

Regulations on Impartiality and Confidence in the Research Council of Norway - Extract

The Research Council is required to comply with the provisions relating to impartiality set out in Chapter II “Concerning disqualification” of the Public Administration Act. These provisions also apply to all externally-employed individuals who perform services for the Research Council, such as referees and experts. In addition, the Research Council has adopted its own regulations on impartiality and confidence, which in some areas are more stringent than the provisions set out in the Act. The most important provisions for assessment of impartiality and disqualification are:

From the Regulations:

2 Definitions

For the purposes of these guidelines, the following terms shall have the following meanings:

Party – “person or legal person to whom a decision is directed or whom the case otherwise directly concerns,” cf. Section 2, litra e), of the Public Administration Act. Under normal circumstances this definition will also encompass an individual who is directly identified in a grant application and who will play a central role in a project.

3 Requirements as to impartiality and decisions concerning the question of disqualification

3.1 Automatic disqualification

An employee, expert or member of governing and advisory bodies of the Research Council, as well as any other person who performs services or work for the Research Council, shall automatically be disqualified from preparing the basis for a decision or from making any decision in a case

- a) if he himself or she herself is party to the case;
- b) if he or she is related by blood or by marriage to a party in direct line of ascent or descent, or collaterally as close as a sibling;
- c) if he or she is or has been married to or registered partner with a party, is engaged to or is cohabitant with a party, or is the foster parent or foster child of a party;
- d) if he or she is the guardian or agent of a party to the case or has been the guardian or agent of a party after the case began;
- e) if he or she is the head of, or holds a senior position in, or is a member of the executive board or the corporate assembly of a public or private institution that is a party to the case;

f) if he or she is, or within the last three years has served as, the doctorate-level advisor for a party to the case.

3.2 Disqualification based on discretionary assessment

An employee, expert or member of governing and advisory bodies of the Research Council, as well as any other person who performs services or work for the Research Council, shall be disqualified from preparing the basis for a decision or from making any decision in a case if there are any special circumstances which are apt to impair confidence in his or her impartiality.

When assessing disqualification, due regard shall be paid to whether the decision in the case may entail any special advantage, loss or inconvenience for the individual involved personally or for anyone with whom he or she has a close personal association. Due regard shall also be paid to whether any objection to the individual’s impartiality has been raised by one of the parties.

Comment to 3.2:

The assessment of disqualification should pay due regard to and attach importance to the following:

- personal interest in the outcome of the case;
- close professional collaboration, including assessing the significance of co-authorship and supervisory activities;
- close personal friendship;
- personal or professional conflict;
- personal ownership – shares, etc.

From the Guidelines:

3. Assessment of impartiality: General

The task of assessing impartiality will often require the exercise of a certain measure of discretion. When considering the question of disqualification the following general questions must be asked:

- Are there any circumstances pertaining to the matter that may impair or be assumed to impair the individual’s professional judgment?
- Seen from the outside, are there any circumstances pertaining to the matter that may impair or be assumed to impair the individual’s professional judgment?
- Is there anything in the individual’s conduct that is apt to diminish confidence in the final decision?

Due regard must be paid to whether the decision in the case entails the possibility of any special advantage, loss or inconvenience for the individual involved.

The table below provides an overview of which issues should be assessed when determining whether a person should be disqualified.

Points to check	Description
a) Automatic	See the regulations pertaining to automatic disqualification.

disqualification	
b) Close personal/ professional association	Close personal friendship (must be more than an acquaintanceship), close professional collaboration, e.g. collaboration or co-authorship of recent date, etc. Both the scope and proximity in time are components in determining closeness in collaboration/co-authorship (see Chapter 4.1 below on close professional collaboration). When determining whether close personal or professional ties will lead to disqualification, consideration must be given to whether the decision taken in the relevant case will have an impact on the person involved in the close relationship (cf. point c).
c) Potential for special advantage/loss/ inconvenience	To be disqualified, a person or someone with whom he or she has a close relationship (point b) must have a certain degree of personal interest in the outcome of a case. In the context of the Research Council, this will normally entail the outcome of a project allocation process. The personal interest may be of a professional and/or financial character. For university employees such interests will tend to be at the professional level. Even when an employee is not directly involved in the relevant project it may be in his or her own interests that his or her professional community is strengthened, receives greater recognition, or is awarded funding for new equipment, as this may enhance his or her own potential for support in the future. For the employee of a company, especially one from a small company, the personal interest may be at the financial level, as a grant allocation can mean job security for all the staff members. For employees at a research institute, the interest may have both a professional and a financial component, depending on the institute's size and diversity (see Chapter 5 below).
d) Other circumstances which are apt to impair confidence in a decision in which the individual has taken part	Seen from the outside, are there any circumstances pertaining to the matter that may impair or be assumed to impair the individual's professional judgment, for example in relation to requirements relating to administrative proceedings, equal treatment, or objectivity? The essential question here has to be: How does this look from the outside? The assessment must be based on more than loose speculation and assumptions. It must be seen as highly probable that someone will question a person's impartiality, and that this will diminish confidence in the actual decision taken.

It is essential that all relevant elements are considered in each individual case. The presence of several applicable elements at the same time may indicate disqualification more clearly.

4. Discretionary assessment of impartiality

When no grounds for automatic disqualification are present it is important to consider impartiality based on discretionary assessment. There are a number of different factors to assess in this context, including whether there are any special circumstances which are apt to impair confidence in a decision in which the individual has been involved. Among other things, due regard must be paid to whether the decision will entail any possibility of special advantages, loss or inconvenience for the individual involved, or someone with whom he or she has a close personal association.

It may be necessary to apply the requirements pertaining to impartiality with greater stringency in cases that are more complicated, of greater importance, or demand a higher degree of discretionary assessment. This will also be the case when an individual has great power to influence the final decision in a case. It is essential that no doubt can be sown regarding the individual's association with the case or the parties involved.

A number of typical situations that are relevant in relation to Research Council activities are discussed in the following.

4.1 Close professional collaboration, including co-authorship and supervisory activities

A person who has, or until recently has had, close professional collaboration with a person or institution that is party to the case, may be rendered disqualified because a close professional collaboration may affect the individual's ability to remain impartial.

In general, there must be weighty arguments in play for a situation involving collaboration in a work situation to lead to disqualification. Such collaboration must be so close and comprehensive that it would on its own be enough to raise the question of whether an individual should be disqualified. Normal collaboration in a work situation or contact based on work in the same field will not ordinarily lead to disqualification. The Public Administration Act opens for a broad discretionary assessment in which the essential element is to determine whether there are "any special circumstances" and whether these are "apt to impair confidence" in the individual's impartiality. Research, however, may have certain characteristics that distinguish it from other forms of collaboration in a work situation, as research is by nature a more personal activity.

In cases where the criteria for credited authorship are fulfilled (cf. the definition on etikkom.no, primarily based on the Vancouver guidelines) a collaborative relationship may be said to exist, but it is not a given that this will lead to disqualification. The number of contributors to a publication and the role played by the individual in question may provide some indication of the likelihood that the collaboration is close enough to render the individual disqualified. The number of co-publications and the publication frequency are also factors to be considered.

Co-authorship that does not satisfy the conditions for credited authorship will not lead to disqualification unless there is other collaboration beyond the co-authorship that is of a nature that may render an individual disqualified.

- Editorial responsibility will under normal circumstances not give grounds for disqualification.

- For legal co-authorship that is just over three years in the past, it may be of relevance to check when the collaboration took place, as some time may have elapsed before the publication was actually printed.

Academic advisors

A person who has served as academic advisor for a party working towards a doctorate degree more than three years ago (cf. Section 3.1 of the regulations) must assess his or her impartiality on the basis of the three bullet points listed in Chapter 3 of these guidelines. The same applies to individuals who are, or have been, academic advisors for a party working towards other degrees or qualifications than a doctorate degree.

5. Disqualification of employees from the same institution

Rules relating to automatic disqualification and disqualification based on discretionary assessment may both need to be applied when considering the impartiality of employees from the same institution.

Several elements must be considered when a person is to be involved in a decision concerning applications from the institution at which he or she is employed.

- What position does he or she hold at the institution?
 - Under otherwise equal circumstances, a person with a key or senior position in an institution will be disqualified more often than persons in less senior positions.
- Ownership rights, in the form of shares and the like, in the institution at which the individual is employed must be assessed.
 - Even a small number of shares may be enough to render an individual who holds a senior position within the institution disqualified. Conversely, a large shareholding may be a contributing factor in the disqualification of an individual in a less senior position at the institution.

Impartiality considerations may be affected by the sector with which an individual is affiliated. (the university sector, independent institute sector or trade and industry sector).

The following outlines a number of elements that can be used to assess impartiality in relation to the sector with which an individual is affiliated:

The university sector

Individuals serving as rectors, deans or department heads will be disqualified from dealing with applications from their own units pursuant to Section 3.1 litra e) of the regulations. The same applies to individuals serving on the boards of the university, faculty or department.

Individuals in researcher/professor positions will tend to be disqualified in relation to applications in which researchers from their own groups or close professional partners play a key role. However, employment at the same department does not necessarily entail disqualification. This will depend on the size of the department (number of researchers) and the professional ties between the applicant and the relevant researcher/professor. These elements must be assessed separately in each individual case.

Independent institute sector

An individual who is the head of, or holds a senior position in, an independent research institute will be disqualified pursuant to Section 3.1 litra e) of the regulations. The same applies to an individual who is a member of the executive board of the institute.

Like those engaged in the university sector, individuals in researcher/professor positions will tend to be disqualified from reviewing applications in which members of their own research group or close professional partners play a key role. In addition, the impact that a grant allocation to the institute will have on the relevant employee must be considered. In this context, importance must be attached to the implications of the project in relation to the institute's financial standing and reputation.

Trade and industry

An individual who is the head of, or holds a senior position in, a company will be disqualified pursuant to Section 3.1 litra e) of the regulations. The same applies to an individual who is a member of the executive board of the company.

Like those engaged in the university and independent institute sectors, company employees will tend to be disqualified from reviewing applications in which members of their own group or close professional partners play a key role. In addition, the impact that a grant allocation to the company will have on the relevant employee must be considered. In this context, importance must be attached to the implications of the project in relation to the company's financial standing and reputation.