

Conflicts of interest management: the Charity Commission becomes more prescriptive

For many years, the Charity Commission's guidance on the management of conflicts of interest and conflicts of duty was relatively light-touch. The guidance focussed on situations where a trustee stood to become involved in some financial transaction with the charity or obtain a benefit.

This has become one of the main focuses of the Commission's regulatory activity. Their recently issued revised guidance on the management of conflicts of interest is considerably more prescriptive than the previous guidance.

Implications of the new Charity Commission guidance

The Commission's approach is now more directive as follows. Trustees should only be allowed to participate in the discussion on an issue where they are conflicted if the conflict is likely to have only insignificant bearing on his or her approach to the issue. If the charity is a company, this approach must be also allowed by the provision in the articles.

Trustees need to be aware that the presence of a conflicted trustee can affect trust between trustees and could inhibit free discussion. Trustees need to consider a range of solutions to conflicts of interest and conflicts of duty, such as eliminating the conflict by removing the trustee. This will require the resignation of the trustee if the conflict is likely to recur or poses a high risk to effective decision making. In less serious conflicts, the trustee needs to prevent the competing interest or duty from affecting their decision. The affected trustee should withdraw from a quorum, as well as from all aspects of the discussion, decision making and voting.

Minutes should be kept detailing how the conflict is handled. The minutes should document:

- the nature of the conflict;
- the name of the trustee or trustees affected;
- whether the conflict was declared in advance;
- an outline of the discussion;
- confirmation that the person withdrew from the discussion; and
- how the trustees took a quorate decision in the best interests of the charity

If trustees have acted outside the terms of the charity's governing instrument or their law, that decision may not be valid and could be challenged by the Commission or interested parties.

The minimum requirements for conflicts of interest policies include:

- defining the nature of different sorts of conflict;
- explaining the legal duties of trustees;
- setting out what the charity's governing document says about management of conflicts;
- defining all the interests trustees need to declare;
- setting out the procedures to follow when the trustee is affected by a conflict;
- confirming how and by whom the policy will be monitored and enforced;
- communicating the policy widely within the charity; and
- placing the policy within the framework of a trustee handbook.

Actions to be taken in consequence of the new guidance

The following are suggested actions in light of the new advice:

1. is the conflict of interest policy up to date and compliant?
2. do constitutional provisions provide clear guidance on how conflicts are to be managed?
3. are trustees' interests and those of all their connected parties recorded in a register and disclosed to the Board?
4. have unconflicted trustees discussed, agreed and recorded how particular conflicts are to be dealt with?
5. where does responsibility for implementing conflict interest management lie and how is compliance monitored?
6. have the Board had up to date training on the issues?

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