UGM CONSULTING

CAN YOU GUARANTEE CONFLICTS OF INTEREST ARE RESOLVED ETHICALLY?

Questions that support clearer thinking and analysis

1. What do we know about this situation, its history and what's happening now?
2. In this context, do we face any ethical challenges? If so, what are they?
3. What are our options?
4. Is each option in the best interests of the organisation and our business objectives?
5. Is it legal?
6. Does it reflect our values, policies and code?
7. Could it affect our reputation, goodwill and client relationships?
8. Are there any social and community trust issues?
9. Are there any conflicts of interest here?
10. Would we be comfortable explaining and justifying this option, including publicly?

The partners' dilemma

The senior partners of a large international professional services firm met in Europe for a development program. The facilitator took the partners into the middle of an empty room and posed the following dilemma for their consideration.

The firm has taken on a significant project for a major client, as a fee-for-service contract worth 1 million euros (approx. $1,600,000). This figure is based on the number of consultants required, the number of hours they will need and their various hourly rates. As the project draws to a close, the project manager can see that the actual hours put in translate to a fee more like 700,000 euros. Some clever approaches by the team significantly reduced the number of hours required. The project manager considers three invoicing options. One, submit an invoice for the original agreed fee of 1,000,000 euros. Two, submit an invoice reflecting actual costs (700,000 euros). Three, get the team to undertake some additional tasks probably useful to this client, so the hours worked add up to the contract total and submit an invoice for 1,000,000 euros.

The partners were invited to think alone about the case and then move to one of three corners in the room, representing the three choices facing the project manager. The result was that all three options got roughly equal support.

For example, there was considerable disagreement about how open they would be with the client and how much information they would share. Some partners argued that, if they were transparent with the client and invoiced for the lower amount, this might help build trust with this client - who might then be inclined to give the firm more work at a later date. But by no means all partners agreed.

Whose interests get prioritised?

The company's first duty is the client's interests, then its own. Central to being a professional is the pledge (often explicit) to manage conflict of interest situations, such that the client's interest is placed foremost. But, in general, clients don't know enough to be able to assess whether this is happening. There is a knowledge gap.

The client of a financial adviser, an accountant, a lawyer, doctor, dentist or teacher may find it hard to challenge what's said or done. This knowledge gap can allow an unethical professional to place their own interests first and not be found out. The same applies to public sector roles. Known asymmetries in power, information and expertise can create temptations. Most professionals will behave ethically when under public scrutiny. But the moral challenge is whether they will do so, when there is a very low risk of any unethical conduct being detected.

Whose interests does your system serve?

Accountants, for instance, pledge to look after not only their client's interests but also that of other relevant stakeholders, such as the Tax Office. But many analyses of what went wrong at Enron highlight the problems. Their accountant (Arthur Andersen) helped the company to hide financial losses and appear to the market healthier than it was. Accountants are expected to manage their clients' financial information but also objectively critique it. It has been argued that this is akin to a sports system where the athletes hire and pay their own drug testers, but can also sack them if they don't like the service they get!

The financial sector is under intense scrutiny for questionable handling of conflict of interest situations. Consumers query the extent to which a financial adviser can be assumed to place their client's interest uppermost. Greg Smith, the senior executive of Goldman Sachs, who sent his resignation letter to the New York Times on March 14, 2012, exposed the problem. He had worked at Goldman Sachs for 12 years and over that time saw the culture become more toxic. He wrote, "I attend sales meetings where not one single minute is spent asking questions about how we can help our clients. It's purely about how we can make the most possible money from them."

Thinking tools and templates

Ethics training for professionals benefits from helping them to become familiar with templates and tools that encourage clear thinking about options and especially their implications. Considering implications (and doing this along with colleagues) is important because most conflict of interest situations are not, strictly speaking, moral dilemmas. In other words, they tend not to concern navigating your way among choices and options all on an equal footing, where what is right or wrong isn't necessarily obvious. Instead, most conflict of interest challenges are about the temptation to do wrong, not about trying to identify what is wrong in the first place. A shared method of challenge and questioning exposes flawed thinking and supports a robust ethical culture, where everyone speaks up.

A crucial issue in all this is incentives, since they can militate against thinking ethically. Tackling this requires making sure that reward systems don't simply generate the temptation to prioritise self-interest. Is it acceptable, for example, to forego the company's profit, as well as your own, in the interests of what's best for your client? If it isn't, then perhaps the term 'adviser' needs to be changed to 'salesperson', as that at least would clarify the role! If employees are, *in effect*, encouraged to prioritise self-interest, they will be ill-equipped to act responsibly in conflict of interest situations.

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