

## **Conflicts of interest**

### **Charity Commission publishes revised guidance**

The Charity Commission has published revised guidance on conflicts of interest. While the legal position remains the same, Sam Younger, Chief Executive of the Charity Commission, has commented on the tougher tone of the guidance and has stated that the Commission expects trustees to take more robust action when handling conflicts of interest. By choosing to issue this guidance when operating on minimal resources, it is clear that the Commission views conflicts of interest as a priority and will be adopting a more forceful approach when dealing with charities that fall foul of the rules.

#### **What is a conflict of interest?**

The Commission's updated guidance defines a conflict of interest as "any situation in which a trustee's personal interests or loyalties could, or could be seen to, prevent them from making a decision only in the best interests of the charity."

Conflicts can either arise where there is the possibility of a trustee gaining a personal benefit in a situation, or where they have a competing loyalty to another organisation or person. It is important when considering conflicts of interest to remember that the duties do not simply apply to financial benefit or pecuniary interests, but apply to any form of duty or obligation, transaction, interest, situation, or receipt of information which creates a conflict.

It should also be noted that the trustee themselves need not be the person directly gaining the benefit in order for a conflict to occur. If a person connected with the relevant trustee may gain a benefit, this will also satisfy the test. Persons connected include family members, relatives, business partners or businesses in which a trustee has an interest.

#### **What to do once a conflict of interest is identified**

Trustees are under a legal obligation to act in the best interests of the charity. Consequently, if one trustee's decision making ability is impaired by a conflict of interest, this must be addressed and remedied.

We recommend having a conflicts of interest policy and ensuring that the terms of this policy, along with the relevant provisions in your governing document, are fully understood by all trustees. All trustees should complete a register of interests and the register should be disclosed to the full board. You should ensure that trustees really understand what constitutes an "interest" in this context as often sheets are returned blank without appropriate thought or understanding of the issue.

The new guidance states that trustees should have a standard agenda item at the beginning of each meeting to declare any actual or potential conflicts of interest. Best practice dictates that any possible conflicts of interest (even if trivial) should be "pre-declared" by trustees.

Once a conflict is declared, the trustees should consider how best to proceed in order to minimise the impact of the conflict and ensure that they act in the charity's best interests. This may involve removing the relevant trustee from the decision making process, pursuing an alternative course of action that will not entail any conflict, or, in extreme cases, necessitate the resignation of the conflicted trustee.

### **What to do after the conflict of interest is dealt with**

The charity should keep written records of their board meeting minutes, to show how the trustees dealt with any conflicts of interest that arose. Trustees thereby ensure that should any of their decisions later be questioned, they can respond with confidence (and evidence) that they acted in the charity's best interests.

If anything was learned through the process which could improve how conflicts are dealt with in future, this should be written into the charity's conflicts of interest policy.

### **What happens if a charity falls foul of the rules?**

If a conflict of interests is allowed to influence the trustees' collective decision making so that they do not act in the charity's best interests, the trustees have breached their legal duty. Accordingly, they could be made to repay any sums paid out by the charity or any loss suffered by the charity. Furthermore, the Commission or another interested party could challenge the actions of the charity and the relevant decision could be declared void or it could be invalidated.

The Commission has indicated that it will only take such action in serious cases and that in less serious cases it will expect the charity to correct their approach using Commission guidance.

Aside from the considerations above, the reputational consequences are potentially huge.

### **Guidance on governance**

For guidance on how to manage conflicts of interest or governance in general, please contact [James Sinclair-Taylor](#), [Andrew Studd](#) or [David Mears](#).

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