

Model Conflict of Interest Policy

This ICSA Guidance Note has been written so that a charity of any size can develop the information to adapt to their own organisation's needs. This document is not exhaustive but should provide sufficient detail to enable the reader to think about the governance arrangements within their own charity, and apply that aspect of best practice that is most appropriate. It is good practice for each charity to undertake a periodic review of their governance arrangements as the charity grows and evolves, and where appropriate, amend policies, procedures, and its governing document¹ to ensure that they remain fit for purpose and are structured in the most effective way to meet the charity's objects.

ICSA Guidance Notes expand upon and consolidate the principles highlighted in *The Code of Governance for the Voluntary and Community Sector*.² Throughout the series, the Institute believes that the Guidance Notes reflect current best practice in this area of charity governance, and provides assistance for those charities that are in a position to enhance their governance arrangements.

This Guidance Note covers charities registered in England and Wales. Whilst principles of good governance should transcend national borders, it is important to bear in mind the specific differences in charity legislation for those charities operating in Scotland, Northern Ireland, and elsewhere.³

For the purposes of these Guidance Notes, the ICSA assumes that the charity takes advantage of a paid charity secretary that is not the chief executive officer of the charity, where staff are employed.⁴

Overall Purpose

The aim of this Guidance Note is to provide charities with a generic model document that can be amended to suit the needs of individual organisations, whilst addressing the fundamental issues that arise from real and perceived conflicts of interest.

It should be noted that the benefit derived by those trustees who are users of the charity's services, should not receive any added benefit over and above that received by any other user or beneficiary of the charity.

Please feel free to adapt the following model policy to suit the needs of your organisation.

This policy applies to *[trustees]* *[trustees and senior staff]* *[trustees and all staff]*.

Why we have a Policy

Trustees have a legal obligation to act in the best interests of *[name of the charity]*, and in accordance with *[the charity's]* governing document, and to avoid situations where there may be a potential conflict of interest. *[Staff and volunteers have similar obligations]*.⁵

Conflicts of interests may arise where an individual's personal or family interests and/or loyalties conflict with those of *[the charity]*. Such conflicts may create problems; they can:

1 There are specific actions that must be taken in order to change a charity's governing document depending on the corporate structure of the organisation; in all cases changes to the charity objects will require approval from the Charity Commission. See ICSA Guidance Note 070726 for further details on changing a charity's governing document.
2 *The Code of Governance for the Voluntary and Community Sector* can be downloaded from www.governancehub.org.uk.
3 Further Guidance Notes for charities registered and operating in Scotland and Northern Ireland will be available in due course from the ICSA website.
4 Further details on the role of the charity secretary can be found in ICSA Guidance Note 070702.
5 Further guidance can be found in the Charity Commission's Operational Guidance *Trustee Responsibilities* – www.charitycommission.gov.uk/supportingcharities/trustee1.asp

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

The aim of this policy is to protect both the organisation and the individuals involved from any appearance of impropriety.⁶

The Declaration of Interests

Accordingly, we are asking *[trustees]* *[trustees and senior staff]* *[trustees and all staff]* to declare their interests, and any gifts or hospitality received in connection with their role in *[the charity]*. 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 charity secretary *[or _____]* for confidential guidance.

This register of interests shall also be used to record all gifts of a value over *[£xx]* received by the trustees and staff.

Interests and gifts will be recorded on the charity's register of interests, which will be maintained by *[the charity secretary]*. The register will be accessible by *[level of access, noting any statutory requirements applicable]*.

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 *[trustees]* *[trustees and senior staff]* *[trustees and all staff]* act in the best interests of *[the charity]*. The information provided will not be used for any other purpose.⁷

What to do if you face a Conflict of Interest

If you are a user of *[the charity's]* services, or the carer of someone who uses *[the charity's]* services, you should not be involved in decisions that directly affect the service that you, or the person you care for, receive(s). You should declare your interest at the earliest opportunity and withdraw from any subsequent discussion. The same applies if you face a conflict for any other reason.

You may, however, participate in discussions from which you may indirectly benefit, for example where the benefits are universal to all users, or where your benefit is minimal.

If you fail to declare an interest that is known to *[the charity secretary]* and/or *[the chair of the board]*, the *[charity secretary]* or *[chair]* will declare that interest.

Decisions taken where a Trustee or Member of Staff has an Interest

In the event of the board having to decide upon a question in which a trustee or member of staff has an interest, all decisions will be made by vote, with a *[simple majority]* *[two thirds 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 board members may not vote on matters affecting their own interests.

⁶ Reference should be made to the Charity Commission's Operational Guidance *A Guide to Conflicts of Interest for Charity Trustees* and the ICSA's Best Practice Guide *Managing Conflicts of Interest in the Not-for-Profit Sector* (Revised 2007).

⁷ See the Charity Commission's Operational Guidance *Data Protection 1998 – The Provisions of the Data Protection Act 1998*, OG 58 A3 February 2002 for further information.

All decisions under a conflict of interest will be recorded by *[the charity secretary]* 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.

Where a trustee benefits from the decision, this will be reported in the annual report and accounts in accordance with the current Charities SORP.

All payments or benefits in kind to trustees will be reported in the charity's accounts and annual report, with amounts for each trustee listed for the year in question.⁸

Where a member of *[the charity's]* staff are connected to a party involved in the supply of a service or product to the charity, this information will also be fully disclosed in the annual report and accounts.

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

(Organisations should add any further requirements that relate to the nature of the organisation's work.)

Managing Contracts

If you have a conflict of interest, you must not be involved in managing or monitoring a contract in which you have an interest. Monitoring arrangements for such contracts will include provisions for an independent challenge of bills and invoices, and termination of the contract if the relationship is unsatisfactory.

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⁸ The Charities SORP 2000 requires the full disclosure of all 'related party' transactions with any third party that may inhibit the charity being able to pursue its separate interests, paragraph 166 provides more detail. The Charity Commission strongly recommends that all trustee payments should be disclosed in an appropriate manner, see CC11 – *Payment of Charity Trustees*.