

Conflicts of Interest

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INTRODUCTION

This guide is designed to help organisations identify how to avoid conflicts of interest and how to act appropriately if a conflict of interest does develop. This advice note sets out the legal background to conflicts of interest for the members of the governing body of a voluntary and community organisation (committee members). It also contains appendices with a sample conflict of interest policy and a sample declaration of interest form.

This advice note is designed particularly for charitable organisations as they have specific legal obligations in this area, however it can be used by any voluntary and community organisation whether a recognised charity or not. This advice note will help your committee/board to adhere to Principle 6 of the Code of Good Governance: Integrity

DEFINITION OF CONFLICTS OF INTEREST

A conflict of interest is any situation in which the personal interests of committee members seem to conflict with those of the organisation which they govern. This personal interest can be direct or indirect, and it can include the interests of parties connected to the committee member. A direct interest would arise in the following example:

ABC charity wants to contract for catering services and one of the members of the governing body owns a catering company. This member gets the contract. This is a direct interest as the benefit to the committee member is a direct financial benefit.

An indirect interest in the above example would be if the member of the governing body did not own the company but had shares in it and stood to benefit indirectly from any profit made.

Under company law a connected person includes the following:

- Family members (including spouse or civil partner, anyone with whom the director lives as a partner in 'an enduring family relationship', children and step children (both the director's own and his partner's) and the director's parents)
- Corporate bodies to which the director is connected; committee members of a trust of which the director (or a family member or a body corporate with which he is connected) is a beneficiary
- A director's business partner.

It is unlikely that conflicts of interest can be completely avoided but the conflict should be managed to avoid any adverse effect on the organisation and to promote maximum accountability and transparency in the organisation's affairs. Possible conflicts or perceived conflicts should be considered as well as actual conflicts as an organisation's name and reputation are very important.

THE LEGAL BACKGROUND TO CONFLICTS OF INTEREST

Members of the governing body of a charity are under a legal obligation to act in the best interests of the charity. It does not matter how the committee member is appointed, while they are on the governing body they have a duty to the organisation and this must take precedence. If this is unachievable or if the conflicts are so regular that the committee member's value to the organisation is significantly reduced, then they must resign from the post or cease the conflicting activity.

HOW SHOULD ORGANISATIONS DEAL WITH CONFLICTS OF INTEREST?

1. Identify the conflict

The first step is to identify a conflict of interest. This can be difficult as the issues can be quite complex. Some common instances of conflicts of interest are the following:

- Direct payment of committee members – most governing documents explicitly prohibit the payment of committee members although there may be circumstances in which HM Revenue and Customs may permit the inclusion of a clause into the governing document allowing payments to be made to a charity trustee for services rendered to his or her charity, other than trusteeship. The Revenue must be satisfied that the payment is in the best interests of the charity and the governing document should contain checks and balances to ensure that this power is limited to prevent abuse

Where a committee member or a person connected to the committee member receives payment, that committee member must declare a conflict of interest and not participate in any discussion around the payment. This should not stop the payment of legitimate out of pocket expenses to committee members to reimburse them for expenses they incur while carrying out their duties for the organisation. In addition, if a member of the committee is paid for any reason, best practice would suggest that this should be fully disclosed in the annual accounts and annual report

- Indirect benefit – as mentioned above, a conflict can occur where there is no direct benefit to the committee member, for example where the organisation employs the spouse of a committee member. In this case, particularly if both parties have joint finances, it is clear that there may be a benefit to the committee member
- Potential employment opportunities – a common issue that arises in the voluntary and community sector is when a committee member, or a person connected to the committee member, becomes interested in applying for a job within the organisation. In this case the person must declare an interest immediately; they should not take part in any discussion around the position, such as setting rates of pay, holidays, job description, etc, otherwise the organisation may leave itself open to accusations of unfairness within the recruitment process as one candidate could be deemed to have an unfair advantage
- Personal interests – this is a common issue that is highlighted in the following example:

ABC charity provides grants to older people to help them pay heating bills. A committee member of the charity is struggling to pay her heating bill and applies for a grant from the charity

In this example it is clear that the organisation's reputation could be damaged if it is felt that the committee member is benefiting from their place on the committee.

2. Manage the conflict

When a conflict of interest is identified, committee members should try to manage the conflict in the following ways:

- (a) **Declare a conflict** – once identified, a conflict of interest should be declared at the earliest opportunity
- (b) **Leave the meeting** – the committee member who declares a conflict should leave the meeting and the other committee members should decide whether their absence is appropriate or necessary
- (c) **Decide on next steps** – this depends on the conflict, if the committee decides that there is no conflict, the individual committee member can go into the meeting. However, if the conflict is of such a low level that it can be tolerated, then the organisation should determine how to best protect its interests. The committee member may for example absent themselves from parts of the meeting where the conflicting activity is discussed. On the other hand, if the conflicts are so frequent or serious that the committee member's usefulness is considerably lessened, they should resign from their post as committee member or cease the conflicting activity
- (d) **Record the process** – the process above should be clearly minuted and a register of interests should be held where committee members can record their interests.

GIFTS AND HOSPITALITY

Organisations should have policies to deal with personal gifts or hospitality. This protects the organisation against claims that such gifts or hospitality are intended to influence decisions within the organisation.

Organisations should have a specific policy to deal with this issue and generally employees, volunteers and committee members should follow these guidelines:

1. All gifts and hospitality should be declared and recorded in minutes or a register kept for this purpose. The information recorded should include its estimated value, the date on which it was received, who it was given by and the reason for the gift
2. Gifts and hospitality should never be solicited
3. Gifts and hospitality with nominal value can be accepted (the committee should set this level) but only if the gifts are not given or received with an expectation that there is an obligation owed as a result of the gift
4. If a gift is received that exceeds the nominal value, the gift should be returned to the sender, the market price should be paid or the gift should be donated to the organisation directly or to another charitable organisation
5. Gifts and hospitality intended to influence organisational decision making should **NEVER** be accepted.

SAMPLE CONFLICT OF INTEREST POLICY

Committee members should all be aware of conflicts of interest, what they could mean for the organisation and how conflicts of interest should be managed to protect the organisation. To ensure consistency, organisations should have a conflict of interest policy which should include a code of conduct for committee members, a register of interests, and a written procedure for identifying conflicts, for withdrawing from discussions if a conflict arises and for recording this process.

APPENDIX 1

[Organisation] CONFLICT OF INTEREST POLICY

This policy applies to [Executive] [Management] [Committee] [Board] members.

Why we have a policy

[Executive] [Management] [Committee] [Board] members have a legal obligation to act in the best interests of [Organisation] and in accordance with [Organisation's] governing document.

Conflicts of interest may arise where an individual's personal or family interests and/or loyalties to some other individual or group conflicts with those of [Organisation]. Such conflicts may create problems. They can:

- inhibit free discussion
- result in decisions or actions that are not in the interests of [Organisation]
- risk the impression that [Organisation] has acted improperly.

The purpose of this policy is to protect both [Organisation] and its [Executive] [Management] [Committee] [Board] members from any appearance of impropriety.

What to do if you face a conflict of interest

All conflicts of interest, whether actual or potential, should be declared promptly at the earliest possible opportunity:

- Any [Executive] [Management] [Committee] [Board] member who has a financial interest in a matter under discussion should declare the nature of their interest and withdraw from the room, unless they have dispensation to speak
- If an [Executive] [Management] [Committee] [Board] member has any interest in the matter under discussion, which creates a real danger of bias, that is, the interest affects the organisation which they represent, or a member of their household, more than the generality affected by the decision, they should declare the nature of the interest and withdraw from the room, unless they have dispensation to speak
- If an [Executive] [Management] [Committee] [Board] member has any other interest which does not create a real danger of bias, but which might reasonably cause others to think it could influence their decision, they should declare the nature of the interest, but may remain in the room, participate in the discussion, and vote if they wish
- If an [Executive] [Management] [Committee] [Board] member is in any doubt about the application of these rules, they should consult with the chairperson.
- If you fail to declare an interest that is known to the [company secretary or the] chairperson, the chairperson will declare that interest. It is recommended that [Executive] [Management] [Committee] [Board] members' interests are listed in a register, an example of which is given below:

APPENDIX 2

Sample Register of Interests

Name of [executive] [Management] [Committee] [Board] member	Description of interest	Does the interest affect the [committee member] or a connected person to the [committee member] ?	Is the interest current?
Example			
Mr James Smyth	Owner of consultancy firm	Spouse of board member	Current
Ms Jane Rowan	Board member of a development group	Board member	Former committee member, retired in February 2004
Mr Roland Brown	Owner of events management company	Spouse of board member	Current

The declaration of interests

Accordingly, we are asking **[Executive]** **[Management]** **[Committee]** **[Board]** members to declare their interests, and any gifts or hospitality received in connection with their role in **[Organisation]**.

A declaration of interests form is provided for this purpose, listing the types of interest you should declare.

To be effective, the declaration of interests needs to be updated at least annually and also when any changes occur.

If you are not sure what to declare, or whether/when your declaration needs to be updated, please err on the side of caution.

If you would like to discuss this issue, please contact the **[company]** secretary or the chairperson for confidential guidance. Interests will be recorded on **[Organisation]**'s register of interests, which will be maintained by the **[company]** secretary. The register will be accessible by **[Executive]** **[Management]** **[Committee]** **[Board]** members and the **[company]** secretary.

APPENDIX 3

Decisions taken where an **[Executive]** **[Management]** **[Committee]** **[Board]** member has an interest

In the event of the **[Executive]** **[Management]** **[Committee]** **[Board]** having to decide upon a question in which an **[Executive]** **[Management]** **[Committee]** **[Board]** member has an interest, all decisions will be made by vote, with a simple majority required. A quorum must be present for the discussion and decision. Interested parties will not be counted when deciding whether the meeting is quorate. Interested **[Executive]** **[Management]** **[Committee]** **[Board]** members may not vote on matters affecting their own interests.

All decisions under a conflict of interest will be recorded and reported in the minutes of the meeting.

The report will record:

- the nature and extent of the conflict
- an outline of the discussion
- the actions taken to manage the conflict.

Independent external moderation will be used where conflicts cannot be resolved through the usual procedures.

Data Protection

The information provided will be processed in accordance with data protection principles as set out in the Data Protection Act 1998. Data will be processed only to ensure that **[Executive]** **[Management]** **[Committee]** **[Board]** members act in the best interests of **[Organisation]**. The information provided will not be used for any other purpose.

FOR FURTHER INFORMATION, PLEASE CONTACT:

NICVA Governance and Charity Advice Service
61 Duncairn Gardens
Belfast BT15 2GB
Tel: 028 9087 7777
Fax: 028 9087 7799
Email: cas@nicva.org
Website: www.nicva.org

All of NICVA's advice notes, as well as the most up to date information about the implementation of company and charity law, can be downloaded from www.nicva.org.

NICVA's governance and charity advice staff can assist with redrafting memorandum and articles of association into the new form articles to include the latest provisions of the Companies Act 2006 as well as offering specialised training on The Duties of the Directors of a Charitable Company.

Companies House

1st Floor, Waterfront Plaza
8 Laganbank Road
Belfast BT1 3LR
Tel: 0845 604 8888
Website: www.companieshouse.gov.uk

Since 1 October 2009, Companies Registry amalgamated with Companies House to form Companies House Belfast. Since this date there has been a new set of company forms which are available for download from the regulator's website. Companies House also produces a range of online guidance notes.

www.icsa.org.uk

Institute of Chartered Secretaries and Administrators

Useful guidance notes for companies including the use of electronic communications.

www.diycommitteeguide.org

The Code of Good Governance

Online governance resources mapped to the principles of the Code of Good Governance.

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