handling applications for which a conflict of interest has been determined.

In a conflict of interest situation, the following measures shall be taken when administering a matter:

- The disqualified person shall leave the room when the matter is being processed.
- Conflicts of interest shall be documented throughout the procedural process.
- If minutes are not kept at a meeting, any conflicts of interest shall still be recorded.

If a member of a reference or working group is a participant in an application for a grant, written statements shall be collected from at least two expert advisors who are not already part of the group.

There are situations when the authority must make a formal decision on the conflict of interest. This primarily applies when an outsider issues a challenge. In such cases, decisions are made by a qualified manager and the matter shall be tried within two weeks of receiving the challenge.

In serious cases of conflicts of interest, the administrator who participated in the decision may be charged with official misconduct or be subject to a labour law sanction, e.g. a disciplinary action.

#### **4.5 For how long are you considered disqualified?**

You are considered disqualified from handling a certain matter during a period of three years after concluding the engagement considered to constitute a conflict of interest.

## **5 Conflicting loyalties and other conflicts of interest**

### **5.1 Freedom of expression and duty of loyalty**

The principle of public access to official records is a cornerstone of Swedish democracy. This principle is expressed in different ways, primarily through freedom of expression and whistleblowing for government employees and the regulations on public access to official documents. For you as a government employee, it is important to remember that these freedoms apply both to you and your colleagues and individual citizens. However, you as a government employee must remember that it is one thing to speak as a representative of the authority and another to express your personal opinion. It is therefore important that your statements in the line of duty are worded in a way that there can be no doubt that you are indeed making them as a representative of the authority.

There are no statutory rules on a duty of loyalty in an employment relationship. However, it has been determined in case law that this duty does indeed exist (see e.g. AD 2003 no. 21 and AD 2003 no. 84) and that it is, together with the principle of the employer's so-called managerial authority, an important part of the relationship between employer and employee also in the public sector. The legal system considers these principles important in order to conduct efficient and legally certain operations.

However, for you as employee of a public authority, the employer equals the central government and thereby the public, which means that the constitutional freedom of expression becomes part of the employment relationship. This reduces the importance of the duty of loyalty towards the employer. You can, for example, not be

given notice (*Sw. uppsägning*) or be removed through summary dismissal (*Sw. avsked*) from the Swedish Arts Council for using your freedom of expression or whistleblowing.

## 5.2 Secondary occupation damaging public confidence

The main purpose of prohibiting secondary occupations that may damage public confidence is to prevent a situation wherein the authority's impartiality is questioned due to one of the authority's employees engaging in a certain kind of secondary occupation. Read more in the Swedish Arts Council's *Guidelines for secondary occupations*.

## 6 How we prevent corruption

The following principles are employed by the Swedish Arts Council in order to prevent corruption.

- Four eyes principle. This means that at least two people in the reference or working group review each application. This also applies to expert advisors and other contributions when possible. In financial transactions, at least two people are always involved as approver and certifier. Also, at least two people are involved in the handling of payments.
- Close leadership. This means that the heads of unit with working and reference groups in their organisation support administrators in connection with information to the groups on the rules on conflicts of interest and in complicated matters.
- The heads of unit discuss the Swedish Arts Council's Anti-Corruption Guidelines and the meaning of the same with their employees at least once a year. Reference and working groups, jury groups, and other expert advisors shall be informed of the Swedish Arts Council's Anti-Corruption Guidelines by the head of the unit tied to these groups of experts.
- You as administrator with the Swedish Arts Council should early on inform members of relevant reference and working groups of the applications received along with a request for information on any conflicts of interest.
- The issue of conflicts of interest shall be a standing point on the agenda both for board meetings and meetings in reference and working groups.
- When reference and working groups are appointed and when applications are distributed, conflicts of interest shall be noted and situations of

disqualification be avoided. In certain cases, this can be accomplished by transferring an application to a different group.

- If you, either as administrator or as member, risk being disqualified due to a conflict of interest regarding an application, you shall not be appointed to review this application.
- If you, either as administrator or as member, risk being disqualified due to a conflict of interest regarding an application, you shall not be present when this application is processed by a reference or working group.
- The Swedish Arts Council shall strive to appoint members for reference and working groups that do not intend to apply for grants themselves or be part of an application during the period of time when they are appointed as members, to the extent this is possible.
- When appointing members for working and reference groups, the decision-maker shall consider whether the prospective member is involved in such a way that there is a risk of a conflict of interest for the member when they perform their duties in the Swedish Arts Council's working or reference group.

## **7 Duty of reporting suspected corruption**

You shall, without delay, inform your immediate supervisor if there is any indication or suspicion of undue influence (bribe) or if there is a risk of disqualification due to conflict of interest, regardless of whether it pertains to you or any other employee.

The loyalty to the mission and the employer – by extension the citizens – means that the Swedish Arts Council shall not accept any signs of impropriety. Anyone who learns that one or more colleagues are allowing themselves to be influenced in an undue manner shall act and inform the appropriate superior.

If the suspicion concerns a superior, contact the internal auditor. The internal auditor will inform the Director-General or the chairperson of the board of directors and investigate, in consultation with the legal advisor, the potential improprieties and then report their findings to the Director-General or the chairperson of the board of directors.

Anyone suspected on reasonable grounds to have taken a bribe in the course of their employment shall be reported to the police by the employer. This is evident from Section 22 of the Public Employment Act (SFS 1994:260). Decision on filing a police report is made by the authority's disciplinary board.

## 8 Version history

Effective date	Version	Comment
2018-12-12	1.1	The guidelines replace Anti-Corruption Guidelines adm. 2017/47, GD 2017:109.
2017-06-07	1.0	The guidelines replace Policy on conflicts of interest, bribery, and other undue influence (GD 2012:223), Ticket Policy – cultural events (GD 2012:224), and Invitations issued to the Director-General (DG) The Swedish Arts Council regarding openings of exhibitions, premieres, awards ceremonies etc. (S 2014:29).