

Conflicts of Interest

All trustees have a legal duty to act only in the best interests of the charity.

Trustees' personal and professional connections can bring benefits to the work of a charity, often forming part of the reason why an individual was asked to join the trustee body. However, those same reasons can give rise to conflicts of interest.

Related Parties – Think much wider than yourself

A connected person, or 'related party' is someone to whom you are related or closely connected, where personal and or business interests may cross-over.

Usually therefore, you are looking at a 'related party' to include a charity's trustees, their close family members and those entities which they (the trustee or their close family) control or in which they have significant interest, either directly or indirectly.

What is Expected of Trustees?

At a glance, trustees have a legal duty to act only in the best interest of the charity. Hence they must not put themselves in a position where their duties as a trustee may conflict with any personal interest they (or their related party connections) have.

Of course, in reality many trustees may end up with a conflict. The key is to be aware of any conflict and manage it effectively.

How do you Manage Conflicts? The Legal Requirements

To manage a conflict, trustees should use the following steps:

1 Identify conflicts of interest:

- Each trustee has an individual personal responsibility to declare conflicts of interest which affect them.
- Trustees should have strong systems in place, so they are able to identify conflicts of interest.

2 Prevent the conflict of interest from affecting the decision. This might include:

- Not pursuing a course of action.
- Proceeding in a different way so that the conflict of interest does not arise.
- In certain circumstances, not appointing a particular trustee, or securing a trustee resignation may be appropriate.

3 Record the conflict of interest:

- Trustees should formally record any conflicts of interest and how they were handled.
- Trustees must also (where accruals accounts are being prepared) disclose any trustee benefits in the charity's accounts.

Conflicts of interest can arise with the individual trustee themselves, or as a result of a close connection, a 'related party'.

Trustee related parties = Parents, siblings, spouse, children.

Identifying Conflicts of Interest can be the hard part:

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; or
- A trustee's duty to the charity may compete with a duty or loyalty they owe to another organisation or person.



Can Trustees Benefit from their Charity?

The obvious answer here is no. However, in fact trustees can benefit from their charity, where there is an explicit authority in place before any decision conferring trustee benefit is made.

Of course, any payments made to trustees must still be to the benefit of the charity and be a suitable use of charitable funds.

Some examples of benefits to trustees are where the trustees decide to:

- Sell, loan or lease charity assets to a charity trustee;
- Allow the charity to 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 with the charity, even if that trustee has recently resigned, or is employed by the charity's trading subsidiary company;
- Pay a trustee, or a person, or a company closely connected to a trustee for providing a service to the charity. This includes anything that would be regarded as a service, including legal, accountancy or consultancy services, through to maintenance work or even things like painting and decorating;
- Employ a trustee's spouse, or other close relative at the charity or the charity's trading subsidiary company;
- Make a grant to a service user trustee, or a service user who is a close relative of a trustee; or
- Allow a service user trustee to influence service provision to their exclusive advantage.

Therefore, as long as the charity has permission to benefit/ pay trustees within their governing document and they take actions to identify, prevent and record the conflict of interest as the issue is being decided upon, then trustees may decide that it is in the charity's best interest to allow this.

Preventing the Conflict From Affecting the Decision Making

Having identified a conflict of interest, trustees must then only act in the charity's best interest. This means that trustees must consider the issue of the conflict so that any potential effect on decision making is eliminated.

- In practical terms this means that the conflicted trustee must:
- Declare the conflict to the wider board.
- The wider trustees must then consider removing the conflict of interest.
- The trustees must follow their charity's governing document and the law.

- Where the trustee benefit is authorised in advance, the affected trustee must be absent from any part of any meeting where the issue is discussed. Note the trustee affected should not vote or be counted in deciding whether a meeting is quorate.

Record the Conflict of Interest

The Charity Commission and the OSCR expect the charity's written records to document any conflicts of interest and how the trustees have dealt with them. The usual way is to record the trustees' decisions in the minutes of their meetings and where there is a conflict, the written decision should record:

- 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; and,
- How the trustees took the decision in the best interest of the charity.

How do I know if I am doing a good job?

- Do you check for conflicts at the start of each meeting?
- Do you ensure that trustees think about their wider connections, including family and business interests?
- Do you fully record (in writing) any conflicts and discussion in dealing with the issue?
- Are you aware of what your charity's governing document says about trustee benefit?

Did you know?

- The Charity Commission's main guidance is document CC29 "Conflicts of interest: a guide for charity trustees".
- Trustees can be paid by or can receive benefit from the charity.
- Conflicted trustees, who have withdrawn from a decision, cannot be counted when ensuring the meeting is quorate.
- Trustees can be conflicted due to their wider family, their own business interests and their wider family's business interests.

How we can help

Review your charity's procedures about how conflicts of interest must be handled (create one if it doesn't already exist) and consult your charity's governing document. If you would like any assistance with developing your conflict of interest procedures, please don't hesitate to get in touch with your local MHA member firm.

If you would like to discuss any matter arising from this article please contact MHA on info@mha-uk.com or your usual MHA contact.

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