
Rules on Impartiality for VKM

1. Purpose of the Rules

The rules on impartiality at VKM apply to all employees in the secretariat, members of VKM appointed by the Ministry of Health and Care Services, and others who perform tasks on behalf of VKM. The purpose of the rules on impartiality is to

- ensure that stakeholders of VKM have confidence that VKM only makes assessments according to its mandate
- promote transparency about any personal interests of individuals who act on behalf of the administration
- ensure that potential conflicts of interest or personal concerns cannot influence decisions taken by VKM
- protect employees, members, and others who perform tasks on behalf of VKM from undue pressure

The requirement for impartiality in the administration states in brief that no one should manage a case on behalf of an administrative body if they are a party to the case themselves, or if kinship or other special relationships are likely to undermine that the case handler is impartial.

It is not reprehensible to be impartial in a case. Nor is it a prerequisite for being impartial that one is uncertain of their ability to act impartially in a case. The rules on impartiality, rather, have the effect of giving an employee or a member a legal basis for withdrawing from the handling of a case in which external parties may question impartiality, or where an employee or a member is exposed to undue pressure. Even if the individual is confident that they are not influenced by e.g., kinship or friendship, and they do not share information, they should consider how external parties may view this.

2. Guiding documents

Chapter II of the Public Administration Act has rules on impartiality for public employees. According to general administrative law and §10 of the Act, the regulations also apply to others who “perform services or work for an administrative body”. The rules on impartiality in the Public Administration Act apply to everyone who provides a statement or gives advice to the administration, in connection with individual cases or areas of concern, even if they themselves do not formally make a decision in the case.

All employees and members of VKM must familiarise themselves with VKM's rules on impartiality, as well as with the VKM's values, the ethical guidelines for civil service, and the ethical guidelines for the Norwegian Institute of Public Health (NIPH).

3. Specification: Rules of impartiality apply to VKM

According to § 10 of Public Administration Act, the law applies to administrative bodies and those who perform services or work for an administrative body. VKM is part of an administrative body, and employees, members, and others who perform tasks on behalf of VKM perform such services or work in this legal sense.

The rules on impartiality are related to the principle that external considerations must not be taken into account. The requirement for impartiality applies not only to the person who is to make a decision in a case but also to the one(s) who are to research or prepare the case. VKM makes decisions, investigates, and prepares cases in the legal sense.

In a body like VKM, it could be argued that individual employees, members, and others who perform tasks on behalf of VKM have less influence on the outcome of the case than where a single civil servant prepares and makes decisions. According to Sections 6 and 8 of the Public Administration Act, it is made clear that the requirements for impartiality apply in full, and it is the body itself that makes decisions on impartiality issues. The requirement for withdrawal due to impartiality also applies where the member in question will have no practical influence on the opinions adopted by VKM.

VKM assesses risks based on mandates from the Norwegian Food Safety Authority and the Norwegian Environment Agency, which use the assessments to provide advice, issue permits, develop regulations, and provide input to government ministries. VKM's risk assessments are of importance to public health, plant and animal welfare, and the environment. At the same time, the assessments can be of importance commercially, and can theoretically, directly, or indirectly, be of benefit or profit to employees and members. It is therefore crucial that the Norwegian Food Safety Authority, the Norwegian Environment Agency, and society can have full confidence that the opinions are based solely on professional, scientific assessments, without any external considerations factored in.

Transparency and public access to information are the most critical prerequisites for the rules on impartiality to fulfil their purpose. Nothing can be more destructive to trust in a public agency than the exercise of authority by individuals who have hidden the vested interests they have in the outcome of a case.

Employees of VKM, of the Norwegian Food Safety Authority and the Norwegian Environment Agency, and employees of ministries cannot be members of VKM.

4. When do members and employees have a duty to disqualify themselves from a case?

The requirements for impartiality in §6 of the Public Administration Act can be divided into two main categories:

- Cases where one is a party to the case or is related or otherwise closely associated with a party to the case.
- Cases where there are special circumstances that are likely to undermine confidence in one's impartiality.

VKM consists of a steering committee, 13 scientific panels, and a scientific secretariat. The committee (steering committee, scientific panels, approval groups, project groups) has the scientific responsibility for the risk assessments. VKM members are scientifically independent and take part based on their expertise. They do not represent the institution they are employed by or other interests. No one can instruct the committee or secretariat on scientific matters.

When it comes to the requirements for impartiality ("special circumstances"), it is important to distinguish between interests (one's own expertise and independence) that one is assumed to represent in/for the committee, and other special interests that may be perceived as unsuitable and in conflict with impartiality.

If, as a scientist, one has identified a health hazard associated with the use of a particular additive in food, one will not be disqualified as a member of VKM in cases where VKM assesses the risks of the use of the additive. Nor will one be disqualified because they have participated in the treatment of the same additive in another organisation. However, if you have an assessment for a company that produces such a substance (or for a competing business), one could be considered impartial.

4.1. § 6,1 of the Public Administration Act: Automatic disqualification

One should not take part in a risk assessment in VKM if it concerns a business that one owns. Nor should one take part in a risk assessment in cases where there are close relationships between oneself and whomever might be affected by the assessment.

4.2. A list of cases affected by § 6,1:

- a) Persons who are themselves a party to a case that VKM is managing. A party to the case is the one the statement is directed towards; the one who has applied for a permit or who may be required to do something, cf. Section 2 (1) letter **e** of the Public Administration Act.
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b) and

c) By relationship. When one is related or is an in-law to a party in ascending or descending or sideways lineage, as close as siblings. When one is or has been married to, engaged to, or is a foster parent or foster child to a party. Partnership is equated with marriage, and cohabitation leads to automatic disqualification during the period it lasts.

Example: Risk assessment of toxic compounds in farmed fish. Your spouse runs a fish farm or has other commercial interests in the salmon industry, and you are a member of the scientific panel on contaminants.

d) By guardianship or power of attorney, where the person represents the party outwardly. However, the limitation applies only when the party is represented in the relevant case.

e) Director or management position, member of the board or corporate assembly for a company that is a party to the case. This is not limited to companies; thus, managers of public and private enterprises are equated.

Example: You are a board member of a company that has developed a new vitamin-enriched breakfast cereal. The panel in which you are a member is to assess the enrichment.

4.3. § 6,2 of the Public Administration Act: Disqualification based on a comprehensive evaluation

There must be "special circumstances" that are suitable for undermining confidence in one's impartiality to disqualify according to section 6, paragraph 2.

Special circumstances mean a special interest in the decision, in addition to general professional or business interests. The law states that weight should be given to whether the decision may entail particular benefit, loss, or disadvantage for oneself or someone one may have a close personal relationship to. These may be relationships like those referred to in Section 6, paragraph 1, but where there may also be a possibility of particular benefit, loss, or disadvantage from the decision.

As a rule of thumb, the closer the relationship one has to the party, the less interest in the outcome of the case is needed. The more distant the relationship, the more interest could be present.

Individual assessments shall be made in such cases. It is important that members and employees of VKM bring up the issue for discussion and report any doubts about impartiality. If one makes the assessment by oneself, the general rule is that it is better to disqualify oneself from the handling of a case once too often, than one time too few.

4.4. Non-exhaustive list of what may be affected by §6,2

Personal interest: Interest in the outcome of a case without being a party. For example, the decision may result in financial consequences for you through dependencies relating to a business relationship, or the decision may entail a high probability of increased assignments for you. It may also be about more interesting tasks, personal prestige, or loss of reputation. The important thing here is that you use your judgment and consider in each case whether your participation may weaken confidence in your impartiality.

Example: The risks concerning the use of a new additive under Norwegian conditions are about to be assessed by VKM. You have previously been heavily involved in the matter, including providing scientific advice to the company that developed the substance. The outcome may lead to new, interesting assignments and perhaps financially benefit you.

Friendship: The decision may entail an advantage or disadvantage for a close friend of yours. It must be friendship. It is not necessary for the friendship to be demonstrated by social interaction or in any other way.

Example: The VKM panel responsible for novel food shall assess the risks of a new product. The application for introducing the product on the Norwegian market has been submitted by a colleague with whom you have a close personal relationship: you may be going out to eat together this weekend.

Enmity: The decision may entail advantage or disadvantage for someone whom you have a conflict with. Here, personal aversion or professional opposition is not sufficient for the provision to take effect.

Example: A risk assessment of a new genetically modified product that a company is applying to import. Someone you have been in a long, intense neighbourhood conflict with is a consultant for the company. It will bring them great personal prestige if the company's application were to be granted.

Kinship and other close relationships: Even if you are not in the kinship relationship described in Section 6, paragraph 1, more distant kinship combined with particular benefit, loss, or disadvantage for the person concerned may lead to disqualification under Section 6, paragraph 2. The decision may, for example, entail loss or gain for a cohabiting partner, former spouse, or cousin.

Example: A report on contagious animals and the assessment whether the animals should be slaughtered or not is discussed by the VKM panel on biological hazards, of which you are a member. A herd of the affected animals belongs to your cousin.

5. The relationship between the secretariat and the committee regarding impartiality

Section 8 of the Norwegian Public Administration Act stipulates that in collegial bodies such as VKM, the body itself assesses its own impartiality.

VKM's secretariat conducts an impartiality assessment when the committee is appointed and when it establishes project- and project approval groups. The secretariat conducts this assessment because the committee and groups have not yet been appointed or established, and there are no other parties who can assess impartiality. The secretariat's role is to assess whether individuals, based on their own or their close relatives' ownership positions, roles, etc., should not be appointed, should not take part in the groups, or should not have other roles in VKM's risk assessments (expert reviewers, etc.).

After the committee is appointed and the groups are set up, Section 8 of the Public Administration Act requires that the committee (the collegial body) itself assess impartiality. The impartiality of everyone in each case should be discussed in all group meetings and recorded in the minutes or records. Thus, the committee's groups (panels, project groups, and approval groups) share responsibility for ensuring that everyone is impartial. The secretariat will inform the groups if these procedures are not followed and if the secretariat becomes aware of a potential conflict of interest. However, according to the law, it is the committee that should decide this and make the decisions on impartiality issues. The committee may seek advice from VKM's secretariat on impartiality issues, and the secretariat may consult with the Ministry of Health and Care Services.

6. Procedures

6.1 Upon appointment of the committee, establishment of project groups, and employment

Upon appointment as a member of VKM, when asked to take part as an external expert (or to hold other roles, such as peer reviewers, etc.), and upon employment at VKM, the following shall be submitted from the secretariat:

- Reference to the provisions of the Public Administration Act on impartiality
 - Rules on impartiality at VKM
 - VKM values
 - Ethical guidelines for civil service
 - Ethical guidelines for the Norwegian Institute of Public Health
 - Declaration of impartiality for members, external experts, or employees
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When assessing declarations of impartiality, the secretariat bases its decisions on the Public Administration Act and the rules on impartiality at VKM. When the secretariat carries out impartiality assessments, it also looks to EFSA's policy and guidelines on conflicts of interest. In this context, the secretariat will ask members to supply an overview of their research funding over the past few years when completing the declaration of impartiality.

Anyone who works for VKM completes the declaration of impartiality, in which they declare whether they are aware of any circumstances that make them ineligible. The declaration also confirms that they are familiar with, and will follow, the provisions of the Public Administration Act on impartiality, the rules on impartiality at VKM, have reviewed the other documents listed above, and accept that the declaration of impartiality may be published on VKM's website. The declaration is sent to the secretariat by email, along with an overview of research funding over the past five years. The secretariat records the declaration and publishes it on VKM's website.

All circumstances that do affect or may affect impartiality or that one is uncertain about should be listed in the declaration. Circumstances that are borderline can easily become a problem if they are not listed, as their absence may be perceived by the outside world as attempted concealment. When disclosed and explained, such circumstances are often unproblematic and provide a good basis for assessment of impartiality in individual assignments.

6.2 Impartiality during the committee's work following appointment and establishment of project groups

Members and external experts supply a statement on impartiality at the beginning of each meeting in panels and project groups. The project manager at the secretariat ensures the issue of impartiality is on the agenda. Under this item on the agenda, the minutes shall document the question of impartiality and which issues have been discussed, and any decisions that were made. Minutes from panel meetings are published on the VKM website.

As a member, employee, or someone performing a task on behalf of VKM, you have a duty to ensure that you do not manage cases where you are not impartial. This refers to Section 8 of the Administrative Procedure Act.

For chairpersons of the steering committee, panels, or approval groups: If you are to make a statement, for example as the chair of a panel, it is up to you to decide whether you are impartial.

For members of the steering committee, panels, approval groups, or project groups: When you are to take part in the handling of a case, you report your possible bias before the case is considered. It is up to the rest of the group whether you should withdraw. You should not

take part in this decision, that is, you should not participate in the voting or discussion of the issue of your impartiality.

As an employee of VKM: You report your own bias to your supervisor before the case is considered. It is up to the supervisor to decide on the impartiality issue.

Where bias is proven, the member, external expert, or employee concerned shall leave the room during the handling and decision-making of the case(s). A biased member, external expert, or employee shall not be given the opportunity to represent their interests in any other way than other parties (additional information, clarifications, etc.) in cases VKM has under consideration.

It is important to emphasize that the assessment of impartiality must be continuous. The assessment must be made in each individual case under consideration. Furthermore, it is important to remember that a change of workplace, establishment of a new business, purchase of shares, i.e. by oneself, relatives, or friends may lead to a change in the assessment of impartiality in an individual case.

7. Consequences of not withdrawing due to impartiality

If one or more biased members, employees, and others performing tasks on behalf of VKM participate in the work on a risk assessment, this would represent a procedural error in the statement itself, and in the administrative decision that the statement may later be used in. Such a procedural error may result in the administrative decision being invalid.

A more likely consequence than direct legal consequences of such a procedural error would be that the biased member/employee and others performing tasks on behalf of VKM, and VKM itself, will be subject to criticism and loss of trust and reputation.

8. About confidentiality for members and employees of VKM

An extract from section 13 of Public Administration Act is cited below. Item 2, which deals with trade secrets, may be relevant to the work of VKM. Both members of the committee, external experts, employees of the secretariat, and staff of the Norwegian Food Safety Authority and the Norwegian Environment Agency can be subject to compensation and criminal liability if they neglect their duty of confidentiality.

Section 13 of Public Administration Act sets out, *inter alia*:

“It is the duty of any person rendering services to, or working for, an administrative agency, to prevent others from gaining access to, or obtaining knowledge of, any matter disclosed to him in the course of his duties concerning:

- 1) *an individual's personal affairs, or*
- 2) *technical devices and procedures, as well as operational or business matters which for reasons of competition are important to keep secret, in the interests of the person whom the information concerns.*

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The duty of confidentiality shall continue to apply after the person concerned has terminated their service or work. Nor may he exploit such information as is mentioned in this section in their own business activities or in service or work for others."
