



CONFLICTS OF INTEREST POLICY

CONFLICTS OF INTEREST POLICY

LEARNING FOR LIFE CHARITY

The need for a policy

The Trustees, as charity Trustees, have a legal obligation to act in the best interests of the Charity, in accordance with its governing documents, and not for their own private interest or gain.

The aim of this policy is to protect both the Charity and its Trustees in situations where a conflict of interest or duty arises, or might arise, and to ensure that such situations are dealt with openly. Conflicts of interest and duty are bound to arise within a charity, and the issue is not the integrity of the Trustee concerned, but the management of any potential for a Trustee to profit from their position, or for a Trustee to be influenced by conflicting loyalties.

Benefits from Third Parties

A Trustee must not accept a benefit from a third party that is given to him/her because of their position as a Trustee or because of an action that is taken/not taken as a Trustee unless that benefit cannot reasonably be regarded as giving rise to a conflict.

A benefit that cannot reasonably be regarded as giving rise to a conflict is one that is small/minor in nature, and usually not linked to the taking of action/not taking action, for example, a bottle of wine given to a Trustee at Christmas. A case of wine may be excessive, however, depending upon the context.

All benefits offered and accepted/refused must be declared, and noted on the Register of Benefits, which will be kept by the [Secretary/Chair]. The form should be reviewed annually, and updated when the position changes.

Trustees must refuse all benefits which could lead to a conflict of interest. If you are in any doubt as to whether a particular benefit would qualify, you should consult the [Secretary/Chair]. The Trustees may produce guidance on the acceptance of benefits from time to time.

Declaration of Interests Form

The Charity has in place a Declaration of Interests form, which all new and existing Trustees are required to fill out. The form gives details of the Trustee's interests and connections which could conflict with the Charity, including connections relating to Family Members. "Family Members" includes a Trustee's spouse, partner, family and close relatives.

An obvious example of an interest that a Trustee should include, would be where a Trustee is also a Trustee of an organisation that may compete for funding with this Charity. There may not be any conflict at the time of making the declaration, but the information should be included as there is a potential future conflict.

The Declaration of Interests Form should be updated as and when a potential conflict arises (such as the date of appointment to the other charity in the example given above), and the forms shall be kept by the [Secretary/Chair]. The forms will also be reviewed at a meeting once a year.

Conflicts of Interest/Duty

The Trustees have a company law duty to avoid conflicts of interest with the Charity, and a charity law duty to not benefit personally from their position as Trustee. To ensure that these duties are not infringed, the Trustees must manage conflicts and potential conflicts in line with the procedure below. *It is the personal responsibility of each Trustee to ensure that they have read and understood this policy, and act in accordance with it as and when a conflict arises.*

What is a conflict?

As set out above, a “conflict” may be a conflict of interest or of duty, and may apply to the Trustee themselves, or a Family Member. The conflict may arise in the course of the Trustee’s professional life, or personal life. Any situation in which the interests or duty of the Trustee or their close family could potentially conflict with the interests of the Charity is a “conflict” which requires management in accordance with the following policy. An obvious example is one where a Trustee stands to benefit financially from a transaction – perhaps through the sale of the Trustee’s land to the Charity, or the engagement of a firm in which the Trustee’s partner is employed. A conflict of duty may also arise where a Trustee is involved in organisations that are competing for funding. If in doubt, always err on the side of declaration.

If the conflict of interest involves a conveyance, transfer, lease or other disposition of land, then there is a wider definition of Family Member, which includes other connected parties. “Connected Parties” is defined in the Charities Act 2011, and this definition is reproduced at Appendix 1.

Declaration

Although most potential conflicts will be noted on the Declaration of Interests Form, at any meeting at which an agenda item is proposed in which a Trustee or Family Member (or Connected Party) has a potential conflict, that conflict should be declared by the Trustee or the [Secretary/Chair] at the start of the meeting.

If it is not possible to make the declaration at the meeting, then the declaration must be made in writing and sent to all the Trustees in advance of the meeting.

Once any declaration has been made, the other Trustees must consider whether the situation amounts to a conflict or potential conflict of interest. If it does, then the conflict must be managed in line with the procedure below. If it does not, the Trustees must make a note of this in the minutes, and continue to monitor the situation.

Procedure at Meeting

Once a conflict has been declared, and the non-conflicted Trustees have taken the view that a conflict situation has arisen, the conflict must be authorised, and then a procedure agreed for the Trustee’s participation going forwards.

Authorisation – by Charity Commission

Where there is:

- A financial benefit to the Trustee or Family Member;
- A non-financial but other significant benefit to the Trustee or Family Member;
- A significant conflict but the conflicted Trustee is required to take part in future discussions and votes;
- A majority of Trustees subject to the conflict; or

- The proposed transaction relates to the conveyance, transfer, lease or other disposition of land to a Trustee or connected party as defined in the Charities Act 2011¹;

then an order of the Charity Commission must be sought before the transaction can go ahead.

Authorisation – by members

Certain types of transaction/arrangement also require the authorisation of the members of the Charity, before the transaction/arrangement is put into effect. A list of these transactions/arrangements is at Appendix 2.

Action going forwards

Once authorised, the non-conflicted Trustees shall decide whether the conflicted Trustee can remain for discussions on the relevant issue, but the conflicted Trustee will not, in most cases, be able to vote unless special circumstances lead the non-conflicted Trustees to the conclusion that they may vote.

In all cases, a note shall be made of the detail of the conflict, the discussions carried out by the Trustees, and the conclusions and actions taken.

ALL CONSENTS / AUTHORISATIONS MUST BE IN PLACE BEFORE TRANSACTIONS / ARRANGEMENTS ARE ENTERED INTO, OR BENEFITS CONFERRED.

Monitoring and Review

The policy shall be monitored, reviewed and updated by the Trustees once a year. Compliance with this policy shall be monitored by the [Secretary/Chair], and appropriate action taken when necessary.

Data Protection

Any personal information provided will be processed in accordance with the Data Protection Principles, as set out in the Data Protection Act 1998. Personal Data will be processed only to ensure that Trustees act in the best interests of the Charity, and will not be used for any other purpose.

Date of last review of policy:

¹ See Appendix 1

APPENDIX 1

118 Connected Persons under section 118 Charities Act 1993 for disposal of land

- (1) In section 117(2) “connected person”, in relation to a charity, means any person who falls within subsection (2)—
 - (a) at the time of the disposition in question, or
 - (b) at the time of any contract for the disposition in question.
- (2) The persons are—
 - (a) a charity trustee or trustee for the charity,
 - (b) a person who is the donor of any land to the charity (whether the gift was made on or after the establishment of the charity),
 - (c) a child, parent, grandchild, grandparent, brother or sister of any such trustee or donor,
 - (d) an officer, agent or employee of the charity,
 - (e) the spouse or civil partner of any person falling within any of paragraphs (a) to (d),
 - (f) a person carrying on business in partnership with any person falling within any of paragraphs (a) to (e),
 - (g) an institution which is controlled—
 - (i) by any person falling within any of paragraphs (a) to (f), or
 - (ii) by two or more such persons taken together, or
 - (h) a body corporate in which—
 - (i) any connected person falling within any of paragraphs (a) to (g) has a substantial interest, or
 - (ii) two or more such persons, taken together, have a substantial interest.
- (3) Sections 350 to 352 (meaning of child, spouse and civil partner, controlled institution and substantial interest) apply for the purposes of subsection (2).

350 Connected person: child, spouse and civil partner

- (1) In sections 118(2)(c), 188(1)(a), 200(1)(a) and 249(2)(a), “child” includes a stepchild and an illegitimate child.
- (2) For the purposes of sections 118(2)(e), 188(1)(b), 200(1)(b) and 249(2)(b)—
 - (a) a person living with another as that person’s husband or wife is to be treated as that person’s spouse;
 - (b) where two people of the same sex are not civil partners but live together as if they were, each of them is to be treated as the civil partner of the other.

351 Connected person: controlled institution

For the purposes of sections 118(2)(g), 157(1)(a), 188(1)(d), 200(1)(d) and 249(2)(d), a person controls an institution if the person is able to secure that the affairs of the institution are conducted in accordance with the person's wishes.

352 Connected person: substantial interest in body corporate

- (1) For the purposes of sections 118(2)(h), 157(1)(b), 188(1)(e), 200(1)(e) and 249(2)(e), any such connected person as is there mentioned has a substantial interest in a body corporate if the person or institution in question—
 - (a) is interested in shares comprised in the equity share capital of that body of a nominal value of more than one-fifth of that share capital, or
 - (b) is entitled to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of that body.

APPENDIX 2

(From the Companies Act 2006)

190 Substantial property transactions

- (1) A company may not enter into an arrangement under which—
- (a) a director of the company or of its holding company, or a person connected with such a director, acquires or is to acquire from the company (directly or indirectly) a substantial non-cash asset, or
 - (b) the company acquires or is to acquire a substantial non-cash asset (directly or indirectly) from such a director or a person so connected,

unless the arrangement has been approved by a resolution of the members of the company or is conditional on such approval being obtained.

For the meaning of “substantial non-cash asset” see section 191.

197 Loans and quasi loans to directors

- (1) A company may not—
- (a) make a loan to a director of the company or of its holding company, or
 - (b) give a guarantee or provide security in connection with a loan made by any person to such a director,

unless the transaction has been approved by a resolution of the members of the company.

215 Payments for loss of office

- (1) In this Chapter a “payment for loss of office” means a payment made to a director or past director of a company—
- (a) by way of compensation for loss of office as director of the company,
 - (b) by way of compensation for loss, while director of the company or in connection with his ceasing to be a director of it, of—
 - (i) any other office or employment in connection with the management of the affairs of the company, or
 - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company,
 - (c) as consideration for or in connection with his retirement from his office as director of the company, or
 - (d) as consideration for or in connection with his retirement, while director of the company or in connection with his ceasing to be a director of it, from—
 - (i) any other office or employment in connection with the management of the affairs of the company, or
 - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.

- (2) The references to compensation and consideration include benefits otherwise than in cash and references in this Chapter to payment have a corresponding meaning.
- (3) For the purposes of sections 217 to 221 (payments requiring members' approval)—
 - (a) payment to a person connected with a director, or
 - (b) payment to any person at the direction of, or for the benefit of, a director or a person connected with him,is treated as payment to the director.
- (4) References in those sections to payment by a person include payment by another person at the direction of, or on behalf of, the person referred to.