

**Summary of conflict of interests procedures and  
Charity Commission guidance: Arthur Nicholson  
Recreation Ground Registered Charity No. 278976**

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## Conflicts of interest and conflicts of loyalty

This is a summary of the Charity Commission guidance on conflicts of interest and is intended as a brief guide to the key points on the law governing the area.

### Conflicts of interest and conflicts of loyalty

It is a basic principle that trustees have a legal duty to act only in the best interests of their charity. This means that they must not put themselves in any position where their duties as trustee may conflict with any personal interest they may have.

Managing conflicts of interests is a key responsibility of a trustee to ensure that the best interests of the charity are always the foremost concern.

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. A conflict of loyalty is a particular type of conflict of interest, in which a trustee's loyalty or duty to another person or organisation could, or could be seen to, prevent the trustee from making a decision only in the best interests of the charity.

There are two common types of conflict of interests which arise in practice and the Charity Commission identifies these as (a) *financial conflicts*, where there is a potential financial or measurable benefit directly to a trustee, or indirectly through a connected person, and (b) *loyalty conflicts*, where a trustee's duty to the charity may compete with a duty or loyalty they owe to another organisation or person

### How should Charities approach conflicts of interest?

The Charity Commission have a three step approach to dealing with such conflicts:

- Identify a conflict of interest;
- Deal with a conflict of interest; and
- Record a conflict of interest.

We have outlined the key points for consideration below and explained each of these steps and how this works in practice.

### Identify conflicts

Charities need to have sufficiently robust procedures in place to pick up on potential conflicts. A distinction must be made between trustees having their own point of view and opinion on a matter, to which they are entitled, and between trustees having an actual conflict which could prevent the trustee from making a decision in the best interests of the charity.

Each trustee has their own individual responsibility to declare conflicts of interest which they personally have which may affect them and their ability to act in the best interests of

the charity. Furthermore, the charity should have strong systems in place to identify potential conflicts of interest.

The Charity Commission give examples of conflicts of loyalty which could be where the trustee's loyalty to the charity could conflict with their loyalty to the body that appointed them to the charity, another organisation or charity, a member of their family or another connected person or organisation. Trustees' other interests and loyalties can generate conflicts of interest from time to time, some of which pose a minor risk to the charity and some of which are more serious. The trustees may decide that where a conflict of loyalty poses no risk or a low risk to decision making in the best interests of the charity, the affected trustee, having declared their other interest, can participate in decision making.

The trustees must decide what is a low risk conflict and decide in those particular circumstances how they deal with this as it is decision-specific. It may be that the trustees decide that once a trustee has declared a potential conflict of loyalty by their membership of another organisation that there is a low risk of conflict in those circumstances. The trustees must take all relevant factors into account and be ready to explain their approach if asked.

#### Deal with conflicts of interest

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. Trustees should always declare any conflicts of interest which affect them and any failure to declare a conflict of interest is a serious issue.

The board of trustees should consider whether serious conflicts of interest should be removed or require authority and any affected trustees should not participate in any decisions where they stand to gain, whether directly, or indirectly through a connected person. If there is a conflict of loyalty, trustees should carefully handle any participation by a conflicted trustee. Trustees should be able to demonstrate that their decision was made only in the best interests of the charity

In your particular case, it is likely that the main issue which could arise is a conflict of loyalty due to membership or an affiliation with other local groups. The Commission explains that where there is a conflict of loyalty and the affected trustee does not stand to gain any benefit and there are no specific governing document or legal provisions about how the conflict of loyalty should be handled then 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.

The trustees must then 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

### Record conflicts and ensure procedures in place

- **Ensure the charity has a policy**

The Charity Commission recommend that the trustees should draw up a policy to suit the needs of their charity. The policy does not have to be complex, but it should be regularly reviewed and updated.

- **Ensure your trustees have sufficient training**

It is a good idea to ensure that when elected or appointed, the trustees are fully trained in their responsibilities as trustees and that the appointing body is also made aware of these responsibilities.

- **Ensure your trustees record the conflicts and key decisions**

Any conflicts of interest which arise during the course of acting as a trustee should be recorded in the minutes of the charity trustee meeting and any key decisions reached should be noted. Trustees should formally record any conflicts of interest and how they were handled and must, if they prepare accruals accounts, disclose any trustee benefits in the charity's accounts.

- **Ensure your trustees establish a register of interests**

The Commission also recommends that trustees establish a register of interests and record all their other interests openly, which should highlight any actual or potential conflicts of interest

### Charity Commission checklist for Charity trustees summarised

**Q1.** If a trustee has identified a conflict of interest exists, has the trustee body considered if it is so serious that it should be removed or they should seek authority for it. *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. *If yes go to Q3 and if no go to Q4.*

**Q3.** Is the benefit authorised:

By the charity's governing document?

By a statutory provision such as s. 185 Charities Act? [this provides charities with powers to remunerate trustees for providing services over and above their normal trustee duties]

Specifically by the Charity Commission?

*If no, trustees must apply to the Commission for authority for the benefit so go to Q5. If yes, have the 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 interest of the charity? If no, the trustees should take advice on the decision and ensure suitable conflicts of interest procedures are put in place and followed in the future. *If yes go to Q6.*

**Q5.** Have the trustees checked whether they are required to disclose the trustee benefit in the annual report and accounts? *Go to Q6.*

**Q6.** Have the charity's trustee made a record of the conflict, their approach to dealing with it and their decision?