CHARITY COMMISSION
FOR ENGLAND AND WALES

Guidance

Conflicts of interest: a guide for charity trustees

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Applies to England and Wales

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1. About this guidance

Conflicts of interest affect charities of all types and sizes. They can lead to decisions that are not in the best interests of the charity and which are invalid or open to challenge. Conflicts of interest can also damage a charity's reputation or public trust and confidence in charities generally. These harmful effects can be prevented where individual trustees can identify conflicts of interest, and the trustee body can act to prevent them from affecting their decision making.

All trustees have a legal duty to act only in the best interests of their charity. The Charity Commission expects them to take appropriate steps in line with this guidance to ensure that they can do this.

1.1 Conflicts of interest can affect any charity

Trustees' personal and professional connections can bring benefits to the work of a charity and they often form part of the reason why an individual has been asked to join the trustee body. However, they can give rise to conflicts of interest, to which the trustees must respond effectively.

The existence of a conflict of interest does not reflect on the integrity of the affected trustee, so long as it is properly addressed.

1.2 What does the Commission expect?

The Commission sees too many cases of unidentified or poorly handled conflicts of interest, many of which could have been prevented by better trustee awareness and stronger systems. It expects trustees to identify and address effectively any conflicts of interest that affect them or their charity.

1.3 Who should read this guidance and when does it apply?

This guidance applies to the trustees of all charities in England and Wales, registered and unregistered.

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

For a quick overview of the key issues it recommends reading the summary article on conflicts of interest (https://www.gov.uk/guidance/manage-a-conflict-of-interest-in-your-charity).

For a detailed explanation of the Commission's view of the law underpinning the guidance, please refer to the legal underpinning (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29) for this guidance.

This guidance is generally applicable to all types of trustee, including corporate trustees. The directors of charitable companies and the trustees of charitable incorporated organisations (CIOs) are also subject to some specific duties. There are summarised in Annex 2 (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees#sA2).

Although outside the scope of this guidance, which is only concerned with trustees, the trustees may also need policies to ensure any conflicts of interest affecting the charity's staff, particularly its senior staff, can be dealt with correctly. The principles are largely the same as those for trustees affected by a conflict of interest. However, unlike trustees, staff are normally paid and may receive other benefits from the charity as part of their remuneration. They should not be involved in any trustee decisions about the remuneration they receive.

The proper handling of conflicts of interest is an essential part of proper decision making by trustees, something which is covered in It's your decision: charity trustees and decision making (CC27) (https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making).

1.4 'Must' and 'should': what the Commission means

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

1.5 Technical terms used in this guidance

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. The Charities Act sets out the duties for trustees of CIOs.

Charities Act: this means the Charities Act 2011, as amended.

Charitable incorporated organisation (CIO): a charitable incorporated organisation, or CIO, is a new legal form for a charity. It is an incorporated form of charity which is not a company. The provisions of the Companies Act 2006 do not apply to CIOs unless the CIO regulations make such provision.

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, or could be seen to, 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 their 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.

Goods or services: this means services provided, or goods provided, or goods and services provided together.

Governing document: this means the legal document setting out a charity's objects and, usually, how it is administered. It may be a trust deed, constitution, articles of association, conveyance, will, Royal Charter, scheme of the Commission or other formal document.

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 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 (https://www.gov.uk/topic/running-charity).

Service 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 their charity.

2. Conflicts of interest: at a glance summary (legal requirement)

Trustees have a legal duty to act only in the best interests of their charity. They must not put themselves in any position where their duties as trustee may conflict with any personal interest they may have.

This means that they should handle conflicts of interest using the following steps:

2.1 IDENTIFY conflicts of interest

Trustees:

- each have an individual personal responsibility to declare conflicts of interest which affect them
- should have strong systems in place so that they are able to identify conflicts of interest

Section 3 (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees#s3) explains how to identify a conflict of interest.

2.2 PREVENT the conflict of interest from affecting the decision

Trustees must make their decisions only in the best interests of the charity. This means that they must consider the issue of the conflict of interest so that any potential effect on decision making is eliminated. How they do this will depend on the circumstances. In cases of serious conflicts of interest it may mean the trustees deciding to remove the conflict by:

- not pursuing a course of action

- proceeding with the issue in a different way so that a conflict of interest does not arise
- not appointing a particular trustee or securing a trustee resignation

Where trustees have decided against removal of the conflict of interest they must prevent it from affecting their decision in a different way. They:

- must follow any specific requirements in the law or the charity's governing document which deal with conflicts of interest and how they should be managed (legal requirement)
- should, where there are no specific governing document or legal provisions:
  - require conflicted trustees to declare their interest at an early stage and, in most cases, withdraw from relevant meetings, discussions, decision making and votes
  - consider updating their governing document to include provisions for dealing with conflicts of interest
- may, exceptionally, need to seek the authority of the 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

Conflicts of interest often arise because a decision involves a potential trustee benefit. Where this is the case:

- the trustee benefit must be properly authorised and (legal requirement)
- the trustees must follow any conditions attached to the authority which say how the conflict of interest should be handled (legal requirement)

Section 3 (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees#s3) and Annex 1 (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees#sA1) explain how to ensure that a proper authority is in place before any decision to confer trustee benefit is made.

2.3 RECORD conflicts of interest

Trustees:

- should formally record any conflicts of interest and how they were handled
- must, if they prepare accruals accounts, disclose any trustee benefits in the charity's accounts

Section 4 (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees#s4) explains the steps

that trustees can take to prevent the conflict of interest from affecting decision making and ensure that their decision is made only in the interests of their charity.

Trustees can use this checklist (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29) to help them address a conflict of interest.

3. 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. In practice this means that:

- 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 What is a conflict of interest? (legal requirement)

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

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.

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. The Commission's guidance It's your decision: charity trustees and decision making (CC27) (https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-

making) explains the principles that trustees should apply when making decisions affecting their 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.

Being prepared to respond to conflicts of interest
It is good practice for a charity's governing document to include provisions to deal with conflict of interest situations and if a governing document does not include such provisions, trustees should consider amending their governing document (https://www.gov.uk/government/publications/changing-your-charitys-governing-document-cc36).

It is also good practice to have a written conflicts of interest policy and register of interests as these can help individual trustees and the trustee body to identify conflicts of interest promptly. Annex 4 (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees#sA4) outlines some suggested content for inclusion in a conflicts of interest policy.

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

The trustee body 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.

3.2 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 with a duty or loyalty they owe to another organisation or person

The following 2 sections cover these in more detail.

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

Example 1: identifying trustee benefits
A charity has some empty office space and its trustees are considering letting it to a company owned by one of the trustees.

This would be a trustee benefit: it would involve a transaction with a business owned by a trustee. The trustees can only proceed with the transaction once they have a proper authority for the trustee benefit: in cases which involve a property transaction with a connected person, the trustees must get authorisation from the Commission and comply with the conditions in the Charities Act 2011 before proceeding.

Annex 1 (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees#sA1) gives more detail about trustee benefit and the legal rules that trustees need to be aware of.

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 their other interests.

For example, a trustee'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 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.

Example 2: identifying conflicts of loyalty
An individual is a trustee for 2 charities planning to bid for the same service provision contract.

This conflict of interest is a loyalty conflict. It doesn't involve benefit to the trustee, but the trustee's decision at either charity could be influenced by their knowledge of and duty to the other charity. This means that the trustee cannot fulfil their duty to either charity to make decisions only in its best interests.

Example 5 (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees#example-5) in section 4 shows how this conflict should be dealt with.

Trustees' other interests and loyalties can generate conflicts of interest from time to time, some of which pose a minor risk to the charity and some of which are more serious. The 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. The trustees of other types of charity should consider updating their governing document to include this type of authority. Even where trustees are relying on a governing document authority, they should ensure that they can demonstrate that they have taken their decision only in the best interests of the charity.

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. It is not possible to give a definitive view of when this is appropriate. It depends on the particular decision and relevant circumstances. The trustees must take all relevant factors into account and be ready to explain their approach if asked. The following examples illustrate some common situations and the considerations that may be involved.

Example 3: membership of another organisation
An educational charity is making a decision about delivering a programme of work at regional arts centres, including a centre where one of its trustees is a member.

This conflict is a conflict of loyalty because the trustee has a connection with the arts centre through their membership. However, the trustees may conclude that this is a low risk conflict of loyalty which, once declared, does not need to prevent the trustee from participating because:

- the trustee's connection to the arts centre is through membership only
- the trustee's membership is likely to have no bearing on their approach to the decision
- any benefits to arts centre members which result from the decision will only affect the trustee in the same way as other members

Example 6 (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees#example-6) in section 4 shows how this conflict can be dealt with.

Example 4: appointments to closely linked organisations
Where a trustee is appointed by:

- a local branch to the charity's national trustee body
- by a religious foundation to one of its schools

it is usually acceptable for the trustee to simply declare a conflict of loyalty and then participate in decisions.

Although there may be a decision at the charity that also affects the appointing body, the similarity of charitable purpose between the 2 organisations means that conflicts of loyalty which do crop up often present only low risks to the charity. However, the trustees should decide in each case how the conflict of loyalty should be handled and should ensure they can demonstrate that that any decision was taken only in the best interests of the charity.

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

It is a good idea to ensure that when elected or appointed, the trustees are fully trained in their responsibilities as trustees and that the appointing body is also made aware of these responsibilities.

There is more information for trustees who are school governors (https://www.gov.uk/government/publications/charities-and-charity-trustees-school-governors) or appointed by local authorities (https://www.gov.uk/government/publications/local-authorities-as-charity-trustees) or by a corporate foundation (https://www.gov.uk/government/publications/a-guide-to-corporate-foundations).

4. Preventing conflicts of interest from affecting decision making (legal requirement)

Having identified a conflict of interest, trustees must act only in the best interests of the charity. This means that they must consider the issue of the conflict of interest so that any potential effect on decision making is eliminated. How they prevent the conflict from affecting decision making will depend on the circumstances. This section of the guidance explains that:

- 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
- 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

The following steps describe how trustees can prevent a conflict of interest from affecting their decision making.

4.1 Declare conflicts of interest

Each trustee's legal duty to act only in the best interests of the charity means in practice that individual trustees who fail to declare any conflicts of interest will fail to comply with their trustee duties.

Although declaring conflicts of interest is primarily the responsibility of the affected trustee, the trustee body should ensure that they have strong systems 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 they are conflicted, they 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.

4.2 Consider removing the conflict of interest

Trustees must consider the issue of the conflict of interest so that any potential effect on decision making is eliminated. This means that in cases of serious conflicts of interest they may decide that removing the conflict of interest is the most effective way of preventing it from affecting their decision making and demonstrating that they have acted only in the best interests of the charity.

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

- are so acute or extensive that the trustees are unable to make their decisions in the best interests of the charity, or could be seen to be unable to do so
- are present in significant or high risk decisions of the trustees
- 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

In practice removing the conflict of interest is likely to mean:

- not pursuing the course of action
- proceeding with the issue in a different way so that a conflict of interest does not arise. This might mean deciding not to consider using a trustee's company to do some work for the charity if this would mean that the number of payments to trustees, although authorised, is at risk of introducing levels of conflict of interest which could be difficult to manage and to justify. It could, exceptionally, mean seeking the Commission's prior authority to a continuing and widespread conflict of interest
- securing the resignation of a trustee affected by a conflict of interest
- not making trustee appointments which will introduce a conflict of interest

There is more information about serious conflicts of interest and how they should be approached at Annex 3 (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees#sA3).

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 section of the guidance or at Annex 3 (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees#sA3) will allow them to demonstrate that their approach and decision were in the best interests of the charity.

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

Where trustees have decided against removing the conflict of interest, they must consider how to make their decision only in the best interests of the charity.

There are often specific requirements in the law, the charity's governing document, or the terms of an authority granted by the Commission which deal with how the conflict of interest must be handled. For example, where trustees are using the power in the Charities Act, which allows for the payment of trustees for the provision of goods or services to the charity in certain circumstances, the decision to do this must be made only by those trustees who will not benefit.

Trustees must follow any legal or governing document requirements which say how the conflict of interest must be handled. They should also be satisfied that doing so is an appropriate way of demonstrating that their decision was made only in the best interests of their charity.

The trustees should also consult and follow their own conflicts of interest policy if they have one.

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.

4.4 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.

The trustees should 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 Commission expects that these provisions will, as a minimum, require withdrawal from decision making by a trustee who stands to benefit from a decision.

4.5 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 on 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 their other interest poses a low risk to decision making in the charity's interests, or is likely to have only an insignificant bearing on their 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 the relationship 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 were 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.

Example 5: withdrawing where there is a conflict of loyalty
In example 2 (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees#example-2), a conflict of loyalty was identified for an individual who is a trustee for 2 charities planning to bid for the same service provision contract. The trustees should deal with the conflict of interest as follows.

Firstly, the trustee concerned has a responsibility to declare the conflict of interest at an early stage with each charity.

The trustees of each charity must consider the issue of the conflict of interest so that any potential effect on decision making is eliminated. It may mean deciding that the conflict of interest is so serious that it can only effectively be prevented by removal, which here is likely to mean the resignation of the trustee. This is only likely to be the case if the conflict of interest is likely to recur frequently or otherwise poses high risks to effective decision making.

If the trustees decide that the conflict is not so serious as to require removal, they must prevent the competing interest/duty which the trustee has from affecting their decision. Here, this means that the affected trustee should withdraw from the meeting and from all aspects of the discussion, decision-making and voting so that the remaining trustees can freely discuss and make a decision. However, in deciding their approach the trustees must follow any governing document or legal requirements which outline how conflicts of interest should be handled. They should also follow any processes in the charity's conflicts of interest policy. They should be satisfied that their handling approach is an appropriate way of demonstrating that their decision was made only in the best interests of the charity.

They should keep a proper record of their discussions and decision.

However they proceed, the trustees of each charity should be satisfied that the affected trustee understands that they 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.

Example 6: participating where there is a conflict of loyalty
In example 3 (https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees#example-3), a conflict of loyalty was identified for an individual who is a trustee of an educational charity, and a member of a local arts centre, where the charity is considering delivering a programme of work at the local arts centre. Example 3 also sets out the factors that may make this conflict low risk.

It can be helpful for trustees to have a conflicts of interest policy to help identify conflicts of loyalty that are low risk. If the trustees decide that the affected trustee has a conflict of loyalty that does not prevent them from making decisions in the best interests of the charity, even though the decision also concerns the arts centre, it is acceptable for the trustee simply to declare the interest before participating in the decision.

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. It is not possible to give a definitive view of when this is appropriate. It depends on the particular decision and relevant circumstances. The trustees should take all relevant factors into account and be ready to explain their approach if asked.

4.6 Record the conflict of interest

Keep a written record of the decision
The Commission expects the charity's written records to document any conflicts of interest and how the trustees have dealt with them. The usual way to record the trustees' decisions is in the minutes of their meetings.

Where there is a conflict of interest, the trustees should ensure that 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.

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.

The Commission recommends that, whether or not they are required to prepare accruals accounts, all charities should disclose benefits received by trustees in their annual accounts.

There is more information about charity accounts in Charity reporting and accounting: the essentials November 2016 (CC15d) (https://www.gov.uk/government/publications/charity-reporting-and-accounting-the-essentials-november-2016-cc15d).

5. Why it's important to follow this guidance

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

Where trustees don't identify or properly respond to a conflict of interest, there can be serious consequences for the affected trustee, the charity, and public trust and confidence in charities generally.

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.

The Commission has produced this guidance to help trustees approach their decision making properly where there is a conflict of interest. It expects them to use this guidance to fulfil their duty to act only in the best interests of the charity and to be able to provide a sufficient justification for their decisions in the event of challenge.

Where trustees fail to act properly or make a mistake the Commission 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 take regulatory action.

A. Legal consequences (legal requirement)

Failure to act properly where there is a conflict of interest is a breach of the trustees' legal responsibilities.

A transaction affected by a conflict of interest, where the trustees have not acted properly, could be challenged by the Commission or by an interested party. In some circumstances the transaction may be unsafe and capable of being invalidated or, in the worst case, might be void from the start.

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. This can be the case, even where the charity has benefitted from the arrangement. If the charity has also suffered a loss, the trustees may have to make good such loss to the charity.

B. Regulatory consequences
The Commission will intervene where it has concerns about trustee misconduct or mismanagement or if there is a risk to charity property.

Read about how the Charity Commission will assess any concerns (https://www.gov.uk/government/publications/complaints-about-charities) that come to its attention and when it may become involved.

The regulatory consequences of making a decision which is subject to a conflict of interest largely depend on the nature and severity of the conflict, its impact on the charity, and the ability of the trustees to remedy the situation and operate in line with their duties.

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 this guidance to correct their approach.

In these cases the Commission's minimum expectation of trustees is that they:

- 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 or develop a conflicts of interest policy, ensure that all trustees are made aware of its content and meaning, and fully implement the policy in the future

Corrective regulatory advice
Where the impact of the decision subject to the conflict of interest is higher the Commission will give corrective regulatory advice. Factors which may have a higher impact on the charity include conflicts of interest which are associated with

unauthorised trustee benefit, other loss of charity funds, bad publicity for the charity or potential damage to public trust and confidence in charities generally.

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 further use of the Commission's powers.

Using the Commission's powers
The Commission will intervene using its investigative powers in serious or 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 the Commission 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

- review or develop a conflicts of interest policy and ensure that all trustees are made aware of its content and meaning, and fully implement the policy in the future
- make a full record of the issue and how they have handled it

C. Reputational consequences including damage to public confidence in charities

Trustees should be aware of the significant negative effects that a conflict of interest can have on the charity's reputation and on public trust and confidence generally. If those outside the trustee body, such as the charity's funders or other supporters, have the impression that the trustees have acted in their own interests rather than those of the charity, this may have reputational consequences and affect future funding. When dealing with conflicts of interest, trustees should be aware of how the situation may appear to someone from outside the charity, and make sure that policies and procedures are in place which will allow trustees to demonstrate that such situations have been dealt with properly.

Annex 1. Trustee benefit - the legal rules that trustees need to be aware of (legal requirement)

Where there is a potential trustee benefit, it is important to remember that there are 2 issues which the trustees must address:

- acting only in the best interests of the charity to prevent the conflict of interest associated with the trustee benefit from affecting decision making
- ensuring that there is an appropriate authority in place before any decision conferring trustee benefit is made

The first of these is covered in this guidance. The second is summarised as follows:

- the law says that trustees can only benefit from their charity where there is an explicit authority, obtained in advance
- authority will come either from:
  - a clause in the charity's governing document
  - a statutory provision such as the power in the Charities Act which allows charities, in some circumstances, to pay trustees for additional goods or services they provide to the charity over and above normal trustee duties
  - the Commission
  - the court

The term trustee benefit includes ‘any’ payments or benefits to trustees or a connected person, apart from their reasonable out of pocket expenses. The term also covers situations where a trustee could receive property, loans, goods or services from the charity.

Authority is required where there is a possibility of benefit. This means that trustees must ensure that there is a proper authority for any situations where trustees could benefit, irrespective of whether there is any actual benefit to a trustee.

Where there is a proposed sale or lease of charity land to a trustee, or to a person or company closely connected with a trustee, this will need to be authorised by the Commission. This applies even if the disposal is at full market value.

The payment of reasonable expenses to trustees is not a trustee benefit, so it does not create a conflict of interest or require authorisation.

There is more information about trustee benefits and the requirement for authority in Trustee expenses and payments (CC11) (https://www.gov.uk/government/publications/trustee-expenses-and-payments-cc11).

Annex 2. The legal framework for charitable companies and CIOs

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.

Definition of a conflict of interest (legal requirement)

As from 1 October 2008, directors have been under a specific statutory duty to avoid a situation in which they have, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

The Commission considers that directors of charitable companies were already under a duty to avoid conflicts of interest prior to the implementation of this section.

Conflicts of interest include those arising where:

- a director, or a person connected with a director, has a personal financial interest in a transaction with the charity – the interest may be direct or indirect
- a director, or a person connected with a director, has a conflict of duty/loyalty
- there is even the possibility that a director's personal interests or duties/loyalties could affect their decision making

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

Note: Companies formed before 2008 may find the authorising provisions relating to conflicts of interest in the company's memorandum rather than in its articles of association. This meets the requirements of the Charities Act 2006.

Do directors of charitable companies need to amend the articles in order to comply with their duty to avoid unauthorised conflicts of interest?

The Commission's view is that this is not needed so long as provisions already exist for dealing with any conflicts of interest which do arise. However, it appreciates that some charities may wish to do so.

The Commission's model memorandum and articles of association (GD1) (https://www.gov.uk/government/publications/setting-up-a-charity-model-governing-documents) is compatible with the conflict of interest provisions of the Charities Act 2006.

Declaring conflicts of interest

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. The company's articles may require withdrawal from any discussion and decision where there may be a conflict between the director's interests and those of the charity.

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.

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

Legal requirement: where the provisions of the governing document are inadequate, 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.

Where the conflict involves a benefit to a director, which is not covered by the charities act power to pay trustees for goods or services provided to the charity, the directors must rely on an adequate power in the charity's governing document, or apply for Commission authority and demonstrate that the transaction is in the interests of the charity.

The duty to avoid conflicts of interest in the Companies Act 2006 extends to some transfers between an unincorporated charity and a charitable company. These include situations where a substantial asset that isn't cash is transferred from the unincorporated charity to the charitable company. There is likely to be a conflict of

interest where one or more of the trustees of the unincorporated charity are also directors of the charitable company. In these cases, the transfer can only take place with the prior written consent of the Commission.

In addition, where the transfer involves the transfer of liabilities (ie, pension liabilities or a mortgage) the trustees of the unincorporated charity, who are also directors of the charitable company, are likely to need Commission authority to make the decision to transfer the liabilities and the assets. This is because invariably the transfer of liabilities from the trustees of the unincorporated charity to the charitable company will involve the trustees of the unincorporated charity, who are directors of the charitable company being:

- afforded the benefit of the incorporated charity's limited liability status
- relieved of all or some of their former personal liability as trustees of the unincorporated charity
- given indemnities against any potential continuing liability

It is the authorisation of this trustee benefit which would potentially need Commission approval.

Companies House (https://www.gov.uk/government/organisations/companies-house) provides a wide range of guidance for company directors.

Charitable incorporated organisations (CIOs): key points about conflicts of interest in the Charities Act and CIO regulations

A charitable incorporated organisation, or CIO, is an incorporated form of charity which is not a company.

CIO trustee duties and responsibilities regarding conflicts of interest and trustee benefits largely reflect those which apply to other types of trustee. This guidance applies to CIO trustees, but they should also be aware of how their duties regarding conflicts of interest are specified in the Charities Act and the Charitable Incorporated Organisations (General) Regulations 2012 (the CIO Regulations).

Disclosure of conflicts of interest

In addition to setting out statutory duties for CIO trustees, the Charities Act says that a CIO trustee cannot benefit from an arrangement or transaction entered into by the CIO, if before the arrangement or transaction was entered into, the trustee did not disclose their interest to all of the other trustees.

As with other types of charity, there must be a proper authority for any benefit affecting a CIO trustee. Disclosure by a trustee of a conflict of interest does not authorise a trustee to benefit.

Participation in decisions where there is a conflict of interest

The CIO Regulations say that a CIO trustee who stands to benefit, whether directly or indirectly, from a transaction or arrangement with the CIO must not take part in the decision. This also applies to decisions by the CIO's members. The CIO Regulations say that the affected trustee or member must not be counted in the quorum for that part of the business. This duty does not apply where the transaction or arrangement cannot reasonably be regarded as likely to give rise to a conflict of interest.

Trustee benefits from a third party

CIO trustees must not accept a benefit from a third party that is given to them because of their position as a trustee or because of them doing, or not doing, something as a trustee. There is an exception where the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

The Commission has produced general information about CIOs (https://www.gov.uk/guidance/charity-types-how-to-choose-a-structure).

Annex 3. Serious conflicts of interest

There are some cases where trustee bodies are affected by such serious conflicts of interest that they are unable to make their decision in the best interests of the charity, or could be seen to be unable to do so. This section describes some of these situations and the factors that trustees should consider when approaching them. The examples and options given are not exhaustive.

Significant or high risk decisions of the trustees

This could be where there is:

- a conflict involving a significant financial interest where the trustees of a charity, that was founded by a family and has a family member trustee, are proposing to

sell the charity's shareholding in a family company

- a conflict of loyalty where the charity is in a significant dispute with another organisation and a trustee is a member of that organisation's governing body

Often these types of decision attract more external interest. It could be harder for trustees to clearly demonstrate or explain that their decision has been made independently of any private interest or competing duty. The very existence of the conflict of interest could be damaging to the charity's interest and reputation.

Here the trustees must consider:

- the issue of the conflict of interest so that any potential effect on decision making is eliminated - this may mean the trustees deciding to remove serious conflicts of interest

In the examples given, removal of the conflict of interest is likely to be achieved by asking the conflicted trustee(s) to resign so that the decision is not undermined by the conflict of interest. If the conflict of interest involves an element of benefit to a trustee who resigns, authority for the benefit would still be required even though s/he has resigned.

If they wish to proceed without removing the conflict of interest, the trustees should consider:

- obtaining independent expert advice about how they should respond to the conflict, including advice on whether any elements of conflict of interest or benefit to a trustee require authority
- getting advice from the Commission, in high risk cases, including advice on whether any elements of conflicts of interest or trustee benefit should be authorised
- appointing new trustees, who are not conflicted, to help decide the issue and demonstrate that the decision is being taken only in the best interests of the charity
- not making trustee appointments which would risk introducing further conflicts of interest

Effective decision making undermined

This could be where a situation develops at the charity which means that:

- the trustees cannot act because the majority of the trustees are conflicted on a particular issue - similarly, the charity might have a sole trustee such as a local authority or parish council which finds that in its trustee and council/authority role, it has an interest in 'both sides' of a transaction or decision
- a large proportion of trustees have interests which conflict with those of the charity - this might be where several of the trustees, or people or companies connected

with them, have links with each other

- the interests of one or more of the trustees is regularly in competition with those of the charity

Irrespective of the form a trustee body takes, it must make its decisions based on consideration of the charity's best interests alone.

Where conflicts of interest become too acute or extensive they can lead to serious problems. The need for individual trustees to withdraw regularly from discussions can mean that the charity loses the benefit of a rounded trustee contribution and also poses a challenge to quorate decision making. This situation can adversely affect the charity's reputation.

Here the trustees must consider:

- the issue of the conflict of interest so that any potential effect on decision making is eliminated - this may mean the trustees deciding to remove serious conflicts of interest

In the examples given, removal of the conflict of interest is likely to be achieved by asking trustees to resign if they are subject to significant conflicts, or by not proceeding with a proposed course of action which is affected by a conflict of interest. If the conflict of interest is connected to an element of benefit to a trustee, authority for the benefit would still be required even though s/he has resigned.

If they wish to proceed without removing the conflict of interest, the trustees should consider:

- obtaining independent expert advice about how they should respond to the conflict, including advice on whether any elements of conflict of interest or benefit to a trustee require authority
- getting advice from the Commission, in high risk cases, including advice on whether any elements of conflict of interest or trustee benefit should be authorised
- not making any further trustee appointments which would risk introducing a conflict of interest of this type or scale
- reviewing their trustee appointment provisions and recruitment practices so that more 'independent' people can be appointed

Inappropriate trustee benefits

This could be where:

- a trustee borrows money from, or lends money to, their charity on terms that cannot be justified in the charity's interests

- the level of payment made to a trustee, or person or organisation connected to a trustee, is not commensurate with the size of the charity or the nature of the work involved
- the number of trustees, or people or organisations connected to trustees, benefitting from the charity in some way is too high

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. Otherwise, it will refuse authority.

Where levels of payment to trustees are excessive or trustee benefits at a charity are widespread, this can create the impression that the charity is set up for the financial reward of its trustees rather than for the public benefit. The more trustees in receipt of benefits from a charity, even if authorised, the bigger the risk and potential disadvantage particularly in terms of managing the associated conflicts of interest and protecting the charity's reputation.

Here the trustees must consider:

- the issue of the conflict of interest so that any potential effect on decision making is eliminated - this may mean the trustees deciding to remove serious conflicts of interest

In the examples given, removal of the conflict of interest is likely to be achieved by not proceeding with a proposed course of action which is affected by a conflict of interest, or by asking trustees to resign if they are affected by significant conflicts. As above, where the conflict of interest is connected to an element of benefit to a trustee, authority for the benefit would still be required even though s/he has resigned.

If they wish to proceed without removing the conflict of interest, the trustees must:

- ensure that prior authority is in place for any trustee benefits

They should, to avoid serious problems:

- ensure, where any trustees are receiving a benefit, that each of the arrangements affecting trustees and the overall balance and extent of payments is clearly justifiable in the interests of the charity
- consider reducing the number of trustees, or people or organisations connected with trustees, in receipt of benefit - the Commission's starting expectation is that the total number of trustees, or connected people or organisations, receiving authorised payments or benefits from the charity are in a minority

If a charity appears to be becoming a vehicle for trustee payments, rather than for the public benefit, the Commission will use its powers to protect its assets.

Annex 4. Drawing up a conflicts of interest policy

Trustees should draw up a policy to suit the needs of their charity. The policy does not have to be complex, but it should be regularly reviewed and updated.

The Commission also recommends that trustees establish a register of interests. In recording all their other interests openly, any actual or potential conflicts of interest can be identified more easily by individual trustees and the trustee body. The register of interests should be regularly updated.

As a minimum, a conflicts of interest policy should:

- define conflicts of interest
- explain that trustees have a personal responsibility to declare conflicts of interest if they are to fulfil their legal duty to act only in the best interests of the charity
- give an account of what the charity's governing document says about conflicts of interest
- define all interests that trustees should declare, including business and personal interests and those of their spouse, partner, family and close relatives
- define trustee benefits and highlight the requirement to obtain legal authority before any transaction involving trustee benefit is undertaken
- include guidance on the procedures to follow when a trustee is subject to a conflict of interest, such as:
  - recording trustee interests in the charity's register of interests
  - declaring interests at the beginning of each meeting
  - removing the trustee concerned from the decision making process
  - recording details of the discussions and decisions made
- set out how and by whom the policy will be monitored and enforced
- be widely communicated and understood within the charity
- 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

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