



## Managing Conflicts of Interest

Can charity trustees be paid?

Can I be a trustee for two charities working in the same area?

Should we have councillors/service users on our board?

I am a trustee of a charity; can I apply to be a staff member if there is a job opening?

Can my wife/husband/son/daughter be employed by the charity I am a trustee of?

I am the founder of a charity; can I be the CEO and the chair of the board of trustees?

My spouse and children are all a part of the Board of Trustees. Is this ok?

I am a local commissioner and also on a trustee board. Will this be a problem?

These are just some of the many questions you need to consider carefully when working in the charitable sector.

*'A conflict of interest exists when a member of a governing body has any interest, duty or obligation which may directly or indirectly conflict with the duty they owe the organisation. {This includes a member of the governing body or a **connected person!**}*

Russell-Cooke Voluntary Sector Legal Handbook, 3<sup>rd</sup> edition

### Back to basics!

Governing body members provide leadership to their organisation and make sure it is doing what it set out to do as stated in their charitable objects. They have a role of overall control of the organisation. Most governing body members are giving their time for free. The concept behind voluntary trusteeship is the fact that trustees should be fully objective over an issue and consequently money, or a benefit of any kind could bias their judgment to make decisions for the benefit of the public.

Conflicts are inevitable and will crop up over time. The important thing is to know how to recognise them and know how to manage them!

## Why is it important to deal with conflicts of interest?

Trustees have a duty to always act in the best interests of the charity and its beneficiaries. When issues outside the charity conflict with a trustee's duties, they are in a *conflict of interest* which could affect their decision making.

For example, a trustee's decisions could be influenced if they:

- receive payment for some work they do for the charity
- work for a local authority that is thinking of funding the charity
- are a charity beneficiary and the trustee board is considering changing its services

If a conflict of interest isn't managed properly, it can create problems for your charity, including:

- invalidating your decisions in the eyes of the law
- calling into question the motives behind trustees' decisions
- risking the charity's reputation
- preventing trustees from speaking freely at meetings

(Charity Commission)

## How to recognise a conflict of interest?

A common conflict of interest charities face involves trustees receiving some sort of benefit from their charity. These situations include trustees receiving:

- **direct financial gain** – for example if the charity awards a contract to a business the trustee owns
- **indirect financial gain** – such as a trustee's partner being employed by the charity
- **non-financial gain** – this could happen when a trustee is a user of the charity's services

## Conflicts of Duties or Loyalties

These are when a governing body member is 'wearing two hats' and has duties in both roles which conflict with each other. Conflicts of duties or loyalties often do not involve a financial interest to the individual.

For example:

- being an employee or governing body member of an organisation, or of its subsidiary or parent body;
- being a governing body member of another or employee of another organisation;
- professional, advisory, counselling, patient or client relationships;
- family or couple relationships;
- being connected with a body that provides funding to, competes with, or purchases goods or services from the organisation i.e. a local authority commissioner who will be part of the decision making panel for commissioning services, also being on the board of an organisation who wishes to put in a tender to be commissioned for those services.

## Legal Principles

Under charity law, charity trustees have duties

- to further charitable purposes
- to act in the best interests of the charity
- trustees cannot receive a benefit from the charity, direct or indirect, unless authorised by
  - the governing document

- the law
- the Charity Commission or the courts

Under company law, directors have a duty to avoid a conflict of interest or duty/loyalty unless it is authorised by

- the Articles
- the Commission or the court
- authorised by the un-conflicted directors using a constitutional power (does not apply where it relates to direct or indirect personal benefit)

There are special rules for CIO's on conflicts of interest.

## Dealing with conflicts of interest

Conflicts of interests will always crop up over the lifetime of any organisation and as long as they are managed properly do not have to become a problem.

There are some simple ways to manage most conflicts. In the majority of cases conflicts can be dealt with easily, real problems only arising if the number or type of conflicts inhibits the decision making of the governing body and the individual's ability to be part of decision making.

Trustees need to demonstrate that the conflict did not/will not affect decision making.

## The tabloid test

A straightforward test to know if you are likely to be dealing with a conflict of interest is the tabloid test. How would this look if the situation was reported by a journalist determined to make the story look as bad as possible? If it looks like a conflict of interest, it is very likely to be one!



## What to do if we identify a conflict?

Ideally, you would want to deal with the conflict of interest at the early stages.

If a trustee has a conflict of interest, they need to declare this to the other trustees straight away. It is then up to the board to decide whether that member can be part of discussions and the decision as normal, just part of discussion but NOT the decision or if they must step out of the room and not be part of any meetings or discussions on that subject.

While acting as a charity trustee his or her first duty to the charity should be paramount: all other loyalties must be put to one side. It becomes challenging when some trustees have been appointed in the first place because of a personal or professional situation they are in (beneficiaries, councillors, staff member of a competitive organisation).

If a trustee has a conflict of interest which creates a real risk of being influenced (or could be perceived to do so) they should withdraw from the relevant part of the meeting where the decision is to take place.

If this is not possible, then the organisation should engage its procedures on conflicts of interest. If this is simply not possible, or if the conflicts are so frequent as to limit a trustee's usefulness as a trustee, then they must stand down from one of the posts.

There are other situations that are not allowed - such as payment of trustees - that could only be an exception to the rule with a special authorisation from the Charity Commission and allowed by the charity's governing document. You can find out more about the payment of trustees on the Charity Commission website: [Trustee expenses and payments \(CC11\)](#)

## Adopt measures to ensure you manage conflicts of interest before they crop up!

There are simple steps that you can take as a board that will ensure you know how to react when conflicts appear.

- [Adopt a conflict of interest policy](#)
- Ensure there is full disclosure before appointment
- Keep a register of interest – update this annually
- Declare your interests at board meetings and be open to discuss conflicts of interest in the board room – have a section on every agenda
- Ensure you keep track of those discussions in your minutes!
- And last but not least, develop an organisational culture where stepping outside of the board room doesn't make people feel uncomfortable or wounded.

Remember:

- ✓ follow provisions in your governing document
- ✓ follow your Conflicts of Interest policy and procedures
- ✓ follow good practice
  - withdraw from discussion
  - stay to inform discussion
  - don't vote
  - don't include in quorum
- ✓ If a trustee benefits has it been authorised?
- ✓ Record in minutes
  - Which trustees declared an interest
  - Whether these are conflicts
  - How they were managed
  - Outline of discussion
  - Reasons why the decision taken was in the best interests of the charity
- ✓ Go by procedure in governing document if a written resolution.

Note: conflicts of interest do not just affect charities; this briefing will also be useful for companies, CIO's CIC's and other legal forms of not-for-profit organisations.

## Support

If you would like any support with conflicts of interests or any other issues facing your organisation, please contact the Development Team at Community Southwark:

[development@communitysouthwark.org.uk](mailto:development@communitysouthwark.org.uk) / 020 7358 7020.

## Resources

- [Association of Chairs](#)
- [Charity Commission](#)
- [Charity Commission guidance on managing conflict of interest](#)
- [Charity Commission guidance on payment and expenses for trustees](#)
- [Charity Commission guidance on trustees making decisions](#)
- [Charity Commission Guidance: Finding New Trustees](#)
- [CIC Regulator](#)
- [Code of Good Governance](#)
- [Companies House](#)
- [Directory of Social Change](#)
- [Get Legal](#)
- [Governance Hub](#)
- [Governance pages-Conflict of interest policy templates](#)
- [HMRC](#) (Her Majesty's Revenue and Customs)
- [ICAEW](#) (The Institute of Chartered Accountants in England and Wales)
- [ICSA](#) (The Institute of Chartered Secretaries and Administrators)
- [Know How Non Profit](#)
- [Know How Non Profit Study Zone](#)
- [Law Works](#)
- [LVSC](#) (London Voluntary Service Council)
- [NAVCA](#) (National Association for Voluntary and Community Action)
- [NCVO](#) (National Council for Voluntary Organisations)
- [NCVO Trustee Bank](#)
- [Olmec](#)
- [Russam GMS](#)
- [Russell Cooke LLP](#)
- [Sandy Adirondack](#)
- [Small Charities Coalition](#)
- [Social Enterprise UK](#)
- [The Guardian Trustee Jobs](#)
- [Third sector- a checklist: a trustee facing a conflict of interest](#)
- [Trustee Works](#)
- [Trustees Unlimited](#)
- [Young Charity Trustees](#)