Dolphins Recreation Centre Trust
Charity No. 1201602

Conflict of Interest Policy

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Contents

1 Introduction

Conflicts of Interest can lead to decisions being made that are not in the best interest of the charity and which could invalidate any decisions made or even open the charity up to being challenged. These could damage the reputation of the charity and consequently the public's trust within the charity. This policies aim is to reduce these harmful effects by creating procedures that will help to identify any potential conflicts of interest and prevent them from influencing decisions made by the governing trustees.

It is a legal requirement that each trustee acts, at all times, in the best interest of the charity. Therefore, it is a serious breach of duty to not declare a conflict of interest when potential policies/actions are being discussed and the conflict arises, or any potential future conflicts that should be declared.

It is good practice that when a new trustee is appointed the trustees are fully trained in their responsibilities as trustees, including being given any relevant documentation for them to read, and if they are appointed by another organisation, the appointing body is also made aware of these responsibilities.

2. Definitions

Conflict of Interest – 1. A situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.
2. A situation in which the concerns or aims of two different parties are incompatible.

(Following Definitions are taken from the Charity Commission 'Technical Terms' of their guidance on 'Conflicts of interest: a guide for charity trustees, published May 2014)

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.

3. Identification of Conflicts of Interest

The Charity Commission (CC) expects both Individuals and trustee bodies to be able to identify any conflicts of interests at as early a stage as possible. This section describes the common situations where conflicts of interests arise.

3.1 Where and how they arise

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
- a trustee's duty to the charity may compete with a duty or loyalty they owe to another organisation or person

3.1.1 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 - these 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

3.1.2 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. Recording of Conflicts of Interests…

A file shall be kept of all declared conflicts of interests, investigations, reports, accusations and judgements made, including reasoning for the judgement. This file shall be kept within the appropriate requirements of the General Data Protection Regulations (GDPR). This file shall include;

4.1 Initial Declaration
A signed copy of the 'Initial Declaration Form' of each trustee, signed once they join the committee. This form is where the trustee swears to act only in the best interest of the charity and any potential/foreseeable conflicts of interests are declared *(Copy of form included in section 8).* This shall include the decision of 'Low' or 'High' risk category and date of minutes where it was discussed and voted.

4.2 Arising conflicts
When an unforeseen conflict of interest arises it must be declared as soon as possible. This can be done by notifying all trustees or if the person involved wishes the conflict to be kept private then they can ask to withdraw to a private meeting, if during the committee meeting, with the Chair or another appropriate representative. The conflict will be recorded within the 'conflicts' folder which is kept within GDPR requirements.
If the conflict is to be kept private from other trustees then the conflict automatically becomes a 'High Risk' category and all procedures of that level *(see Section 5.2)* must be followed.

4.2.1 Conflict arises during a meeting
If a conflict arises during a meeting and the trustee is willing to go public with the declared conflict of interest, this must be recorded in the minutes, alongside how many minutes into the meeting it was declared. The trustees can then discuss what level of risk this conflict is and then vote upon a final decision. This discussion (pros and cons raised) and decision must also be recorded and any reasoning for the decision alongside the declaration in the minutes. This conflict must be added and signed within the 'Initial Declaration' form.

The trustee can automatically excuse themselves from the discussion and/or any votes on the topic that take place that involve the potential conflict of interest.

4.3 Any Investigations
Any investigations that occur due to the fact that a conflict of interest has been raised that potentially jeopardises any previous meetings/decisions made, or accusations against a trustee must be recorded and added to the 'Conflicts' file.

This must include the following information:

- Name of the person/s doing the investigation
- Name of the accused
- If possible, name of the accuser
- Date of accusation
- Date of final decision
- The accusations
- Any evidence used
- Decision

- Reasoning for the decision
- Any remedial actions taken

5. Categorising and Procedures for Conflicts of Interest
It is not necessarily the case that all conflicts of interest will require a trustee to abstain from any discussions or votes that may involve that particular topic. Each conflict of interest should be categorised as either 'Low Risk' or 'High Risk'. These should be discussed and voted by at least a quorum of trustees, excluding the trustee it involves but they should be present to witness and answer any questions that may arise. As previously mentioned, conflicts of interest that are to be kept private from the majority of trustees are to automatically fall into the 'High Risk' category.

5.1 Low Risk Conflicts
Deciding that a conflict of interest is low risk, and that the affected trustee can participate in the decision, is a judgement for the trustees. It is not possible to give a definitive view of when this is appropriate. It depends on the particular decision and relevant circumstances.

Being appointed by a certain organisation does not necessarily mean that they are in the 'High Risk' category. Any benefit should benefit all members of that organisation and not just them, as exampled in the Charity Commission guide (Example 3).

When a conflict is declared as 'Low Risk', as long as it is recorded, they may partake in all discussions and votes that take place within that topic.

5.2 High Risk Conflicts
Deciding that a conflict of interest is High risk, and that the affected trustee cannot participate in the decision, is a judgement for the trustees. It is not possible to give a definitive view of when this is appropriate. It depends on the particular decision and relevant circumstances.

If the conflict is declared 'High' risk, then the trustee should abstain from all discussions and votes where this conflict of interest could cause an issue. The trustee must declare that they are abstaining at the start of any relevant discussions for 'conflict' purposes and this must be recorded in the minutes. Any interjections by this member during the meeting should also be recorded.

The trustee can be asked to remove themselves from the meeting by the other trustees (majority basis), or by the Chair, if they feel the conflict is too severe to warrant them hearing the discussion.

5.3 Conflicts involving financial transactions or other forms of personal gain
Where a trustee is to personally benefit, whether financially or any other form of benefit, the trustee must be absent from any part of any meeting where the issue is discussed or decided.

6. Policy for reporting a potential Conflict of Interest
All conflicts of interests must be declared as a legal requirement. This can be done through

various methods, aside from the ‘Initial Declaration’ Form, throughout the tenure of the trustee.

6.1 Self-declaration

A public conflict of interest can be done to all trustees, either during a meeting, via email or post. In the event that someone would like to keep their conflict private it can be done to the Chair of the committee but this will place it automatically into the ‘High Risk’ category.

6.2 Another Trustee

If another trustee has a concern that a fellow trustee member has an undeclared conflict of interest, they can raise this concern with the trustee themselves and inform them that they should declare the conflict, if they are unwilling to declare the conflict or they do not want to go directly to the trustee themselves, then alternatively they should raise the concern with the Chair of the trustees. However, if the concern is regarding the Chair themselves, then they should take the concern, either to the Charity Commission, or if one exists the Vice Chair.

7. Procedure of Investigation

Any investigation shall be recorded as mentioned in Section 4.3. The person running the investigation, either appointed by the Chair or the Chair themselves, shall appoint any other people they want to co-run the investigation (it is recommended that it is a minimum of two to ensure good procedures are kept). How they run the investigation and evidence the investigation is up to them as long as they can justify, with reasoning, the process they have chosen to take. All data and information must be recorded and all information kept private within the investigation.

9. Initial Declaration Form Sample

This is on the following page.

Dolphins Recreation Centre, Charity No. 1201602

Initial Conflict of Interest Declaration Form

Trustee: ____

Address: ____

____

Date of appointment: ___/___/_______   End date of appointment: ___/___/______

By signing this document, I declare that I have raised all potential 'conflicts of interest' that may occur during my tenure as a trustee of the Dolphins Recreation Centre. I also declare that I will highlight any potential conflicts of interest that may arise during my tenure, as soon as I become aware of them.
I am fully aware that it is my legal duty to act only in the best interest of the charity (Dolphins Recreation Centre) and to do anything but this will be clear breach of my duties as a trustee.

No. of **Initial** Declared Conflicts of Interest: _____

Conflicts of Interest	Low/High	Minutes Date & Signed

Signed: _______________________________________   Date: ___/___/______