



Conflicts of Interest Policy

1. Introduction

Conflicts of interest can lead to decisions that are not in UKCoD's best interests and which are invalid or open to challenge. They can damage a charity's reputation or public trust and confidence generally. To prevent conflicts of interest trustees and SIG members need to be able to identify conflicts of interest, and act to prevent them from affecting their decision making.

All trustees have a legal duty to act only in the best interests of UKCoD and the Charity Commission expects appropriate steps to be taken in line with their guidance:

<https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees>

1.1 The Charity Commission recommends that trustees read the guidance to understand the basics, and how it expects them to deal with conflicts of interest facing them or their charity.

For a detailed explanation of the Commission's view of the law underpinning the guidance, please refer to Conflicts of Interest: a guide for Charity trustees:

<https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees>

The word 'must' is used where there is a specific legal or regulatory requirement that must be complied with. 'Should' is used for minimum good practice guidance you should follow unless there's a good reason not to.

Legal requirement: directors must declare an interest in any proposed or actual transaction or arrangement with the charitable company. Failure to do so may constitute a criminal offence.

1.2 Technical terms used in this policy

Breach of duty: this means a breach of any trustee duty. For charity trustees, these duties depend on the nature of the charity. Trustees of unincorporated charities have duties under the trustee acts and directors of charitable companies have duties under the Companies Act 2006.

Conflict of interest: a conflict of interest is any situation in which a trustee's personal interests or loyalties could, or could be seen to, prevent them from making a decision only in the best interests of the charity.

Connected person: in broad terms this means family, relatives, or business partners of a trustee, as well as businesses in which a trustee has an interest through ownership or influence. The term includes a trustee's spouse or unmarried or civil partner, children, siblings, grandchildren and grandparents, as well as businesses where a trustee or family member holds at least one-fifth of the shareholding or voting rights. If in doubt about whether a person or business is a connected person seek advice from a solicitor or other person qualified to advise on the matter.

Where a charity is either paying a connected person for goods or services, or disposing of land to a connected person, the Charities Act defines what a connected person is at s188 (for goods and services) and s118 (for land disposals).

Conflict of loyalty: this means a particular type of conflict of interest, in which a trustee's loyalty or duty to another person or organisation could prevent the trustee from making a decision only in the best interests of the charity.

Expenses: this means refunds by a charity of legitimate payments which a trustee has had to meet personally in order to carry out his or her trustee duties. Any reasonable costs that allow trustees to carry out their duties can be classed as legitimate expenses and paid from the charity's funds.

Trustee: this means a charity trustee. Charity trustees are the people who are responsible for the general control of the management of the administration of the charity. In a charity's governing document, they may be collectively called trustees, the board, managing trustees, the management committee, governors, or directors, or they may be referred to by some other title.

Trustee benefit: this means any instance where money, or other property, goods or services, which have a monetary value, are received by a trustee from the charity. The law says that trustees cannot receive a benefit from their charity, whether directly or indirectly, unless they have an adequate legal authority to do so.

The term "trustee benefit" does not include any payments to trustees which are for their proper out-of-pocket expenses.

User trustee: this means any trustee who makes use, as a beneficiary of the charity, of the equipment, facilities, services, or support that are provided as part of the charitable purposes of his or her charity.

2. Identifying conflicts of interest (legal requirement)

The commission expects individual trustees and trustee bodies to be able to identify any conflicts of interest at an early stage. The law says that each individual trustee must avoid putting themselves in a position where their duty to act only in the best interests of the charity could conflict with any personal interest they may have:

- individual trustees who fail to identify and declare any conflicts of interest will fail to comply with their personal legal responsibility to avoid conflicts of interest and act only in the best interests of the charity;
- the trustee body must ensure that any conflicts of interest do not prevent them from making a decision only in the best interests of the charity.

The early identification of conflicts of interest is key to ensuring that trustees act only in the best interests of the charity. This section describes what a conflict of interest is, the written policies and procedures trustees should have in place, and the common situations where conflicts of interest arise.

3.1 Key points about identifying conflicts of interest

A conflict of interest exists even where there is the possibility that a trustee's personal or wider interests could influence the trustee's decision making.

Conflicts of interest relate to a trustee's personal interests and the interests of those connected to them. This means that there is a conflict of interest where there is a proposed transaction between the charity and a connected person. Similarly, there is a conflict of interest where there is a benefit or a potential benefit to a connected person.

3.2. Being prepared to respond to conflicts of interest

The Commission encourages trustees to make the operation of the charity as transparent as possible. The trustees may decide to make this conflicts of interest policy available to the public and to make some or all of the register of interests publicly available.

UKCoD trustees should consider conflicts of interest as a pre-appointment issue. Prospective trustees should be asked about potential conflicts of interest, and these should be declared to those who will decide on the appointment. Where prospective trustees are likely to be subject to serious or frequent conflicts of interest, the trustees should seriously consider whether that trustee should be appointed.

In the event of subsequent discovery of an undeclared conflict of interest or failure to declare an interest, where possible, any potentially resulting decisions will be considered null and void and the issue will be re-examined and decided upon by the Board. The failure will be recorded in the conflict of interests register and where required the issue will be reported to the Charity commission.

3.3. Where and how do conflicts of interest arise?

Conflicts of interest usually arise where either:

- There is a potential financial or measurable benefit directly to a trustee, or indirectly through a connected person; a trustee's duty to the charity may compete, or be perceived to compete, with a duty or loyalty they owe to another organisation or person.

4. Benefits to trustees

Trustees can only benefit from their charity where there is an explicit authority in place before any decision conferring trustee benefit is made.

Examples of benefits to trustees are where the trustees decide to:

- sell, loan or lease charity assets to a charity trustee;
- acquire, borrow or lease assets from a trustee for the charity;
- pay a trustee for carrying out their trustee role, or promise a trustee remuneration through either employment or commissioning services through the charity, its beneficiary, or a connected organisation;

- pay a trustee for carrying out a separate paid post within the charity, or a connected organisation, even if that trustee has recently resigned as a trustee;
- pay a trustee for carrying out a separate paid post as a director or employee of the charity's subsidiary trading company, or a connected organisation;
- pay a trustee, or a person or company closely connected to a trustee, for providing a service to the charity - this covers anything that would be regarded as a service and includes legal, accountancy or consultancy services through to any maintenance work;
- employ a trustee's spouse or other close relative at the charity (or at the charity's subsidiary trading company), or at a connected organisation;
- make a grant to a service user trustee, or a service user who is a close relative of a trustee;
- allow a service user trustee to influence service provision to their exclusive advantage.

5. Conflicts of loyalty

These conflicts of interest arise because, although the affected trustee does not stand to gain any benefit, the trustee's decision making at the charity could be influenced by his or her other interests.

For example, a trustee's loyalty to the charity could conflict with his or her loyalty to

- the body that appointed them to the charity, its subsidiary, or a connected organisation;
- the membership or section of the charity that appointed them to trusteeship;
- another organisation, such as their employer;
- another charity of which they are a trustee;
- a member of their family;
- another connected person or organisation.

Some conflicts of loyalty arise because a trustee has a competing legal obligation or duty to another organisation or person. Others result from conflicting loyalties which trustees owe or may feel towards family, friends or other people or organisations who are part of the trustee's network. A conflict of loyalty could also arise where the religious, political or personal views of a trustee could interfere with the ability of the trustee to decide the issue only in the best interests of the charity.

Trustees may decide that where a conflict of loyalty poses no risk or a low risk to decision making in the best interests of the charity, the affected trustee, having declared their other interest, can participate in decision making.

Legal requirement: the directors of charitable companies taking this approach, must have authority in the governing document which allows the unconflicted directors to decide that the trustee affected by the conflict of loyalty can participate.

6. Identifying low risk conflicts of loyalty

Deciding that a conflict of interest is low risk, and that the affected trustee can participate in the decision, is a judgement for the trustees. The trustees must take all relevant factors into account and be ready to explain their approach if asked.

7. Appointed trustees

Where a trustee is elected, or appointed, by a connected organisation or other third party, he or she must act only in the best interests of the charity in carrying out their trustee role.

Trustees should be fully trained in their responsibilities as trustees and that the appointing body be made aware of these responsibilities:

- individual trustees should always declare any conflicts of interest which affect them;
- any failure to declare a conflict of interest is a serious issue;
- the trustee body should consider whether serious conflicts of interest should be removed or require authority;
- affected trustees should not participate in any decisions where they stand to gain, whether directly, or indirectly through a connected person, or a connected organisation;
- where there is a conflict of loyalty, trustees should carefully handle any participation by a conflicted trustee;
- irrespective of the approach trustees take to prevent a conflict of interest from affecting their decision making, they should be able to demonstrate that their decision was made only in the best interests of the charity.

8. Declare conflicts of interest

Although declaring conflicts of interest is primarily the responsibility of the affected trustee, the trustee Board should ensure that it has a strong system in place so that individual trustees:

- have a clear understanding of the circumstances in which they may find themselves in a position of conflict of interest;
- and understand their personal duty to declare them.

The Commission expects trustees to have a standard agenda item at the beginning of each trustee meeting to declare any actual or potential conflicts of interest.

A trustee should declare any interest which he or she has in an item to be discussed, at the earliest possible opportunity and certainly before any discussion of the item itself.

If a trustee is uncertain whether or not he or she is conflicted, he or she should err on the side of openness, declaring the issue and discussing it with the other trustees.

If a trustee is aware of an undeclared conflict of interest affecting another trustee, they should notify the other trustees or the chair.

9. Consider removing the conflict of interest

Where trustees wish to go ahead with a decision affected by a serious conflict of interest, they should seek the authority of the Commission unless they are satisfied that the handling options outlined in this policy will allow them to demonstrate that their approach and decision were in the best interests of the charity.

10. Follow the law and the charity's governing document (legal requirement)

Trustees must follow any legal or governing document requirements which say how the conflict of interest must be handled.

Where the governing document or law does not say how a conflict of interest should be managed, trustees should follow the steps in this section of the guidance.

11. Withdrawing from decision making where the conflict of interest is associated with trustee benefit

Where there are no legal or governing document provisions about managing conflicts of interest, and there is a proposed financial transaction between a trustee and the charity, or any transaction or arrangement involving trustee benefit:

- the trustee benefit must be authorised in advance;
- the Commission expects the affected trustee to be absent from any part of any meeting where the issue is discussed or decided - the individual should not vote or be counted in deciding whether a meeting is quorate.

Withdrawing from decision making means withdrawing when the initial discussions and decisions take place, and from any subsequent discussion or decision making on the issue.

12. Withdrawing from decision making where there is a conflict of loyalty

Where there is a conflict of loyalty and:

- the affected trustee does not stand to gain any benefit;
- there are no specific governing document or legal provisions about how the conflict of loyalty should be handled;

the affected trustee should declare the interest. The other trustees must then decide what level of participation, if any, is acceptable on the part of the conflicted trustee. Ultimately it is for the trustees to decide whether withdrawal is in the best interests of the charity when this type of conflict has been declared. The options might include, but are not limited to, deciding whether the trustee:

- having registered and fully declared the interest, can otherwise participate in the decision - the governing document of some charities allows the non-conflicted trustees to authorise a conflicted trustee to fully participate in this type of decision;
- can stay in the meetings where the decision is discussed and made but not participate;
- should withdraw from the decision-making process in the way described.

In deciding which course of action to take, trustees:

- must always make their decisions only in the best interests of the charity;
- should always protect the charity's reputation and be aware of the impression that their actions and decisions may have on those outside the charity;
- should always be able to demonstrate that they have made decisions in the best interests of the charity and independently of any competing interest;
- should require the withdrawal of the affected trustee from any decisions where the trustee's other interest is relevant to a high risk or controversial trustee decision or could significantly affect, or could be seen to significantly affect, the trustee's decision making at the charity;
- can allow a trustee to participate where the existence of his or her other interest poses a low risk to decision making in the charity's interests, or is likely to have only an insignificant bearing on his or her approach to an issue - if the charity is a company this approach must be allowed by the governing document;
- should be aware that the presence of a conflicted trustee can affect trust between trustees, could inhibit free discussion and might influence decision making in some way;
- should, where there are no governing provisions setting out how conflicts of interest should be handled, consider updating their governing document to include provisions for dealing with conflicts of interest, including the circumstances where they will require withdrawal from decision making.

The trustees can, before their discussion, ask a trustee who is withdrawing to provide any information necessary to help make a decision in the best interests of the charity.

Trustees cannot use information obtained at the charity for their own benefit or that of another organisation if it has been obtained in confidence or has special value such as commercial sensitivity.

12.1. Withdrawing where there is a conflict of loyalty

If the trustees decide that the conflict is not so serious as to require removal, they must prevent the competing interest/duty which their trustee has from affecting their decision. Here, this is likely to mean that the affected trustee should withdraw from the quorum and from all aspects of the discussion, decision making and voting. However, in deciding their approach the trustees must follow legal requirements which outline how conflicts of interest should be handled.

However they proceed, the trustees of each charity should be satisfied that the affected trustee understands that she cannot use information obtained at the charity for her own benefit or that of another organisation if it has been obtained in confidence or has special value such as commercial sensitivity.

13. Record the conflict of interest

The Commission expects the charity's written records to document any conflicts of interest in the minutes of meetings.

The written record of the decision shows:

- The nature of the conflict;
- Which trustee or trustees were affected;
- Whether any conflicts of interest were declared in advance;
- An outline of the discussion;
- Whether anyone withdrew from the discussion;
- How the trustees took the decision in the best interests of the charity.

Recording decisions in this way helps trustees to show that they have acted properly and complied with their duties.

14. Disclose payments or benefits (legal requirement)

Charities which prepare their accounts on an accruals basis must include details of payments and other benefits to charity trustees and connected persons - including family members and businesses. They are also required to say under what legal authority the payments or benefits have been made, together with the reason for them.

15. What are the consequences of not acting properly where there is a conflict of interest?

Where trustees have acted outside the terms of the charity's governing document or the law, their decision may not be valid. It could be challenged by the Commission or by an interested party, such as a beneficiary of the charity.

Where trustees fail to act properly or make a mistake it always expects them to act promptly to put things right and prevent a recurrence of the same or similar issue. Where trustee actions or failings present a serious risk to the charity, the Commission is likely to regard this as mismanagement or misconduct and to take remedial action.

Where they have not acted properly, trustees may have to repay any sums paid by the charity, whether they result from an unauthorised trustee benefit or another breach of duty. If the charity has also suffered a loss, the trustees may have to make good such loss to the charity.

16. Regulatory consequences

The Commission will intervene where it has concerns about trustee misconduct or mismanagement or if there is a risk to charity property. The Commission's [risk framework](#) explains that it decides whether and how to intervene based on the nature and level of the risk posed to a charity or charities generally.

17. Remedial action by the trustees

Where:

- the impact of the conflict of interest on the charity is low;
- there is little or immaterial loss or damage to the charity;
- the trustees can show that the failure to act properly was an error;

the Commission expects trustees to use the policy to correct their approach:

- take reasonable steps to assess and manage any risks to the charity's work and reputation;
- make a full record of the issue and how they have handled it;
- review the conflicts of interest policy, ensure that all trustees are made aware of its content and meaning, and fully implement the policy in the future.

18. Corrective regulatory advice

Regulatory advice will specify what the trustees should do to remedy the situation and to ensure that it doesn't recur. The action plan often requires the serving trustees to decide whether to take action themselves to recover any sums lost to the charity. Very often it means that the serving trustees are required to appoint new independent trustees to work with them.

The Commission will monitor the trustees' implementation of the required improvements, within a stipulated timescale. Any failure to fully implement the required improvements is likely to be regarded as misconduct or maladministration of the charity and can lead to the use of its powers.

19. The Commission's powers

The Commission will intervene using its investigative powers in serious/high risk cases. This will usually be where the issue or allegation presents a serious risk to the charity or to public confidence in charities generally.

For example, where it seems that trustees have deliberately or negligently placed their own interests ahead of those of the charity and have, as a result, gained significant benefit at the expense of the charity, the Commission will use its powers to:

- Stop abuse, trustee misconduct and mismanagement - this includes where the trustees fail to fully take steps to resolve the issues or are incapable of doing so;
- Intervene in a charity's affairs and take steps to recover any sums lost to charity, where the trustees are unable or unwilling to do so, and the amount involved is significant.

If the Commission finds evidence of or suspect criminal activity it will refer the matter to the police and other relevant agencies and, if the public interest justifies it, use its own powers of intervention. In all cases where it intervenes, whether by giving corrective regulatory advice requiring action or using its powers, it will take a stronger line and be less tolerant where it has previously engaged with the charity about the same, or similar, issues.

Where the Commission intervenes, its minimum expectation of trustees is that they:

- Promptly provide full and frank disclosure of all relevant facts and information they have about the incident;
- Take reasonable steps to assess and manage any risks to the charity's work and reputation;
- Co-operate and work with the Commission, if required, to get the charity's management right;

- Act responsibly and take action to ensure that they fulfil their legal responsibilities in the future - this often requires the serving trustees to decide whether to take action themselves to recover any sums lost to the charity - very often it means that the serving trustees are required to appoint new independent trustees to work with them;
- Make a full record of the issue and how they have handled it.

20. Charitable companies: key points about conflicts of interest and the Companies Act 2006 (the CA 2006)

The directors of charitable companies have statutory duties and responsibilities regarding conflicts of interest and director benefits which largely reflect those which apply to other types of trustee. The Commission's guidance applies to company director trustees, but the following describes the specific conflict of interest duties that the CA 2006 places on them.

21. Circumstances where the general duty on directors to avoid a conflict of interest does not apply

Legal requirement: the general duty does not apply where the conflict of interest relates to a transaction which:

- Has been authorised by the company's articles;
- Has been authorised by the Commission or the court;
- Is affected by a conflict of duty/loyalty where the unconflicted directors have authorised this type of conflict of interest using a constitutional power - in the Commission's view, the articles of the company should limit directors' power to authorise a conflict in these circumstances only to situations where there is no direct or indirect benefit of any nature received by a director or a connected person - such a limitation will only permit authorisation of conflicts of loyalty.

22. Trustee benefit

Legal requirement: where the conflict arises from a benefit to a director, the other directors must:

- rely on an adequate express power in the charity's governing document or the charities act;
- apply for Commission authority and demonstrate that the transaction is expedient in the interests of the charity.

The members of a charitable company cannot adopt powers which will benefit their trustees without Commission authority.

23. Commission authority needed where the existing governing document provisions are not adequate to authorise a conflict of interest



The Commission can authorise a director or directors to do something which would otherwise breach the duty to avoid a conflict. The directors will need to satisfy the Commission that their proposed action is in the interests of the charity.

The Commission recognises that there are circumstances where trustee payments are allowed or may be justified. However, it will only authorise those transactions where there is a clear justification in the best interests of the charity.

This policy must be regularly reviewed and updated and be part of a wider policy framework, for example a trustee handbook.

It should also signpost and advocate the values contained in all relevant codes of conduct and other policies that the trustees are obliged to follow.

Agreed by the UKCoD Board on the Board meeting held on 24.02.2021;

Approved and minuted.



Annex

Declaration of Interests by UK Council on Deafness Board Members

As a Board Member you have a duty to act in the best interests of the Council and the Council is obliged to review any possible conflicts when preparing the Annual Report.

In the interest of good governance and to assist the Council in these matters please could you complete and return the below form:

Name

Section A. Declaration of interests

Enter all appropriate information below detailing any commercial or professional interest which could come into conflict with your appointment as a director of UKCoD:

Signed: _____

Date: _____

Section B. No Declarations of interests

The above **is not applicable** therefore I confirm that I do not have any relevant Declarations of interest.



Signed:

Date: