

Ethics Byte

Module 3 – Conflict of Interest or Duties

Transcript

As a migration agent, you have a duty to avoid conflicts of interest and conflicts of duties.

General ethical standards and formal rules, like the Code of Conduct, provide guidance on how to identify and deal with conflicts of interest.

Avoiding conflicts isn't always as simple as it sounds. Real-world situations can be complex, and the correct choices and actions are not always obvious.

Sometimes, you'll need to make a decision on how to act and what to do even if the rule or law doesn't clearly deal with your particular situation.

That's when it's important to consult the Ethical Deliberation Checklist and use your best judgement

As migration agents, our duties are derived from the Code of Conduct. Breaches are taken very seriously as they undermine the very basis of any client relationship, as well as the integrity of the migration advice profession

There are two major ways in which a conflict of interest can occur.

The first is when your personal interests conflict with those of your client. You must never allow your own interests to affect your client's legitimate interests.

The second is when your duty to advance or protect the interests of one client conflicts with those of another current or former client. Your duties towards two clients should never conflict.

It's worth noting that a conflict of interest doesn't need to involve actual conflict, but covers the mere possibility of a conflict arising. It's not sufficient to just manage situations when they arise – you must always be vigilant in identifying potential conflicts and take steps to avoid them completely.

Let's take a look at how this might affect migration agents like you in a real-life scenario.

Meet James. James has a client, Angela, who is setting up her new life in Australia. Angela is from Germany. She has been working as a SCUBA instructor since finishing high school. Now, she wants to study marine biology at a university, but she isn't sure which one to choose. She has engaged James to assist in applying for the right student visa and hopes he can help with finding the right university too.

When James makes enquiries on her behalf, he discovers that there are only a few universities offering courses in this field. Two of them offer James a commission for referring clients to them.

Nobody's ever asked James for assistance in this area before, and he's unfamiliar on matters relating to commissions. He's not sure how to proceed, so before he gives Angela any advice, he decides to consult the Ethics Toolkit.

It's clear that James has some personal interests here that may conflict with his client's – because he could earn money from making certain recommendations, this may cause him to be biased in the advice he gives to Angela.

The Code of Conduct makes it clear that James must disclose any financial benefit that he might receive for giving advice of a 'non-migration nature.' So, he decides to tell Angela about the commission arrangements he has with certain education providers. James provides this in writing to Angela as required by the Code.

Angela is not surprised to hear this, and says that she'd still like to sit down and discuss her options. James can see that Angela genuinely understands the conflict of interest, and has freely requested his advice anyway. On that basis, he agrees to do what he can to help, and together they take a look at all the courses available to Angela.

In the end, the university that James recommends is one that he doesn't have a commission arrangement with. He is confident in the recommendation because he really believes the course is the right fit for his client.

Later, Angela returns to James' office. She has come for some more advice.

She explains that her parents have given her some money to put towards buying an apartment. She's excited about the prospect of becoming a home owner in Australia, and is looking for a place near the beach. But she's heard that the market is very competitive, and she wants to know if James can recommend a real estate agent.

Angela is also looking at private health insurance options, and she wants some advice on which provider James thinks would be best.

Angela has told James how much she trusts him after he was so helpful with finding her a university course. She doesn't know many people in Australia and she'll use anyone he recommends.

James has a good friend, Mary, who has recently become a real estate agent. He knows she would be grateful for some new business. And since their last meeting, James has set up commission arrangements with several healthcare providers.

On the question of health insurance, James remembers the appropriate course of action from the last time he dealt with Angela.

He is up-front about his commission arrangements, being careful to tell her exactly which organisations he has connections with. James also provides this in writing as required by the Code of Conduct. Angela is comfortable with this situation because James earned her trust last time she asked for advice.

He sets aside his own interests and has an objective look at Angela's needs, comparing them to what the different providers are offering.

Based on this comparison, James makes a recommendation. The healthcare provider that he recommends is one which pays him a commission. He reminds Angela about this before she takes out her policy, and she says she's happy with the recommendation anyway.

James tells Angela that he'll have a think about the estate agent question over the weekend and get back to her.

On Friday evening, James catches up for a drink with his real estate agent friend, Mary. She pours her heart out, telling James what a terrible year she's having and how she's concerned that she's chosen the wrong profession. This year, she'll make less than half of what she would have made in her old job.

When he asks her why she's finding it so hard, Mary says it's because she only gets given the worst properties to sell. Because she's the newest agent, she lists the properties nobody else wants, and they're often hard to sell because the owners think they're worth more than they really are. But Mary's hopeful that things will turn around if she can just find enough cashed-up buyers to get her through the next few months.

James and Mary have been friends for a long time, and he wants to see her do well, but as he listens to her, he's not sure if he'd like her to be selling him a house.

Over the weekend, he asks himself whether Mary is really a good agent for Angela. She does seem to know a lot about the local market, but her comments on Friday evening make James wonder whether she might take advantage of Angela's ignorance of local property prices.

What would you do in this situation?

James has two options to consider...

He could recommend his friend to Angela, or he could tell her that she'll have to find an agent on her own.

Like most ethical situations, this is a difficult choice for James.

By testing his options using the Ethical Deliberation Checklist, James starts to get some clarity on the decision ahead.

Mary's current work situation may not necessarily harm his client's needs, but it is definitely possible.

And from what James knows now, he wouldn't be able to recommend Mary based on confidence in her professional work.

His feelings of obligation to his friend might be telling him to take a certain action. But having let his professional obligations and ethics be his guide, one course of action has emerged as being the 'right' one.

On Monday morning, James calls Angela to let her know that he can't recommend any real estate agents. Angela accepts this and says that she has recommended him to a few of her university friends for migration services. So, not only is James relieved that he didn't give questionable advice, but it looks as tho his honesty will pay off in the future.

Even when the rules are unclear, or there is no rule at all, you are expected to act ethically.

Just remember, many conflicts of interest and conflicts of duty can be avoided by taking these steps:

1. Full disclosure.

It's essential that you disclose if you'll be acting for more than one client in relation to the same transaction (or if you might have conflicting interests). Have your clients sign an informed consent that clearly sets out how things will proceed when it comes to the conflict or potential conflict.

2. Conduct 'conflict checks' every time you take on a new client to make sure that there is no conflict with any current client or former client.

3. Make sure that information about clients is stored in a way that prevents it from being given to another client (even accidentally) without the consent of the owner of the information.

4. Avoid collecting information that isn't necessary to the work you are doing.

5. Limit the scope of the work that you do for your clients to ensure that it's confined to what the client wants and needs in order for you to provide assistance.

6. Review the circumstances of your employment contract before it's signed to ensure that there is adequate protection for you in case any conflict arises.

Remember, if you need help when making ethical decisions you can seek assistance by:

- Referring to the Code of Conduct,
- Using the Ethics Toolkit,
- Calling Ethi-call on **1800 672 303**, or
- Contacting your Professional Association