

Conflicts of Interest

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1. Background

Trustees' personal and professional connections can bring benefits to the work of a charity and they often form part of the reason why an individual has been asked to join the trustee body. However, they can give rise to conflicts of interest, to which the trustees must respond effectively.

The existence of a conflict of interest does not reflect on the integrity of the affected trustee, so long as it is properly addressed.

In the guidance, where the word 'must' is used it is a specific legal or regulatory requirement affecting trustees. Trustees must comply with these requirements. **L**

The word 'should' is used for items regarded as minimum good practice, but for which there is no specific legal requirement. Trustees should follow the good practice guidance unless there is a good reason not to.

This guidance is specifically for Members and Directors (collectively termed 'trustees') of the Diamond Learning Partnership Trust (DLPT), but it is good practice for all governors to comply with the guidance.

Further information can be obtained from the publication 'Conflicts of interest: a guide for charity trustees' which is available on the Charity Commission website or please ask the CEO for a copy.

2. The Importance of this Guidance

Where trustees do not identify or properly respond to a conflict of interest, there can be serious consequences for the affected trustee, the charity, and public trust and confidence in charities generally.

Where trustees have acted outside the terms of the charity's governing document or the law, their decision may not be valid. It could be challenged by the Commission or by an interested party, such as a beneficiary of the charity.

Failure to act properly where there is a conflict of interest is a breach of the trustees' legal responsibilities.

3.Conflicts of Interest-Summary

L Trustees have a legal duty to act only in the best interests of their charity. They must not put themselves in any position where their duties as trustee may conflict with any personal interest they may have.

This means that they should handle conflicts of interest using the following steps:

3.1 IDENTIFY conflicts of interest

Trustees:

- each have an individual personal responsibility to declare conflicts of interest which affect them
- should have strong systems in place so that they are able to identify conflicts of interest

3.2 PREVENT the conflict of interest from affecting the decision

Trustees must make their decisions only in the best interests of the charity. This means that they must consider the issue of the conflict of interest so that any potential effect on decision making is eliminated. How they do this will depend on the circumstances. In cases of serious conflicts of interest it may mean the trustees deciding to remove the conflict by:

- not pursuing a course of action or
- proceeding with the issue in a different way so that a conflict of interest does not arise or
- not appointing a particular trustee or securing a trustee resignation

Where trustees have decided against removal of the conflict of interest they must prevent it from affecting their decision in a different way. They:

- **L** must follow any specific requirements in the law or the charity's governing document which deal with conflicts of interest and how they should be managed
- should, where there are no specific governing document or legal provisions
 - I. require conflicted trustees to declare their interest at an early stage and, in most cases, withdraw from relevant meetings, discussions, decision making and votes
 - II. consider updating their governing document to include provisions for dealing with conflicts of interest
- may, exceptionally, need to seek the authority of the Commission where the conflict of interest is so acute or extensive that following these options will not allow the trustees to demonstrate that they have acted in the best interests of the charity

Conflicts of interest often arise because a decision involves a potential trustee benefit. Where this is the case:

- **L** the trustee benefit must be properly authorised and
- **L** the trustees must follow any conditions attached to the authority which say how the conflict of interest should be handled

3.3. RECORD conflicts of interest

Trustees:

- should formally record any conflicts of interest and how they were handled
- **L** must, if they prepare accruals accounts, disclose any trustee benefits in the charity's accounts

Please see Appendix B checklist on page 8.

4. Identifying Conflicts of Interest

L A conflict of interest is any situation in which a trustee's personal interests or loyalties could, or could be seen to; prevent the trustee from making a decision only in the best interests of the charity. 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
- conflicts of interest relate to a trustee's personal interests and the interests of those connected to them. This means that there is a conflict of interest where there is a proposed transaction between the charity and a connected person. Similarly, there is a conflict of interest where there is a benefit or a potential benefit to a connected person

The following two sections cover these in more detail.

3.1. Benefits to trustees

Trustees can only benefit from their charity where there is an explicit authority in place before any decision conferring trustee benefit is made.

Examples of benefits to trustees are where the trustees decide to:

- sell, loan or lease charity assets to a charity trustee
- 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 within the charity, even if that trustee has recently resigned as a trustee
- pay a trustee for carrying out a separate paid post as a director or employee of the charity's subsidiary trading company
- pay a trustee, or a person or company closely connected to a trustee, for providing a service to the charity. This covers anything that would be regarded as a service and includes legal, accountancy or consultancy services through to painting or decorating the charity's premises, or any other maintenance work
- employ a trustee's spouse or other close relative at the charity (or at the charity's subsidiary trading company)

- make a grant to a service user trustee, or a service user who is a close relative of a trustee
- allow a service user trustee to influence service provision to their exclusive advantage

3.2. Conflicts of loyalty

These conflicts of interest arise because, although the affected trustee does not stand to gain any benefit, the trustee's decision making at the charity could be influenced by his or her other interests.

For example, a trustee's loyalty to the charity could conflict with his or her loyalty to

- the body that appointed them to the charity
- the membership or section of the charity that appointed them to trusteeship
- another organisation, such as their employer
- another charity of which they are a trustee
- a member of their family
- another connected person or organisation

The test is always that there is a conflict of interest if the trustee's other interest could, or could be seen to; interfere with the trustee's ability to decide the issue only in the best interests of the charity.

Some conflicts of loyalty arise because a trustee has a competing legal obligation or duty to another organisation or person. Others result from conflicting loyalties which trustees owe or may feel towards family, friends or other people or organisations who are part of the trustee's network. A conflict of loyalty could also arise where the religious, political or personal views of a trustee could interfere with the ability of the trustee to decide the issue only in the best interests of the charity.

4.Preventing conflicts of interest from affecting decision making

L Having identified a conflict of interest, trustees must act only in the best interests of the charity. This means that they must consider the issue of the conflict of interest so that any potential effect on decision making is eliminated. How they prevent the conflict from affecting decision making will depend on the circumstances.

4.1 Serious conflicts of interest include, but are not limited to, those which:

- are so acute or extensive that the trustees are unable to make their decisions in the best interests of the charity, or could be seen to be unable to do so
- are present in significant or high risk decisions of the trustees
- mean that effective decision making is regularly undermined or cannot be managed in accordance with the required or best practice approach
- are associated with inappropriate trustee benefit

4.2 In practice removing the conflict of interest is likely to mean:

- not pursuing the course of action
- proceeding with the issue in a different way so that a conflict of interest does not arise. This might mean deciding not to consider using a trustee's company to do some work for the charity if this would mean that the number of payments to trustees, although authorised, is at risk of introducing levels of conflict of interest which could be difficult to manage and to justify. It could, exceptionally, mean seeking the Charity Commission's prior authority to a continuing and widespread conflict of interest
- securing the resignation of a trustee affected by a conflict of interests
- not making trustee appointments which will introduce a conflict of interests

4.3 Follow the law and the charity's governing document

L Where trustees have decided against removing the conflict of interest, they must consider how to make their decision only in the best interests of the charity. In the case of an academy the Academies Financial handbook and the Funding Agreement must be consulted.

Where the governing document or law does not say how a conflict of interest should be managed, trustees should follow the steps in this part of the guidance.

4.3.1 Withdrawing from decision making where the conflict of interest is associated with trustee benefit

Where there are no legal or governing document provisions about managing conflicts of interest, and there is a proposed financial transaction between a trustee and the charity, or any transaction or arrangement involving trustee benefit:

- the trustee benefit must be authorised in advance and
- the affected trustee will be absent from any part of any meeting where the issue is discussed or decided. The individual should not vote or be counted in deciding whether a meeting is quorate

Withdrawing from decision making means withdrawing when the initial discussions and decisions take place, and from any subsequent discussion or decision making on the issue.

4.3.2 Withdrawing from decision making where there is a conflict of loyalty. Where there is a conflict of loyalty and:

- the affected trustee does not stand to gain any benefit
- there are no specific governing document or legal provisions about how the conflict of loyalty should be handled

the affected trustee should declare the interest. The other trustees must then decide what level of participation, if any, is acceptable on the part of the conflicted trustee. Ultimately it is for the trustees to decide whether withdrawal is in the best interests of the charity when this type of conflict has been declared. The options might include, but are not limited to, deciding whether the trustee:

- having registered and fully declared the interest, can otherwise participate in the decision. The governing document of some charities allows the non-conflicted trustees to authorise a conflicted trustee to fully participate in this type of decision
- can stay in the meetings where the decision is discussed and made but not participate
- should withdraw from the decision making process in the way described above

In deciding which course of action to take, trustees:

- must always make their decisions only in the best interests of the charity
- should always protect the charity's reputation and be aware of the impression that their actions and decisions may have on those outside the charity
- should always be able to demonstrate that they have made decisions in the best interests of the charity and independently of any competing interest
- should require the withdrawal of the affected trustee from any decisions where the trustee's other interest is relevant to a high risk or controversial trustee decision or could significantly affect, or could be seen to significantly affect, the trustee's decision making at the charity
- can allow a trustee to participate where the existence of his or her other interest poses a low risk to decision making in the charity's interests, or is likely to have only an insignificant bearing on his or her approach to an issue. If the charity is a company this approach must be allowed by the governing document
- should be aware that the presence of a conflicted trustee can affect trust between trustees, could inhibit free discussion and might influence decision making in some way
- should, where there are no governing provisions setting out how conflicts of interest should be handled, consider updating their governing document to include provisions for dealing with conflicts of interest, including the circumstances where they will require withdrawal from decision making.

The trustees can, before their discussion, ask a trustee who is withdrawing to provide any information necessary to help make a decision in the best interests of the charity.

Trustees cannot use information obtained at the charity for their own benefit or that of another organisation if it has been obtained in confidence or has special value such as commercial sensitivity.

4.3.3 Record the conflict of interest

Written records will document any conflicts of interest and how the trustees have dealt with them and this will usually be to record the trustees' decisions in the minutes of their meetings.

Where there is a conflict of interest, the trustees should ensure that the written record of the decision shows:

- 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
- how the trustees took the decision in the best interests of the charity

Recording decisions in this way helps trustees to show that they have acted properly and complied with their duties.

4.3.4 Disclose payments or benefits

L DLPT prepare their accounts on an accruals basis and must include details of payments and other benefits to charity trustees and connected persons - including family members and businesses. They will say under what legal authority the payments or benefits have been made, together with the reason for them.

DLPT will disclose benefits received by trustees in their annual accounts.

Annex A - Some terms used in this guidance

Breach of duty: This means a breach of any trustee duty. For charity trustees, these duties depend on the nature of the charity. Trustees of unincorporated charities have duties under the Trustee Acts and directors of charitable companies have duties under the Companies Act 2006. The Charities Act 2011 sets out the duties for trustees of CIOs.

Charities Act: This means the Charities Act 2011.

Charitable Incorporated Organisation (CIO): A charitable incorporated organisation, or CIO, is a new legal form for a charity. It is an incorporated form of charity which is not a company. The provisions of the Companies Act 2006 do not apply to CIOs unless the CIO regulations make such provision.

Conflict of interest: A conflict of interest is 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.

Connected person: In broad terms this means family, relatives or business partners of a trustee, as well as businesses in which a trustee has an interest through ownership or influence. The term includes a trustee's spouse or unmarried or civil partner, children, siblings, grandchildren and grandparents, as well as businesses where a trustee or family member holds at least one-fifth of the shareholding or voting rights. If in doubt about whether a person or business is a connected person seek advice from a solicitor or other person qualified to advise on the matter.

Where a charity is either paying a connected person for goods or services, or disposing of land to a connected person, the Charities Act defines what a connected person is at s188 (for goods and services) and s118 (for land disposals).

Conflict of loyalty: This means a particular type of conflict of interest, in which a trustee's loyalty or duty to another person or organisation could prevent the trustee from making a decision only in the best interests of the charity.

Expenses: This means refunds by a charity of legitimate payments which a trustee has had to meet personally in order to carry out his or her trustee duties. Any reasonable costs that allow trustees to carry out their duties can be classed as legitimate expenses and paid from the charity's funds.

Governing document: This means the legal document setting out a charity's objects and, usually, how it is administered. It may be a trust deed, constitution, articles of association, conveyance, will, Royal Charter, scheme of the Commission or other formal document.

Trustee: This means a charity trustee. Charity trustees are the people who are responsible for the general control of the management of the administration of the charity. In a charity's governing document, they may be collectively called trustees, the board, managing trustees, the management committee, governors or directors, or they may be referred to by some other title.

Trustee benefit: This means any instance where money, or other property, goods or services, which have a monetary value, are received by a trustee from the charity. The law says that trustees cannot receive a benefit from their charity, whether directly or indirectly, unless they have an adequate legal authority to do so. The potential for a trustee to benefit from the charity also creates a conflict of interest which the trustees need to address effectively. The term trustee benefit **does not** include any payments to trustees which are for their proper out of pocket expenses.

User trustee: This means any trustee who makes use, as a beneficiary of the charity, of the equipment, facilities, services or support that are provided as part of the charitable purposes of his or her charity.

Annex B - Addressing a conflict of interest: checklist

Q1. If a trustee has identified that a conflict of interest exists, has the trustee body considered whether the conflict is so serious that it should be removed or they should seek authority for it (see [part 4](#) of this guide). If the trustees have decided against removing the conflict of interest or seeking authority for it, go to **Q2**.

Q2. Has the conflict of interest come up because the trustee concerned, will receive a benefit as a result of the decision? (Details of what a trustee benefit is, and which benefits need to be authorised, can be found in [part 3](#) and [Annex A](#) of this guide). If **yes**, go to **Q3**. If **not**, go to **Q4**.

Q3. Is the benefit authorised:

- by the charity's governing document?
- by a statutory provision such as section 185 of the Charities Act?
- specifically, by the Charity Commission? (see [Annex A](#) of this guide)

If **no**, the trustees must apply to the Commission for authority for the benefit (see [part 3](#) and [Annex A](#) of this guide). Go to **Q5**.

If **yes**, have the charity's trustees complied strictly with the terms of the authority? Go to **Q5**.

Q4. Even though there is no trustee benefit, are there procedures in place to ensure that the decision can be made only in the best interests of the charity? (see [part 4](#) of this guide).

If **no**, the charity's trustees should take advice on their decision, and for the future, ensure that suitable conflicts of interest procedures are put in place and followed.

If **yes**, go to **Q6**.

Q5. Have the charity's trustees checked whether they are required to disclose the trustee benefit in the annual report and accounts (see [part 4](#) of the guide)? Go to **Q6**.

Q6. Have the charity's trustees made a record of the conflict, their approach to dealing with it, and their decision? (see [part 4](#) of the guide).