

# Conflicts of Interest Policy

## Declaration Form and Register of Outside Interests

Policy applicable to all trustee directors, members, local governors, committee members and senior staff

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# Overall purpose

The aim of this policy is to provide guidance on how to recognise and manage perceived and real conflicts of interest amongst members of the Trust board, members, local governors and senior staff.

Conflicts of interest cannot be avoided altogether, so we have developed this policy to manage them effectively, when they arise. The existence and application of this conflicts of interest policy will serve as a means of demonstrating good practice and governance under external scrutiny.



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

Trustees have a duty under common law to act in the best interests of the charities they serve. Trustees, generally, should not benefit from the charity and should not be influenced by their wider interests when making decisions affecting the charity. Similar obligations will apply to local governors. For charitable companies, trustee directors have a specific legal duty to avoid conflicts of interest under s175 of the Companies Act 2006.

#### **A conflict of interest can be defined as:**

*“...any situation in which a trustee’s personal interests or responsibilities they owe to another body, may, or may appear to influence the trustee’s decision making.”*

Conflicts of interest arise when the interests of trustees, or “connected persons<sup>1\*</sup>”, are incompatible or in competition with the interests of the charity. Such situations present a risk that trustees will make decisions based on these external influences, rather than the best interests of the charitable organisation.

<sup>1\*</sup> s.188 Charities Act 2011 defines a “connected” person as:

- a) a child, parent, grandchild, grandparent, brother or sister of a trustee;
- b) spouse or civil partner of trustee, or of (a) above;
- c) business partner of trustee or (a) or (b);
- d) institution controlled i) by trustee or (a), (b), or (c) above or ii) by two or more persons falling within i) when taken together ;
- e) a body corporate which i) the trustee or connected person in (a) to (c) has a substantial interest or, ii) two or more persons falling within i) when taken together have a substantial interest.

Trustees seeking to sell land or other property belonging to the charity should refer to s.118 of the Charities Act 2011 for a further definition of ‘connected persons’ in relation to these transactions. For trustees of charitable companies the definition of ‘connected persons’ is slightly different and readers should refer to s.252 of the Companies Act 2006.



The most common types of conflict include:

- direct financial interest - when a trustee obtains a direct financial benefit via:
  - the payment of a salary to a trustee by the charity
  - the award of a contract to a company or business with which a trustee or their family member is involved
  - the sale of property at below market value to a trustee
- indirect financial interest - this arises when a close relative of a trustee benefits from the charity:
  - the awarding of an employment contract to a trustee's spouse or family member; and
  - making a grant to a trustee's dependent child
- non-financial or personal conflicts – occur where trustees receive no financial benefit, but are influenced by external factors:
  - influencing board decisions on service provision to their own advantage, perhaps because they use the charity's services themselves or care for someone who does
  - to gain some other intangible benefit or kudos
  - awarding contracts to friends
- conflicts of loyalties - trustees may have competing loyalties between the charity to which they owe a primary duty and some other person or entity (e.g. their employer or another organisation they are connected with).

It is, therefore, essential that all trustees are fully aware of their duties and responsibilities and that when acting as a trustee they must act in the best interests of the Trust alone.

The interests of the beneficiaries and those of the charity will - for the most part - be consistent or complementary, but on the occasions where a conflict does arise, the responsibility of all the trustees is to the charity. This includes any access that all trustees may gain to confidential or privileged information by virtue of their trusteeship. All trustees should remain alert to the fact that whatever information they acquire in their role should remain confidential and not be used to the advantage of themselves, an external individual, or entity.

Occasionally there may be cases where an apparent conflict is actually in the organisation's best interests. While the trustees may well act with integrity, the mere appearance of a conflict can be damaging to both the charity and the trustees, so conflicts need to be managed effectively.



Our Code of Conduct for trustees, members, governors and senior leaders, is consistent with and supports the Conflicts of Interest Policy and vice versa.

### **Identifying potential conflicts of interest**

A key means of preventing conflicts of interest from affecting decision-making is to identify potential conflicts in advance.

This gives trustees time to consider the implications and to respond appropriately. To ensure that trustees remain in an optimal position to manage any real or perceived conflict, it should be standard practice to ask for any such declarations at the start of each trustee and governors meeting.

By asking trustees and governors to declare their interests and keeping a register of such interests, we can monitor potential conflicts of interests on a continuous basis. This policy on the management of conflicts of interest will inform trustees how any conflict will be dealt with and provide a framework for the board when conflicts arise.

### **Managing conflicts**

The majority of trustees have multiple interests, personal, domestic and professional that may, on occasion, compete with those of the charity. It is almost impossible to avoid conflicts altogether, particularly in the context of seeking to appoint trustees with skills and experience of the wider community.

If conflicts cannot be avoided, they need to be managed effectively.



## **Declaration of interests**

Potential and new appointees will be expected to declare their interests on appointment and subsequently, when they arise. They will be provided with a copy of the conflicts of interest policy, preferably before appointment. If a potential trustee is concerned about a possible conflict of interest, they should view the policy and discuss the matter with the Chair, Secretary or Clerk before agreeing to take up the position.

On appointment, trustees, members, committee members, local governors and senior staff will be asked to complete a declaration of interests. New appointees may be uncertain as to what comes under this heading (in which case they should consult the Secretary or Clerk), but as they gain more experience on the board, their understanding of exactly what constitutes a potential conflict will develop. The declaration of interests needs to be updated when material changes occur, and reviewed on a regular basis – at least annually.



## Declaration of interests

**When completing a declaration of interests, the following areas must be considered:**

- employment
- any previous employment in which the trustee still has a financial, or other, interest
- any other appointments (voluntary or otherwise) e.g. trusteeships, directorships, local authority membership, tribunals
- professional and organisational memberships
- membership of any special interest groups
- investments in unlisted companies, partnerships and other forms of business
- major shareholdings (more than 5% of issued capital) and beneficial interests
- gifts or hospitality offered to the trustee by external bodies and whether this was declined or accepted
- family connections where relevant, such as the trustee's spouse / partner working for a similar organisation, funder or partner organisation
- caring for a pupil of a School within The Sovereign Trust, or a user of the organisation's services
- any contractual relationship between the trustee or a connected person and Trust or any subsidiary.

All charities and not-for-profit organisations are accountable to a range of stakeholders and should consider conflicts of interest carefully. Those working in sensitive areas, involved with large sums of money, or subject to a high level of scrutiny, may need to be extra vigilant.



## **Register of interests**

The completed declarations should be returned to the Secretary, who will be responsible for keeping the register of interests up to date. A model register can be found below.

Public access to the register furthers the interests of accountability and transparency, as well as demonstrating that the Trust is following best practice in relation to managing conflicts of interest. We are required by the Academies Financial handbook to publish the interests of members, trustees, local governors and the accounting officer.

When a conflict of interest does arise, it is the responsibility of the trustee in question to declare such a conflict to the board.

If he or she fails to do so, the Chair of the trustees, Secretary or Clerk should declare the conflict. It is advisable at the start of board and committee meetings to request the declaration of any interests in relation to any item covered on the meeting agenda, ensuring that appropriate action can be taken and formal records made.



## Dangers of conflicts of interest

If trustees allow factors such as other external interests to influence their decision-making, they may make decisions that are not in the Trust's best interest. This could be costly to them and damage the work and reputation of the Trust. The most common dangers arising out of a conflict of interest are:

- poor decision-making
- legal challenge
- loss of trust within the Trust Board
- reputational damage, including a reduction in donations, volunteers and public support, action by regulators.

Trustees acting outside the terms of their governing document, without permission from the courts or the Charity Commission, will be in breach of trust. Relief from such breaches, however, may be available to those where such a breach occurs even though the trustees have acted as reasonable and 'prudent men or women of business', seeking and following appropriate professional advice<sup>2\*</sup>.

A breach of trust will occur if a trustee knowingly accepts a benefit from the charity without proper authority. Such authority may come from legislation, the Charity Commission, the courts, or the Trust's governing document. If the transaction is challenged (e.g. by the ESFA, Charity Commission, or another interested party) and found to be invalid, the trustee could be required to pay back any benefit received, or become liable for any loss incurred by the Trust.

<sup>2\*</sup> S191 Charities Act 2011 provides the Charity Commission with the power to relieve trustees of a personal liability resulting from a breach of trust where the trustee "... has acted honestly, and reasonably and ought fairly to be excused...".



## Governance

Within the board itself, poorly managed conflicts of interest can harm working relationships, adversely affecting free discussion. Where a trustee is known to have an interest in a decision, the remaining trustees may feel under pressure, whether express, implied or simply imagined, to decide in the interests of their fellow trustee. Alternatively, they may resent the interest of the other trustee and vote against it, even when following the trustee's interest may be the best course of action for the charity. In both cases, the trustees' primary consideration has been a trustee's interest, not that of the charity. Our conflicts of interest policy is designed to manage such conflicts in an open and transparent manner.

Even where the Board is able to make decisions free of these emotional influences, they may feel uncomfortable speaking against the trustee's interests in a trustee meeting, or lose confidence in the ability of the trustee in question to make decisions free of external influence. Such problems may undermine the trustee board's ability to function effectively as a decision-making group.

Where the trustee board is presented with a conflict of interest, the interest should be declared, the trustee(s) involved should remove themselves from the discussion. The conflict and action taken to manage it should be recorded in the minutes. Where the trustee has withdrawn from the meeting, steps should be taken to ensure that any details of the discussion relating to the conflict of interest are not divulged. This could be done via the use of printing sensitive items in separate papers and circulated to those trustees free from the conflict. This should enable the conflicted trustee to continue to exercise their responsibility in all other aspects of the trustees' duties by receiving minutes of meetings, without gaining access to information relating to the conflict.



### **Adverse publicity**

Even where trustees have acted in the best interests of the charity, those outside the Trust board may gain an impression, or mere suspicion, that the trustees acted in their own interest. Accurate or otherwise, such an impression could damage the reputation of the Trust and trustees.

Such publicity may be so adverse that it demands a response from the Trust, for example because of interest from the media, a funder or regulator. The Trust would then need to invest time and energy in justifying its actions and defending its reputation, deflecting resources and attention from its core objectives.



## Company law requirements

Director/trustees of charitable companies, or of a charity's subsidiary company, will be subject to the provisions of the Companies Act 2006 in relation to conflicts of interest and how they are managed.

Specifically, directors have a duty to:

- exercise independent judgment <sup>3\*</sup>
- avoid conflicts of interest <sup>4\*</sup>
- not to accept benefits from third parties <sup>5\*</sup>
- declare any interest in a proposed transaction or arrangement <sup>6\*</sup>
- declare any interest in an existing transaction or arrangement <sup>7\*</sup>

If the board of a charitable company exceeds its constitutional powers in entering into a transaction with a director/trustee (or someone connected to a director/trustee), the transaction may be declared void. Where a director fails to declare an interest in a proposed transaction, the director may be liable to a fine. The directors/trustees involved in the transaction, including those who authorised it, may be required to return any gains to the company or to make good any losses incurred. <sup>8\*</sup>

Company legislation imposes limitations and prohibitions on certain conflicts of interest. Sections 190 to 196 of the Companies Act 2006 limit substantial property transactions between companies and their directors and people connected with the directors: <sup>9\*</sup>

- if the value is greater than £5000 or 10% of the company's net assets;
- the total value of the property is greater than £100,000 the transaction requires the prior approval of the membership by a resolution in a general meeting

### **Under ss. 197 – 223 of the Companies Act 2006, companies are prohibited from:**

- making loans or giving similar financial assistance to directors
- giving guarantees or other forms of security in order to enable a director to obtain a loan

The prohibition does not apply to advance payment of reasonable out-of-pocket expenses that directors/trustees incur in the course of their work on behalf of the Trust.



3\* s. 173 Companies Act 2006.

4\* s. 175, Companies Act 2006. This however, is modified for charitable companies by s.181 of the same Act.

5\* s. 176, Companies Act 2006.

6\* s. 177, Companies Act 2006.

7\* s. 182, Companies Act 2006.

8\* s.41 of the Companies Act 2006.

9\* A “connected person” to a director is defined in s252(2) of the Companies Act 2006 as:

a) members of the directors’ family (s253 defines these as – spouse or civil partner; any other person with whom the director lives as a partner in an enduring family relationship, and that partners’ children or step-children under 18 years of age; children or stepchildren of the director and their partner or spouse; directors’ parents);

b) a body corporate with which the director is connected;

c) a person acting in his capacity as a trustee of a trust – i) the beneficiaries of which include the director or a person who by virtue of (a) or (b) is connected with him, or ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the director or any such person, other than a trust for the purposes of an employees’ share scheme or pension scheme;

d) a person acting in his capacity as a partner – i) of the director, or ii) of a person who by virtue of (a) to (c) is connected with that director;

e) a firm that is a legal person under the law by which it is governed and in which - i) the director is a partner, ii) a partner is a person who by virtue of (a) to (c) is connected with the director, or iii) a partner is a firm in which the director is a partner or in which there is a partner who by virtue of (a), (b) or (c) is connected with the director.



### **Statement of Recommended Practice for Charities (SORP)**

Under paragraph 226 of the Charities SORP, trustees (and connected persons) receiving any benefit or remuneration are required to regard such payment as material and must disclose it in the charity's annual report and accounts. Furthermore, paragraph 230(d) states that where trustees have not received any remuneration this should be disclosed too, as a means to promote transparency in the governance of the charity.

A similar approach to declaring the reimbursement of all reasonable out-of-pocket expenses for trustees would also represent best practice and support the promotion of transparency within the charity.

### **Data protection**

The information held on a voluntary register of interests is subject to the provisions of the Data Protection Act 1998 and GDPR. Certain conditions must be met in order to establish that personal data has been processed fairly and lawfully. These conditions should not prove too onerous provided the trustees are told:

- who is controlling the data
- why the information is being processed
- how often records will be updated
- the individual has consented to the processing and that the processing is necessary for the performance of a contract with the individual
- it is necessary to carry out public functions or to pursue the legitimate interests of the data controller without prejudice to the interests of the individual.

This policy applies to trustees, governors and senior staff of The Sovereign Trust.



### **Why we have a policy**

Trustees have a legal obligation to act in the best interests of the Trust, and in accordance with Trust's Articles of Association, and to avoid situations where there may be a potential conflict of interest.

Conflicts of interests may arise where an individual's personal or family interests and/or loyalties conflict with those of the Trust. Such conflicts may create problems; they can:

- inhibit free discussion
- result in decisions or actions that are not in the interests of the trust
- risk the impression that the Trust has acted improperly.

The aim of this policy is to protect both the organisation and the individuals involved from any appearance of impropriety.

### **The declaration of interests**

Accordingly, trustees, members, local governors, committee members and senior staff must declare their interests, and any gifts or hospitality offered and received in connection with their role in The Sovereign Trust. A declaration of interests form is provided for this purpose, listing the types of interest you should declare.

To be effective, the declaration of interests needs to be updated at least annually, and when any material changes occur.

If you are not sure what to declare, or whether/when your declaration needs to be updated, please err on the side of caution. If you would like to discuss this issue, please contact the Secretary or clerk for confidential guidance.

This register of interests shall be used to record all gifts and hospitality over £50 received by trustee directors, members, committee members, local governors and staff.

Interests and gifts will be recorded on the Trust's register of interests, which will be maintained by the Secretary or clerk. The register will be accessible by members of the public and our regulators.

### **Data protection**

The information provided will be processed in accordance with data protection principles as set out in the Data Protection Act 1998.

Data will be processed only to ensure that trustees and senior staff act in the best interests of the Trust. The information provided will not be used for any other purpose.



### **What to do if you face a conflict of interest**

If you believe you have a perceived or real conflict of interest you should:

- declare the interest at the earliest opportunity
- withdraw from discussions and decisions relating to the conflict.

The Secretary/clerk should take special care to ensure that minutes or other documents relating to the item presenting a conflict are appropriately redacted for the person facing the conflict. A balance needs to be made to ensure that the person still receives sufficient information about the activities of the Trust generally, without disclosing such sensitive information that could place the individual in an untenable position.

If you are the parent or carer of a pupil of a school within the Trust, you should not be involved in decisions that directly affect that pupil. You should declare your interest at the earliest opportunity and withdraw from any subsequent discussion, unless expressly invited to remain in order to provide information. In this case you may not participate in, or influence, the decision or any vote on the matter. You will not be counted in the quorum for that part of the meeting and must withdraw from the meeting during any vote on the conflicted item.

There are situations where you may participate in discussions from which you could indirectly benefit, for example where the benefits are universal to all users, or where your benefit is minimal. This action will be agreed by the Chair and minuted accordingly.

If you fail to declare an interest that is known to Secretary / clerk and / or the Chair, the Secretary/clerk or Chair must declare that interest.



### **Decisions taken where a trustee or member of staff has an interest**

In the event of the Board having to decide upon a question in which a trustee or member of staff has an interest, all decisions will be made by vote, with a simple majority required. A quorum must be present for the discussion and decision; interested parties will not be counted when deciding whether the meeting is quorate. Interested board members may not vote on matters affecting their own interests.

All decisions under a conflict of interest will be recorded by the Secretary or Clerk and reported in the minutes of the meeting.

The report will record:

- the nature and extent of the conflict
- an outline of the discussion
- the actions taken to manage the conflict

Where a trustee benefits from the decision, this will be reported in the annual report and accounts in accordance with the current Charities SORP.

All payments or benefits in kind to trustees will be reported in the charity's accounts and annual report, with amounts for each trustee listed for the year in question.

Where a member of the Trust's staff is connected to a party involved in the supply of a service or product to the Trust, this information will be fully disclosed in the annual report and accounts.

Independent external moderation will be used where conflicts cannot be resolved through the usual procedures.

### **Managing contracts**

If you have a conflict of interest, you must not be involved in managing or monitoring a contract in which you have an interest.

Monitoring arrangements for such contracts will include provisions for an independent challenge of bills and invoices, and termination of the contract if the relationship is unsatisfactory.



### Declaration of Interests Form

I as employee / trustee / member / local governor / committee member\* (\*delete as appropriate) of The Sovereign Trust have set out below my interests in accordance with the organisation's Conflicts of Interest Policy.

Category	Please give details of the interest and whether it applies to yourself or, where appropriate, a member of your immediate family, connected persons or some other close personal connection
Current employment and any previous employment in which you continue to have a financial interest.	
Appointments (voluntary or otherwise) e.g. trusteeships, directorships, local authority membership, tribunals etc.	
Membership of any professional bodies, special interest groups or mutual support organisations.	
Investments in unlisted companies, partnerships and other forms of business, major shareholdings more than 5% of issued capital and beneficial interests.	
Gifts or hospitality offered to you by external bodies and whether this was declined or accepted in the last twelve months.	
Are you the parent or carer of a pupil at a Sovereign Trust school ?	
Any contractual relationship with the Trust or its subsidiary?	
Any other conflicts that are not covered by the above?	

To the best of my knowledge, the above information is complete and correct. I undertake to update as necessary the information provided, and to review the accuracy of the information on an annual basis.

I give my consent for it to be used for the purposes described in the Conflicts of Interest Policy and for no other purpose.

**Signed:**

**Position:**

**Date:**



### Specimen Register of interests for trustees, members, local governors & senior staff

Name of trustee	Description of interest	Does the interest relate to the trustee or a person closely connected to the trustee (describe)?	Is the interest current?
Mr.T. Smith	Joint owner of catering company	Trustee, other joint owner is the trustee's daughter. Trustee	Current  Current
Mrs.A Jones	Employee of ABC charity with similar aims and objectives working in the same	area Trustee	No, trustee resigned post in 1999
Mr.A.Wright	Trustee of XYZ charity	Trustee	Current
Miss. R. Clifford	Was bought lunch to value of £60 by representative of a photocopying machine supplier	Trustee	Current