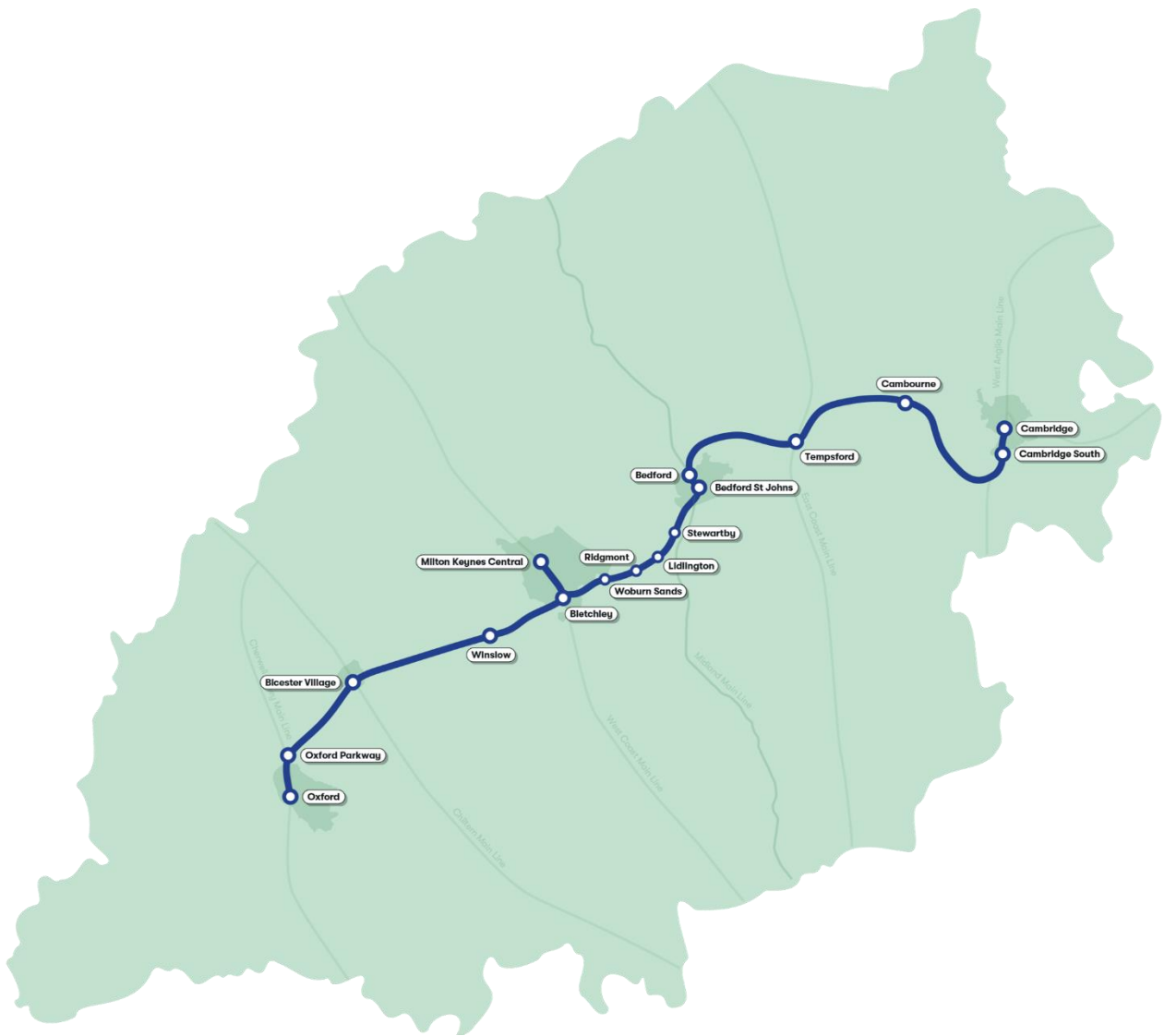




COMMERCIAL CONFLICTS OF INTEREST POLICY

Compliant with the Procurement Act 2023

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1. Purpose

- 1.1. This Policy sets out the obligations of East West Railway Company limited (“**EWR Co**”) in identifying, declaring, managing and mitigating Conflicts of Interest in connection with its Procurements, in compliance with the Procurement Act 2023 (“**PA23**”) and any relevant guidance issued by the Cabinet Office.
- 1.2. EWR Co is committed to ensuring that its Procurements are conducted with transparency, integrity and impartiality, and that no Procurement decision is improperly influenced by any personal or financial interest.

2. Scope

- 2.1. This Policy applies to:
 - 2.1.1. All employees, officers and committee members of EWR Co involved in, or able to influence, a Procurement;
 - 2.1.2. Any individual or body acting for, or on behalf of, or assisting, EWR Co in a Procurement, including consultants, advisers, secondees, evaluators and other external experts;
 - 2.1.3. All stages of Procurement to which the PA23 applies, including covered procurements and the establishment of open frameworks and dynamic markets;
 - 2.1.4. Suppliers, as defined in section 3 below.

3. Definitions

For the purposes of this Policy, the following definitions apply:

- 3.1. “**Conflict of Interest**” or “**Col**” means an actual, potential or perceived conflict between the interests of a person acting in relation to a Procurement and the interests of the Procurement. An interest may be personal, professional or financial and may be direct or indirect.
- 3.2. “**Declaration**” means a written declaration of an actual, potential or perceived Conflict of Interest, or confirmation that they have no interests to declare, made in accordance with section 6 of this Policy.
- 3.3. “**Col Management Plan**” means a plan prepared by a Supplier, where required by EWR Co, setting out the measures the Supplier will implement to manage or mitigate a Conflict of Interest or any resulting unfair advantage. **The Col Management Plan must be approved by EWR Co’s Commercial Sub-Committee.**
- 3.4. “**Col Register**” means EWR Co’s central record of Declarations, assessments, mitigation measures, decisions and reviews relating to Conflicts of Interest.
- 3.5. “**Procurement**” means the full cycle of a covered procurement activity undertaken by EWR Co to which the Conflict of Interest requirements in sections 81 to 83 of the PA23 apply, including pre-market engagement and market warming activities, specification and requirements development, selection and evaluation of tenders, negotiation and clarification, contract award, contract management, and contract variations or uplifts.
- 3.6. “**Procurement Lead**” means the EWR Co individual leading the relevant Procurement.
- 3.7. “**Relevant Person**” means any individual to whom this Policy applies under section 2.
- 3.8. “**Supplier**” means a supplier or prospective supplier participating, or seeking to participate, in a Procurement, including a supplier awarded a contract as a result of that Procurement. It includes any director, officer, shadow director or equivalent, a person with significant control

or influence over the Supplier, a sub-contractor or other entity that forms part of the Supplier's delivery model or proposed model, and such other persons as the PA23 may specify.

4. Legal Framework: PA23

- 4.1. **Section 81** requires EWR Co to take all reasonable steps to identify and keep under review actual and potential Conflicts of Interest in relation to Procurement. This includes conflicts affecting any person acting for, or on behalf of, EWR Co who is able to influence a procurement decision. An interest may be personal, professional or financial, and direct or indirect.
- 4.2. **Section 82** requires EWR Co to take all reasonable steps to ensure that a Conflict of Interest does not place a Supplier at an unfair advantage or disadvantage during a Procurement. This may include requiring a Supplier to take reasonable mitigating actions. If an unfair advantage cannot be avoided, or the Supplier refuses, or fails, to take the necessary actions, EWR Co must treat the Supplier as an excluded supplier and prevent it from participating or progressing in the Procurement, subject to the PA23.
- 4.3. **Section 83** requires EWR Co to prepare a conflicts assessment before publishing a tender notice or transparency notice, or a dynamic market notice establishing a dynamic market. EWR Co must confirm in each notice that the assessment has been prepared and revised in accordance with Section 83. The assessment itself is not required to be published.
- 4.4. This Policy should be read alongside EWR Co's policies, procedures or contractual requirements that apply to the individual or organisation concerned. EWR Co employees must also comply with relevant internal policies, including those relating to gifts and hospitality, bribery and corruption, fraud and standards of conduct. Suppliers and other third parties must comply with any Conflicts of Interest requirements set out in their Procurement documents, contracts and any conflict mitigation measures agreed with EWR Co.

5. Identifying Conflicts of Interest

- 5.1. EWR Co shall take all reasonable steps to identify Conflicts of Interest throughout a Procurement.
- 5.2. At the outset of each Procurement, the Procurement Lead shall ensure that:
 - 5.2.1. all Relevant Persons complete a Declaration before participating in the Procurement;
 - 5.2.2. declared interests are considered against known or anticipated Suppliers;
 - 5.2.3. where appropriate, relevant information held on Companies House, or in the Col Register or other public sources is considered; and
 - 5.2.4. any circumstances that may give rise to a perceived Conflict of Interest are assessed.
- 5.3. EWR Co shall also consider whether any Conflicts of Interest arise from prior involvement of individuals or organisations (including advisers) in the development of specifications or tender documentation that could give an unfair advantage to a particular Supplier.
- 5.4. Conflicts of Interest must be kept under review throughout the Procurement. Relevant Persons must promptly declare any new or changed circumstances in accordance with section 6.

6. Declaration Requirements

6.1. Obligation to Declare

All Relevant Persons must complete a Declaration:

- 6.1.1. before participating in any Procurement to which they have been assigned; and

- 6.1.2. promptly on becoming aware of any new interest or change of circumstances that may give rise to a Conflict of Interest.

The obligation to declare is continuous throughout the Procurement.

6.2. What Must Be Declared

Relevant Persons must declare any interest or circumstance that may give rise to a Conflict of Interest, including:

- 6.2.1. any direct or indirect financial interest in a Supplier or potential Supplier;
- 6.2.2. any close personal or professional relationship (including family relationships, friendships, or prior employment) with a Supplier or any individual connected to a Supplier;
- 6.2.3. any membership of, or affiliation with, the board, advisory panel or similar body of a Supplier;
- 6.2.4. any discussions or arrangements regarding prospective employment or business with a Supplier;
- 6.2.5. any gifts, hospitality or inducements received from a Supplier or prospective Supplier in accordance with EWR Co's Gifts and Hospitality Policy; and
- 6.2.6. any other interest or circumstance that could affect, or reasonably appear to affect, the Relevant Person's impartiality in relation to the Procurement.

If in doubt, the Relevant Person should declare the interest.

6.3. How to Declare

- 6.3.1. Declarations must be made in writing using EWR Co's [Conflicts of Interest Declaration Form](#).
- 6.3.2. Declarations will be recorded in the Col Register and assessed in accordance with section 8.
- 6.3.3. Where circumstances change, the Relevant Person must promptly update their Declaration using the online form.

7. Conflicts of Interest Register

- 7.1. EWR Co shall maintain a Col Register recording all Declarations made in connection with a Procurement, including declarations that no interest exists.
- 7.2. The Col Register shall be maintained by the Commercial Compliance, Risk & Assurance Manager and shall record, as a minimum:
 - 7.2.1. Information provided by the Relevant Person:
 - a) name and role;
 - b) the Procurement to which the Declaration relates;
 - c) details of the declared interest, or confirmation that there is no interest to declare; and
 - d) the date of the Declaration.
 - 7.2.2. Information recorded by the Procurement Lead:
 - a) the date and outcome of the initial review;
 - b) whether an actual, potential or perceived Conflict of Interest has been identified;
 - c) the assessment of the interest and its potential effect on the Procurement;

- d) the mitigation measures proposed or implemented, the reasons for selecting them and the person responsible for implementing and monitoring each measure;
- e) the outcome or decisions, including whether the Relevant Person or Supplier was excluded or restricted from the Procurement; and
- f) any subsequent review, change, breach or escalation.

7.2.3. Information recorded by the Commercial Compliance, Risk & Assurance Manager:

- a) the outcome and date of review;
- b) approval of the assessment and mitigations, or details of any further action required; and
- c) any escalation to the Commercial Sub-Committee.

7.3. The Procurement Lead shall keep the Col Register under review throughout the Procurement. In addition, the Commercial Compliance, Risk & Assurance Manager will arrange a bi-monthly review of the Col Register with the Head of Commercial Operations and the Strategy & Assurance Director to identify overdue actions, recurring issues and any conflicts requiring escalation.

7.4. The Col Register will be retained in accordance with EWR Co's document retention policy and applicable transparency obligations under the PA23.

8. Managing and Mitigating Conflicts of Interest

8.1. Conflicts Assessment

- 8.1.1. For each covered Procurement, the Procurement Lead shall complete a conflicts assessment using information from the Col Register, Declarations, Col Management Plans and other relevant sources. Where required, assistance will be provided by the Head of Commercial Operations and EWR Legal.
- 8.1.2. The conflicts assessment must be prepared before EWR Co publishes a tender notice, a transparency notice, or a dynamic market notice establishing a dynamic market.
- 8.1.3. The conflicts assessment must record the information required under section 83 of the PA23, including the individuals and teams acting in relation to the Procurement and their roles, whether the required Declarations have been received, details of any actual or potential Conflicts of Interest identified, the mitigation measures taken or proposed, whether, following mitigation, a Supplier remains at an unfair advantage or disadvantage, any restrictions or exclusions arising from the assessment and the date of the last review and the next planned review.
- 8.1.4. The Procurement Lead will submit the assessment to the Commercial Compliance, Risk & Assurance Manager, or other relevant approver identified in Appendix A Part 1, for review and approval. Where the Conflict of Interest is assessed as high risk, cannot be effectively mitigated, or where agreement cannot be reached on the proposed mitigation measures, the matter shall be referred to the Commercial Sub-Committee for determination.
- 8.1.5. Once approved, the Procurement Lead must upload the conflicts assessment to Jaggaer with the Sourcing Strategy.
- 8.1.6. The Procurement Lead shall keep the Declarations and conflicts assessment under review throughout the Procurement and revise them as necessary. Following contract award, the relevant Contract Manager shall keep Conflicts of Interest under review and promptly notify the Procurement Lead and Commercial Compliance, Risk & Assurance

Manager of any new or changed circumstances requiring the Col Register or conflicts assessment to be updated.

8.2. Mitigation Measures

8.2.1. No Relevant Person or Supplier affected by a positive Declaration may participate in the relevant Procurement until the Declaration has been assessed and any required mitigation measures have been approved and implemented.

8.2.2. Mitigation measures may include:

- a) **Recusal** — removing the Relevant Person from all or part of the Procurement;
- b) **Information barriers** — restricting the Relevant Person's access to commercially sensitive information relating to the Procurement;
- c) **Oversight and supervision** — subjecting the Relevant Person's work or decisions to additional scrutiny and sign-off by an uninvolved senior officer;
- d) **Disclosure to tenderers** — where appropriate, disclosing any Conflict of Interest and mitigating measures taken to all Suppliers;
- e) **Restructuring the Procurement** — adjusting, restructuring, cancelling or repeating the Procurement to eliminate or reduce the risk posed by the relevant Conflict of Interest;
- f) implementing an **Ethical Wall Agreement**;
- g) requiring a Supplier to prepare and implement a **Col Management Plan**; and
- h) **Independent evaluation** — appointing an independent evaluator to assess tenders or particular aspects of a tender to which the conflict relates.

8.2.3. The mitigation measures selected must be proportionate to the nature and severity of the Conflict of Interest.

8.2.4. The Procurement Lead shall document the measures taken and the rationale for selecting them, and shall communicate them to the Relevant Person, Supplier and every other person responsible for implementing or monitoring them.

8.2.5. Anyone subject to mitigation measures must:

- a) confirm that they understand the measures;
- b) comply with them strictly; and
- c) report any actual or suspected breach immediately.

8.2.6. Any mitigation measures must be approved through the process in this Policy and implemented before the affected Supplier or Relevant Person participates in the Procurement. The Supplier must not amend or depart from any mitigation measures without EWR Co's prior written approval.

8.2.7. Where a Conflict of Interest cannot be effectively mitigated by any reasonable means, EWR Co shall consider whether it is necessary to exclude the Relevant Person entirely from the Procurement, and/or to take action in relation to the relevant Supplier (see section 9).

8.3. No Conflict of Interest identified

Where the conflicts assessment determines that no Conflict of Interest exists, the Procurement Lead shall record the conclusion in the Col Register with appropriate reasons.

9. Exclusion of Suppliers

- 9.1. Pursuant to the PA23, EWR Co may exclude a Supplier from a Procurement, or may disregard a tender submitted by a Supplier, where:
 - 9.1.1. the Supplier or a Relevant Person has a Conflict of Interest which places the Supplier at an unfair advantage in relation to the Procurement; and
 - 9.1.2. that advantage cannot be avoided through reasonable mitigation measures; or
 - 9.1.3. the Supplier will not take the steps EWR Co considers necessary to avoid that advantage.
- 9.2. Before excluding a Supplier under section 9.1, EWR Co shall, where appropriate and subject to the applicable Procurement timetable:
 - 9.2.1. seek approval of the exclusion at the Commercial Sub-Committee, following advice from EWR Legal where appropriate;
 - 9.2.2. notify the Supplier of the potential exclusion;
 - 9.2.3. provide the Supplier with a reasonable opportunity to make representations;
 - 9.2.4. consider any representations made by the Supplier, including any proposed mitigation measures; and
 - 9.2.5. make and document a reasoned decision.
- 9.3. EWR Co shall notify the Supplier of an exclusion decision in writing and comply with all applicable transparency and notification obligations under the PA23 and the Procurement documents.
- 9.4. An exclusion does not, by itself, constitute a ground for adding a Supplier to the debarment list. Where EWR Co determines that an exclusion ground is of such severity that it may warrant inclusion on a debarment list, EWR Co shall consider referral to the appropriate authority under section 62 of the PA23.

10. Transparency and Publication

- 10.1. EWR Co shall comply with all relevant transparency obligations under the PA23, including any requirements to publish notices or decisions.
- 10.2. EWR Co shall ensure that Procurement documentation — including invitation to tender documents and contract notices — includes appropriate Conflict of Interest provisions, including requirements for Suppliers to complete Declaration.
- 10.3. Where a Conflict of Interest has been identified and managed during a Procurement, EWR Co shall consider whether any relevant information should be disclosed in contract award notices or other transparency notices to support public confidence in the integrity of the Procurement.
- 10.4. The Procurement Lead is accountable for ensuring all relevant transparency requirements are met.

11. Supplier Obligations

- 11.1. Each Supplier participating or seeking to participate in a Procurement must:
 - 11.1.1. complete a Declaration and update that Declaration with any new or changed circumstances during the Procurement or contract term;
 - 11.1.2. provide complete and accurate details reasonably required by EWR Co, including information relating to any persons connected with the Supplier relevant to the assessment of a Conflict of Interest;

- 11.1.3. co-operate with EWR Co's efforts to investigate and mitigate any declared Conflict of Interest, including entering into and implementing any Ethical Walls Agreement;
- 11.1.4. communicate applicable restrictions to all affected personnel, advisers and subcontractors, and ensure that its bid team, proposed delivery team, advisers and relevant subcontractors understand and comply with the obligations applicable to them;
- 11.1.5. monitor and retain evidence of compliance; and
- 11.1.6. report any actual or suspected breach immediately.
- 11.2. A Supplier must not involve any person in preparing its tender or delivering the contract where doing so would breach an agreed mitigation measure, Col Management Plan, Ethical Wall Agreement or other restriction imposed by EWR Co.
- 11.3. Failure by a Supplier to comply with this section may result in:
 - 11.3.1. additional mitigation requirements;
 - 11.3.2. removal or replacement of affected personnel;
 - 11.3.3. exclusion from the Procurement;
 - 11.3.4. contractual remedies, including termination where permitted; and/or
 - 11.3.5. referral to the debarment regime under the PA23 or other action available to EWR Co under the Procurement documents, contract or applicable law.

12. Training and Awareness

- 12.1. All Relevant Persons must complete appropriate training before undertaking a material role in a Procurement on:
 - 12.1.1. the requirements of the PA23 regarding Conflicts of Interest;
 - 12.1.2. this Policy and related procedures;
 - 12.1.3. identifying Conflicts of Interest; and
 - 12.1.4. the consequences of non-compliance.
- 12.2. Training shall be provided upon commencement of involvement in a Procurement and refreshed at regular intervals, or whenever there is a material change in legislation or policy. In addition, the Commercial Compliance, Risk & Assurance Manager shall ensure regular training and lessons learned are shared across EWR Co, as appropriate.

13. Consequences of Non-Compliance

- 13.1. Failure to comply with this Policy may constitute a serious breach of duty and may result in:
 - 13.1.1. removal from the relevant Procurement or contract activity and disciplinary action, up to and including dismissal (in the case of EWR Co employees);
 - 13.1.2. termination of appointment or other action under the applicable contract or arrangement in the case of a Supplier, EWR Co contractor, consultant, adviser, secondee or other person acting for or on behalf of EWR Co;
 - 13.1.3. referral to relevant professional or regulatory bodies;
 - 13.1.4. civil or criminal proceedings, including under the Bribery Act 2010;
 - 13.1.5. the measures described in section 11.3 above; and

13.1.6. challenge to, or remedial action in respect of, any affected Procurement decision or contract award.

13.2. EWR Co reserves the right to take all steps necessary to remedy any Procurement decision that has been improperly influenced by an undeclared or unmitigated Conflict of Interest, including re-running all or part of the Procurement.

14. Reporting Concerns

14.1. Any person who knows or suspects that a Conflict of Interest has not been properly declared or managed should report their concern to the Strategy & Assurance Director. Suppliers must report concerns through the contact or reporting route identified in the relevant Procurement documents or contract. Concerns about wrongdoing may also be raised in accordance with EWR Co's Speak Up (Whistleblowing) Policy.

14.2. EWR Co will investigate all reports received in accordance with applicable procedures.

15. Policy Review

This Policy will be reviewed at least annually and updated as necessary to reflect:

- 15.1. changes in legislation, including any amendments to the PA23 or related secondary legislation;
- 15.2. updated Cabinet Office guidance;
- 15.3. lessons learned from Procurement; and
- 15.4. changes in EWR Co's organisational structure or Procurement.

Appendix A — Conflicts of Interest Declaration & Update Flow Diagram

Part 1 — Initial Declaration Process

TRIGGER: RELEVANT PERSON IS ASSIGNED TO A PROCUREMENT, including market engagement, developing the specification or Procurement documents, evaluation, moderation, decision-making or approvals.

STEP 1: RELEVANT PERSON COMPLETES DECLARATION

The Relevant Person must consider whether they have any of the following in relation to a Supplier or potential Supplier:

- Direct/indirect financial interest
- Close personal or professional relationship
- Prior, current or prospective employment or business arrangements
- Board membership / advisory role or similar
- Receipt of gifts or hospitality
- Any other interest affecting or circumstance that may affect, or reasonably appear to affect, their impartiality

CONFLICT TO DECLARE?

Yes

No

**STEP 2: PROMPTLY
SUBMIT DECLARATION
WITH FULL DETAILS**

**STEP 2: PROMPTLY
SUBMIT "NO INTEREST"
DECLARATION**

**STEP 3: DECLARATION RECORDED
IN CoI REGISTER AND
PROCUREMENT LEAD BEGINS
ASSESSMENT**

STEP 4: INITIAL REVIEW BY PROCUREMENT LEAD

Complete conflicts assessment and requests further information where necessary:

- Is it an actual, potential or perceived conflict?
- How involved is the Relevant Person in decision-making?
- Can the conflict be effectively mitigated?

CONFLICT CONFIRMED

YES

NO

**STEP 5: SELECT
MITIGATION MEASURES –
SEE PART 2 BELOW**

**STEP 5: RECORD
DETERMINATION WITH
REASONS IN COI REGISTER**

Relevant Person may continue participating

STEP 6: RECORD IN COI REGISTER

Record must include:

- Name and role of declarant
- Procurement reference
- Nature of the conflict
- Date of declaration
- Assessment outcome
- Mitigation measures selected and rationale
- Sign off by relevant approver

STEP 7: Commercial Compliance, Risk & Assurance Manager REVIEWS AND APPROVES

- Assessment of conflict
- Mitigation measures to be applied
- Any decision to exclude the Relevant Person or Supplier
- Whether referral to Commercial Sub-Committee is required
- Update the CoI Register and/or conflicts assessment, as required

STEP 8: IMPLEMENT MITIGATION AND CONTINUE PROCUREMENT

Relevant Person and/or Supplier subject to measures

ONGOING MONITORING THROUGHOUT (assurance and governance check)

see part 3 (Update process)

Part 2 — Selecting a Mitigation Measure

CONFLICT CONFIRMED - SELECT MITIGATION			
LOW SEVERITY Oversight and supervision by senior officer Information barrier to restrict access to commercially sensitive data	MEDIUM SEVERITY Partial recusal from affected parts of the process Information barriers Disclosure to all tenderers	HIGH SEVERITY Full recusal from entire Procurement And/or Independent evaluation panel appointed And/or Consider Supplier Exclusion under PA23 (see part 4 below)	
Can the conflict be effectively mitigated?			
Yes			No
☐ Record the approved measures and rationale in the Col Register and/or the conflicts assessment. ☐ Identify who is responsible for implementing and monitoring each measure. ☐ Communicate the measures to every affected person. ☐ Implement all measures before the Relevant Person or Supplier participates or continues participating. ☐ Monitor compliance and keep the measures under review. Refer the matter to the Strategy & Assurance Director who determines whether referral to the Commercial Sub-Committee is required.			Refer the matter to the Commercial Sub-Committee to determine whether the Supplier must be excluded.

Part 3 — Update Process (Ongoing Obligation)

TRIGGER: CHANGE IN CIRCUMSTANCES DURING PROCUREMENT:

Examples:

- New interest arises (e.g. job offer from a Supplier)
- Family member gains employment with a Supplier
- Hospitality received from a Supplier
- Previously declared interest has resolved / ceased
- New Supplier enters the procurement process

STEP 1: RELEVANT PERSON updates Declaration

STEP 2: PROCUREMENT LEAD REASSESSES THE CONFLICT

- Is the original mitigation still sufficient?
- Do further or different measures need to be applied?
- Has the conflict resolved so measures can be lifted?

**MITIGATION
SUFFICIENT**

REMAINS

STEP 3: CONFIRM IN WRITING; UPDATE COI REGISTER

Continue procurement with
existing measures

**NEW/ESCALATED MITIGATION
REQUIRED**

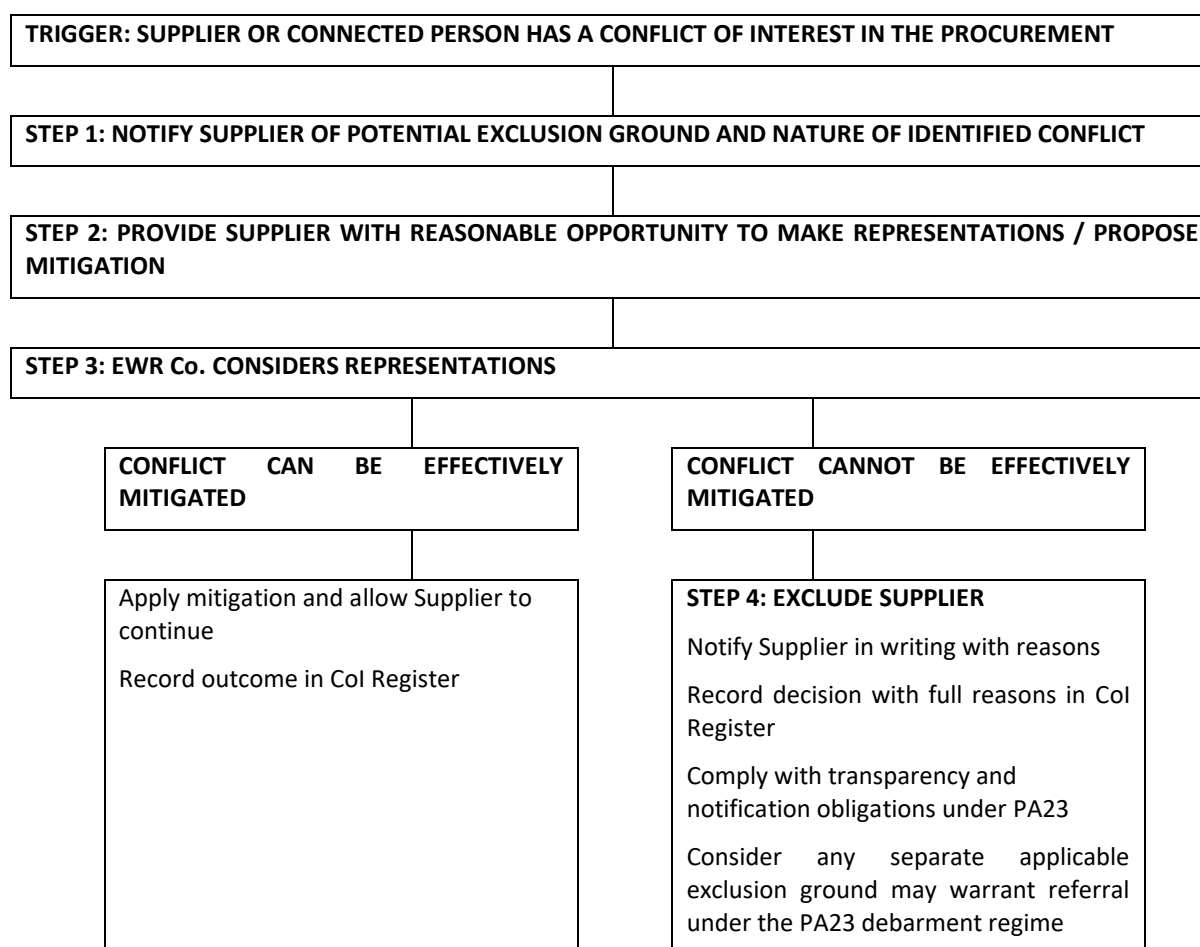
STEP 3: IMPLEMENT REVISED MITIGATION MEASURES

Obtain fresh sign off from senior
officer

STEP 4: UPDATE COI REGISTER WITH

- Nature of change
- Revised assessment
- New mitigation
measures
- Date and sign off

Part 4 — Supplier Conflict of Interest & Exclusion



Key principles to remember throughout all stages:

- **Declare and update:** the obligation to declare is continuous. Declarations must be updated promptly whenever circumstances change.
- **Pause where necessary:** a person affected by a positive Declaration must not participate in the relevant Procurement until the matter has been assessed and any required mitigation has been implemented.
- **Document decisions:** Declarations, assessments, decisions, mitigation measures, approvals, reviews and breaches must be recorded promptly in the Col Register and, where applicable, the conflicts assessment.
- **Use proportionate mitigation:** mitigation must reflect the nature of the conflict, the person's role and influence, their access to information and the risk of unfair advantage or disadvantage.
- **Communicate controls:** approved mitigation measures must be communicated to everyone responsible for complying with, implementing or monitoring them.
- **Comply strictly:** individuals and Suppliers must comply with all approved mitigation measures, Col Management Plans and Ethical Wall Agreements.

Keep matters under review: conflicts and mitigation measures must be reviewed throughout the Procurement and relevant contract management period.