



Conflict of Interest Policy

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Introduction

The information in this document consolidates and expands upon the principles highlighted in the Charity Governance Code (1).

The Code recommends that a charity's board understands how real and perceived conflicts of interests and of loyalty can affect both the organisation's performance and reputation and also that trustees establish a regularly reviewed conflicts of interest policy (2).

The Code also highlights the need for trustees to be aware of the importance of the public's confidence and trust in charities and that they and those representing the charity undertake their duties accordingly, being seen to act with integrity. In safeguarding their charity's reputation they, by extension, promote confidence in the wider sector (3).

Overall purpose

Benefits of being a trustee

Although the role of trustee is a serious duty, there are various positive aspects to it that can help an individual on a personal and professional basis:

- the knowledge that you are contributing to a worthwhile cause;
- building self-confidence;
- experience of committee work;
- acquiring new skills – personal and professional – through training and information sharing; and
- the enjoyment to be had from working with a group of individuals from different backgrounds who share a similar passion for a particular cause.

The role of charity trustee is one that can offer considerable satisfaction, challenges and experiences, but it should not be forgotten that the position can be quite onerous and require a significant time commitment.

The aim of this note is to provide charities with guidance on how to recognise and manage real and perceived conflicts of interest amongst members of the trustee board. It offers a generic model document that can be amended to suit the needs of individual organisations, while addressing the fundamental issues that arise from real and perceived conflicts of interest.

It should be noted that the benefit derived by those trustees who are users of the charity's services should not be over and above that received by any other user or beneficiary of the charity.

What is a conflict of interest?

Trustees have a duty under common law to act in the best interests of the charity they serve. Trustees, generally, should not benefit from the charity and should not be influenced by their wider interests when making decisions affecting the charity. For charitable companies, trustees have a legal duty to avoid conflicts of interest under section 175 of the Companies Act 2006.

A conflict of interest can be defined as:

'...any situation in which a trustee's personal interests or responsibilities they owe to another body, may, or may appear to influence the trustee's decision making.' (4)

Conflicts of interest arise when the interests of trustees, or 'connected persons', are incompatible or in competition with the interests of the charity.

Such situations present a risk that trustees will make decisions based on these external influences, rather than the best interests of the charity.

The most common types of conflict include:

- direct financial interest – when a trustee obtains a direct financial benefit via:
 - the payment of a salary to a trustee by the charity;
 - the award of a contract to a company with which a trustee is involved; or
 - the sale of property at below market value to a trustee.
- indirect financial interest – this arises when a close relative of a trustee benefits from the charity.

For example:

- the awarding of an employment contract to a person connected to the trustee;
- or
- making a grant to a person connected to the trustee.
 - non-financial or personal conflicts – occur where trustees receive no financial benefit, but are influenced by external factors:
 - influencing board decisions on service provision to their own advantage, perhaps because they use the charity's service themselves or care for someone who does;
 - to gain some other intangible benefit or kudos; or
 - awarding contracts to friends.
 - conflicts of loyalties – trustees may have competing loyalties between the charity to which they owe a primary duty and some other person or entity.

It is essential that all trustees are fully aware of their duties and responsibilities and that when acting as a trustee they must act in the best interests of the charity alone. The interests of the beneficiaries and those of the charity will – for the most part – be consistent or complementary, but on the occasions where a conflict does arise, the responsibility of all the trustees is to the charity. This includes any access that all trustees may gain to confidential or privileged information by virtue of their trusteeship.

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All trustees should remain alert to the fact that whatever information they acquire in their role should remain confidential and not be used to the advantage of themselves, an external individual, or entity. Occasionally there may be cases where an apparent conflict is actually in the organisation's best interests. While the trustees may well act with integrity, the mere appearance of a conflict can be damaging to both the charity and the trustees, so conflicts need to be managed effectively. When considering how a situation may be perceived, a simple rule of thumb might be to ask: how could this be portrayed in the media?

Identifying potential conflicts of interest

Trustees will be asked to declare their interests and a register of such interests will be held, in order to monitor potential conflicts of interests on a continuous basis. The policy on the management of conflicts of interest will inform trustees how any conflict will be dealt with and provide a framework for the board when conflicts arise.

A key means of preventing conflicts of interest from affecting decision making is to identify potential conflicts in advance. This gives trustees time to consider the implications and to respond appropriately. To ensure that trustees remain in an optimal position to manage any real or perceived conflict, it should be standard practice to ask for any such declarations at the start of each trustee meeting.

Declaration of interests

Potential and new trustees will be informed that they will be expected to declare their interests on appointment and subsequently, when they arise. They will also be provided with a copy of the conflicts of interest policy, before appointment. If the potential trustee is concerned about a possible conflict of interest, they should view the policy and discuss the matter with the charity secretary/governance professional before agreeing to take up the position.

On appointment, trustees will be asked to complete a declaration of interests. New trustees may be uncertain as to what comes under this heading (in which case they should consult the charity secretary/governance professional), but as they gain more experience on the board, their understanding of exactly what constitutes a potential conflict will develop.

The declaration of interests will be updated when material changes occur, and reviewed on a regular basis – at least annually.

When asking trustees to complete a declaration of interests, the following areas should be considered:

- employment;
- any previous employment in which the trustee still has a financial, or other, interest;
- any other appointments (voluntary or otherwise) e.g. trusteeships, directorships, local authority membership, tribunals;
- professional and organisational membership;
- membership of any special interest groups;

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- investments in unlisted companies, partnerships and other forms of business;
- major shareholdings (charities may set a figure here, e.g. more than 1% or 5% of issued capital) and beneficial interests;
- gifts or hospitality offered to the trustee by external bodies and whether these were declined or accepted;
- family connections where relevant, such as the trustee's spouse/partner working for a similar organisation or a funder;
- using, or caring for a user of, the organisation's services; and
- any contractual relationship between the trustee or a connected person and the charity or its subsidiary. The level of detail required in the register may depend on:
 - the size and culture of the organisation;
 - the likelihood of a conflict arising; and
 - the potential damage that could be caused by a conflict.

All charities and not-for-profit organisations are accountable to a range of stakeholders and should consider conflicts of interest carefully. Those working in sensitive areas, involved with large sums of money, or subject to a high level of scrutiny, may need to be extra vigilant. Organisations will need to find a balance between accountability and unwarranted intrusion into the affairs of their trustees.

Notes

(1). This can be downloaded from www.governancecode.org/.

(2). Charity Governance Code, Recommended Practice 3.8.

(3). Charity Governance Code, Principle 3; Key Outcomes 3.1 and 3.5

(4). Department of Culture, Media and Sport & the Charity Commission, Charitable Museums and Galleries: 'A guide to conflicts of interest policies, trustee benefits and transactions between trustees and charities', 2008, p. 8

(5). The Charities Act 2011 s. 188 defines a 'connected' person as:

- a) a child, parent, grandchild, grandparent, brother or sister of a trustee;
- b) spouse or civil partner of trustee, or of (a) above;
- c) business partner of trustee or (a) or (b);
- d) institution controlled i) by trustee or (a), (b), or (c) above or ii) by two or more persons falling within i) when taken together ;
- e) a body corporate which i) the trustee or connected person in (a) to (c) has a substantial interest or, ii) two or more persons falling within i) when taken together have a substantial interest.

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