

Conflicts of Interest

Key principles

Trustees have a legal duty to act only in the best interests of their charity, and must not put themselves in a position where their duties as a trustee may conflict with any personal interest they may have (including other trusteeships or directorships). The Charity Commission expects trustees to take appropriate steps to ensure that no conflict, or appearance of conflict, arises.

Conflicts of interest can lead to decisions that are not in the best interests of the charity, that are invalid, or that are open to challenge. They can also damage the charity's reputation, or public trust and confidence in charities generally.

To protect the integrity of Inn Churches' decision-making processes and so that stakeholders can maintain confidence in the charity's integrity, Inn Churches trustees and other decision-makers (eg. CEO, senior managers) must avoid situations in which they have a direct or indirect interest that conflicts, may possibly conflict, or may appear to conflict with the interests of Inn Churches.

This policy draws on Charity Commission guidance, which also contains additional information and advice: gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29.

Definitions

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.

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. Even the perception that there is a conflict of interest can damage the charity. Where the perception is not accurate because there is no conflict of interest, the trustees should always be able to respond appropriately to the situation by managing the risks to the charity and being prepared to explain how they have made their decisions only in the best interests of the charity.

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 (see appendix 1).

A **conflict of loyalty** is a particular type of conflict of interest, in which a trustee's loyalty or duty to another person or organisation could, or could be seen to, prevent the trustee from making a decision only in the best interests of the charity.

Trustee benefit is 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 potential for a trustee to benefit from the charity also creates a conflict of interest which the trustees need to address effectively. The term trustee benefit does not include any payments to trustees which are for their proper out-of-pocket expenses.

A **service user trustee** is any trustee who makes use, as a beneficiary of the charity, of the equipment, facilities, services or support provided as part of the charity's charitable purposes.

Procedures for handling conflicts of interest

Identifying conflicts of interest

Trustees and other decision-makers each have an individual personal responsibility to declare conflicts of interest which affect them, and jointly should have strong systems in place so that they are able to identify conflicts of interest.

A conflicts of interest for an individual would usually arise where either:

- there is a potential financial or measurable benefit directly to the individual, or indirectly through a connected person (see appendix 2 for examples)
- an individual's duty to the charity may compete with a duty or loyalty they owe to another organisation or person (see appendix 3 for examples)

As soon as an individual becomes aware of a potential conflict (whether actual or perceived), they must raise this with the whole trustee board.

The trustees should consider conflicts of interest as a pre-appointment issue, with prospective trustees and senior managers being asked about potential conflicts of interest before appointment for consideration as part of the appointment process. Where individuals are likely to be subject to serious or frequency conflicts of interest, the Trustees should seriously consider whether that individual should be appointed.

Trustees will be asked to complete a written declaration of interests on becoming a Trustee.

A request to declare conflicts of interest will be a standing agenda item and the beginning of all Trustee meetings.

Some interest may not present a conflict straight away, but if the interest has the potential to cause a conflict (such as joining a new employer as an employee, or becoming a Trustee of another charity), it should still be declared.

Short-term interest or conflicts of interest for an individual (such as the charity considering a supplier in which the individual has an interest) should be declared at the earliest possible opportunity at the start of any meeting or discussion relating to the area of conflict, and certainly before any discussion of the item itself.

Trustees and other decision-makers should not ignore something that might present a conflict for themselves or another individual, and in the case of any uncertainty should err on the side of openness, declaring the issue and discussing it with the trustees. If an individual is aware of an undeclared conflict of interest affecting another individual, they should notify the trustee board or Chair immediately.

Preventing conflicts of interest from affecting decisions

Trustees and other decision-makers must make their decisions only in the best interests of the charity. This means that they must consider their conflict of interest so that any potential effect on decision making is eliminated.

In the case of a serious conflict of interest, this may mean removing the conflict by:

- not pursuing a course of action
- proceeding with the issue in a different way so that the conflict does not arise
- not appointing an individual or securing a resignation.

Serious conflicts of interest include (but are not limited to) those which:

- are so acute or extensive that the trustees or other decision-makers are unable to make their decisions in the best interests of the charity, or could be seen to be unable to do so
- affect significant or high-risk decisions
- mean that effective decision making is regularly undermined or cannot be managed in accordance with the required or best practice approach
- are associated with inappropriate trustee benefit.

Where trustees or other decision-makers have decided against removing a conflict of interest, they must prevent it from affecting their decision making in a different way. This should include:

- following any legal requirements or requirements in the charity's governing document relating to conflicts of interest and how they should be managed (see appendix 4)
- where there are no specific legal or governing document provisions, requiring conflicted individuals to declare their interest at the earliest possible stage and, in most cases, withdraw from relevant meetings, discussions, decision making and votes
- exceptionally, seeking authority of the Charity Commission where the conflict of interest is so acute or extensive that following these options will not allow the trustees to demonstrate that they have acted in the best interests of the charity.

The relevant clauses from the charity's governing document are contained in appendix 4.

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

Individuals must not use the 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.

Trustee benefit

Conflicts of interest often arise because a decision involves a potential trustee benefit (see appendix 2). Where this is the case:

- the trustee benefit must be properly authorised in advance following the law, the charity's governing document and any requirements imposed by the Charity Commission on how the conflict should be handled
- affected trustees should be absent from any part of any meeting where the issue is discussed or decided, and should not vote or be counted in deciding whether the meeting is quorate.

Conflicts of loyalty

Where there is a conflict of loyalty and the affected individual does not stand to gain any benefit (directly or indirectly), the trustee board as a whole (excluding the affected individual) must decide what level of participation, if any, is acceptable on the part of the conflicted trustee. They must decide whether withdrawal is in the best interests of the charity. Options may include (but are not limited to):

- having registered and fully declared the interest, the individual can otherwise participate in the decision (provided the relevant clauses in the governing document are complied with – see appendix 4)
- allowing the individual to stay in the meetings where the decision is discussed and made, but not to participate
- requiring the individual to withdraw from the decision-making process.

It is the responsibility of the trustees to decide the level of risk presented by a conflict of interest, and whether the affected individual can participate in the decision, and it is not possible to give a definitive view of when this is appropriate, as it depends on the particular decision and relevant circumstances. The trustees must take all relevant factors into account and be prepared to explain their reasoning if asked.

Key principles of decision making

In deciding upon a course of action, trustees:

- must always make decisions only in the best interests of the charity
- must protect the charity's reputation and be aware of the impression that their actions and decisions may have on those outside of the decision-making process
- should always be able to demonstrate that they have made decisions in the best interests of the charity and independently of any competing interests
- should require the withdrawal of conflicted individuals from any decisions where their other interest relates to a high risk or controversial decision, or could significantly affect (or be seen to affect) their decision making
- can allow an individual to participate in decision making where their other interest poses a low risk to making decisions in the charity's interest, or is likely to only have an insignificant bearing on their approach to an issue, provided they follow the provisions of the governing document (see appendix 4)
- should be aware that the presence of a conflicted individual can affect the relationship between trustees, could inhibit free discussion, and might influence decision making even if they are not involved in discussions
- should, where there are no provisions in the governing document setting out how conflicts of interest should be handled, consider updating their governing documents to include provisions for dealing with conflicts of interest, including the circumstances where they will require withdrawal from decision making.

Recording conflicts of interest

Conflicts of interest should be formally recorded in the minutes of the relevant meeting, detailing the conflict and how it was handled. The written record should show:

- the nature of the conflict
- which individual or individuals 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.

Any trustee benefits (see appendix 2) must be disclosed in the charity's annual accounts, together with the reason for them.

The charity will maintain a conflicts of interest register, detailing actual, potential and perceived conflicts of interest for all trustees and other decision-makers.

Appendix 1: connected person

In broad terms, a connected person 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.

Appendix 2: 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
- pay a trustee for carrying out a separate paid post within the charity, 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
- pay a trustee, or a connected person, 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 painting or decorating the charity's premises, or any other maintenance work

- pay a trustee, or a connected person, for providing goods to the charity, such as paint, timber, sports equipment, consumables or stationery
- employ a trustee's spouse or other close relative at the charity (or at the charity's subsidiary trading company)
- 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

There is more information about trustee benefits in Trustee expenses and payments (CC11) at gov.uk/government/publications/trustee-expenses-and-payments-cc11.

Appendix 3: conflicts of loyalty

These conflicts of interest arise because, although the affected individual does not stand to gain any benefit, their decision making at the charity could be influenced by their other interests.

For example, an individual's loyalty to the charity could conflict with their loyalty to:

- the body that appointed them to the charity
- the membership or section of the charity that appointed them
- another organisation, such as their employer (if different)
- another charity of which they are a trustee
- a member of their family
- another connected person or organisation

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

Appendix 4: extract from the articles of association

Benefits and payments to charity directors and connected persons

7. (1) General provisions

No director or connected person may:

- (a) buy any goods or services from the charity on terms preferential to those applicable to members of the public;
- (b) sell goods, services, or any interest in land to the charity;
- (c) be employed by, or receive any remuneration from, the charity;
- (d) receive any other financial benefit from the charity:

Unless the payment is permitted by sub-clause (2) of this article, or authorised by the court or the Charity Commission.

In this article a 'financial benefit' means a benefit, direct or indirect, which is either money or has a monetary value.

Scope and powers permitting directors' or connected persons' benefits

- (2) (a) A director connected person may receive a benefit from the charity in the capacity of a beneficiary of the charity provided that a majority of the directors do not benefit in this way.
- (b) A director or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the charity where that is permitted in accordance with, and subject to the conditions in, sections 185 and 186 of the Charities Act 2011.
- (c) Subject to sub-clause (3) of this article a director or connected person may provide the charity with goods that are not supplied in connection with services provided to the charity by the director or connected person.
- (d) A director or connected person may receive interest on money lent to the charity at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).
- (e) A director or connected person may receive rent for premises let by the director or connected person to the charity. The amount of the rent and the other terms of the lease must be reasonable and proper. The director concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.
- (f) A director or connected person may take part in the normal trading and fundraising activities of the charity on the same terms as members of the public.

Payment for supply of goods only - controls

- (3) The charity and its directors may only rely upon the authority provided by sub-clause (2) (c) of this article if each of the following conditions is satisfied:
 - (a) The amount or maximum amount of the payment for the goods is set out in an agreement in writing between the charity or its directors (as the case may be) and the director or connected person supplying the goods ('the suppliers') under which the supplier is to supply the goods in question to or on behalf of the charity.
 - (b) The amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question.
 - (c) The other directors are satisfied that it is in the best interests of the charity to contract with the supplier rather than with someone who is not a director or connected person. In reaching that decision the directors must balance the advantage of contracting with a director or connected person against the disadvantages of doing so.
 - (d) The supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the charity.
 - (e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of directors is present at the meeting.

- (f) The reason for their decision is recorded by the directors in the minute book.
 - (g) A majority of the directors then in office are not in receipt of remuneration or payments authorised by article 7.
- (4) In sub-clauses (2) and (3) of this article:
- (a) 'Charity' includes any company in which the charity:
 - (i) holds more than 50% of the shares; or
 - (ii) controls more than 50% of the voting rights attached to the shares; or
 - (iii) has the right to appoint one or more directors to the board of the company.
 - (b) 'connected person' includes any person within the definition in article 61 'Interpretation'.

Declaration of directors' interests

8. A director must declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the charity or in any transaction or arrangement entered into by the charity which has not previously been declared. A director must absent himself or herself from any discussions of the charity directors in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the charity and any personal interests (including but not limited to any personal financial interest).

Conflicts of interest and conflicts of loyalties

9. (1) If a conflict of interests arises for a director because of a duty of loyalty owed to another organisation or person and the conflict is not authorised by virtue of any other provision in the articles, the unconflicted directors may authorise such a conflict of interests where the following conditions apply:
- (a) the conflicted director is absent from the part of the meeting at which there is discussion of any arrangement or transaction affecting that other organisation or person;
 - (b) the conflicted director does not vote on any such matter and is not to be counted when considering whether a quorum of directors is present at the meeting; and
 - (c) the unconflicted directors consider it is in the interests of the charity to authorise the conflict of interests in the circumstances applying.
- (2) In this article a conflict of interests arising because of a duty of loyalty owed to another organisation or person only refers to such a conflict which does not involve a direct or indirect benefit of any nature to a director or to a connected person.