



Edinburgh & Lothians
Health Foundation

Conflict of Interest Policy

December 2020

Policy Reference Information

Status	DRAFT
Author	Jane Ferguson
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Related Policies

Policy Title
Governing Document Charter Trustee Code of Conduct

1 INTRODUCTION

- 1.1 This Policy provides guidance on identifying conflicts of interest and sets out the Foundation's policy for managing any such conflicts.
- 1.2 Although the Policy will be of primary concern to the Trustee Board, who have a legal obligation to act in the best interests of the Foundation and to avoid situations where there may be an actual or potential conflict of interest, senior management, staff and volunteers may also find themselves subject to conflicts of interest. Staff have obligations of loyalty and mutual trust and confidence to the Foundation and this policy applies to all individuals involved with the Foundation.
- 1.3 This Policy is supplementary to and should be read in conjunction with the Trustee Code of Conduct¹, the Foundation's Charter² (section 13 in particular) and the Governing Document³. In the case of any inconsistency, then those other documents will prevail.

2 BACKGROUND

- 2.1 Conflicts of interest arise where an individual's personal or family interests and/or loyalties conflict with those of the Foundation, or might be perceived by outside observers to conflict with those of the Foundation. Such conflicts can create problems by inhibiting free discussion and can result in decisions or actions which are not in the best interests of the Foundation or give the impression that the Foundation has acted improperly.
- 2.2 Conflicts of interest can damage a charity's reputation or public trust and confidence in charities generally. The purpose of this Policy is to provide a framework for the full disclosure and management of conflicts and potential conflicts of interest so that the Foundation is always able to respond appropriately to the situation by managing the risks to the Foundation and is able to explain how decisions have been taken only in the best interests of the Foundation.
- 2.3 The aim of this Policy is to protect both the Foundation and individuals involved with the Foundation from any impropriety or appearance of impropriety.
- 2.4 Trustees' personal and professional connections can bring benefits to the work of the Foundation and they often form part of the reason why an individual has been asked to join the Trustee Board. However, where they give rise to conflicts of interest then the Trustee and the Foundation must respond appropriately.

3. DEFINITIONS

- 3.1 A conflict of interest is any situation in which an individual's personal interests or loyalties could, or could be seen to, prevent them from making a decision only in the best interests of the Foundation. It might arise where there is a potential financial or other measurable benefit directly to an individual, or indirectly through a connected person; or where an individual's duty to the Foundation may compete with a duty or loyalty they owe to another organisation or person.

¹ Edinburgh and Lothians Health Foundation Trustee Code of Conduct 2020

² Edinburgh and Lothians Health Foundation Charter 2013

³ NHS (Scotland) Act 1978

- 3.2 A conflict of loyalty is a particular type of conflict of interest, in which an individual's loyalty or duty to another person or organisation could prevent the individual from making a decision only in the best interests of the Foundation.
- 3.3 A connected person means family, relatives or business partners of an individual, as well as businesses in which an individual has an interest through ownership or influence. The term includes an individual's spouse or unmarried or civil partner, children, siblings, grandchildren and grandparents, as well as businesses where the individual or a family member holds a participating interest (usually 5% or more of the shareholding or voting rights).
- 3.4 A related party is a term defined in the Charity SORP that combines the requirements of charity law, company law and the Financial Reporting Standards applicable in the UK. It identifies those persons or entities that are closely connected to the Foundation or its Trustees. Related parties include the Foundation's Trustees and their close family members and those entities which they control or in which they have a significant interest.
- 3.5 Related party transactions are the transfer of resources, services or obligations between related parties, regardless of whether a price is charged.
- 3.6 Trustee benefit includes any payments or non-financial benefits to a Trustee or a connected person, apart from their reasonable out of pocket expenses. The term also covers situations where a Trustee (or connected person) could receive property, loans, grants, goods or services from the Foundation.

4. THE LAW

- 4.1 Trustees have a personal responsibility to declare conflicts of interest if they are to fulfil their legal duty to act only in the best interests of the charity.
- 4.2 Where the charity decides to confer a Trustee Benefit then the Board must ensure that there is appropriate legal authority in place to enable them to make the decision. This could come from:
 - a clause in the charity's governing document
 - a statutory provision such as the power in the Charities and Trustee Investment (Scotland) Act 2005 which allows charities, in some circumstances, to pay trustees for additional services they provide to the charity over and above normal trustee duties
 - the Office of the Charity Regulator (OSCR)
 - the Court
- 4.3 Failure to act properly and follow the stated provisions where there is a conflict of interest is a breach of the Trustees' legal responsibilities.

5. MANAGING CONFLICTS OF INTEREST

- 5.1 The purpose of this Conflict of Interest Policy is to help trustees identify and manage actual, potential and perceived conflicts of interest. The Foundation takes a 3-step approach to conflict of interest:
 - i) Identify
 - ii) Declare
 - iii) Record

IDENTIFYING A CONFLICT

5.2 Examples of common types of conflict include:

- conflicts between an individual's personal financial interests and those of the Foundation;
- conflicts between the financial interests of someone connected to the individual and those of the Foundation, for example, payments to a relative; and
- non-financial conflicts, for example, the interests of two organisations with which a trustee or employee is involved conflicting with each other (i.e. a conflict of loyalties).

5.3 For the Trustees, a useful test is to regard an "interest" as a very broad term which includes anything or any connection that could potentially divert a Trustee's mind from giving sole consideration to fulfilling the objects of the Foundation.

5.4 An individual Trustee must not benefit, whether financially or otherwise, from their position beyond what is permitted by law and what is in the best interests of the Foundation.

5.5 If a Trustee has any doubt as to whether a particular circumstance represents a potential or actual conflict of interest, they should speak to the Chair in the first instance, who will confirm whether a Declaration should be made.

5.6 Any other individual involved with the Foundation who is uncertain as to whether they should notify the Foundation about a particular circumstance should discuss the matter with the Director who will then decide whether the matter should be declared and entered in the Foundation's Register of Interests.

DECLARING AN INTEREST

5.7 All Trustees (and other relevant individuals, eg Committee Members, and Senior Managers) shall, on appointment, complete a Declaration of Interests in respect of themselves, their spouses, partners, close relatives and business associates, as appropriate. Thereafter it is the individual's responsibility for ensuring that the Declaration is up to date, including reviewing the Declaration on an annual basis.

5.8 All external interests should be declared as it may not be apparent which are relevant to the Foundation or may lead to a potential or actual conflict of interests or loyalties.

5.9 All staff and volunteers must notify the Foundation, via their line manager, where the work they are doing for the Foundation involves or might involve a benefit from the Foundation to themselves or a connected party.

5.10 If any individual has a conflict of interest in relation to a particular contract, the conflicted individual must not be involved in managing or monitoring the relevant contract.

5.11 Whenever an individual has a conflict or potential conflict of interest in a matter to be discussed at a Board or Committee meeting where they are present, the conflicted individual shall:

- 5.11.1 declare that interest at or before discussion begins on the matter (at each meeting there should be a formal opportunity for those present to declare any interest in any item to be discussed);
- 5.11.2 withdraw from the meeting during any discussion of that item unless expressly invited to remain in order to give information;
- 5.11.3 not be counted in the quorum for the part of the meeting devoted to that item; and

5.II.4 withdraw during the vote and have no vote on the matter.

- 5.12 Trustees 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.
- 5.13 Trustees must follow any legal or governing document requirements which say how the conflict of interest must be handled and be satisfied that doing so is an appropriate way of demonstrating that their decision was made only in the best interests of the Foundation.
- 5.14 Where a Trustee or Committee Member becomes aware of a personal interest in relation to a matter arising in a written resolution circulated to the Trustees or Committee Members, as the case may be, the Trustee or Committee Member concerned shall:
- 5.14.1 as soon as possible declare an interest to all the other Trustees or Committee Members;
- 5.14.2 not be entitled to vote on the written resolution; and
- 5.14.3 the resolution shall take effect if approved by the requisite proportion of the remaining Trustees or Committee Members provided that any Trustee or Committee Member who has already voted on the resolution may, on being notified of the personal interest, withdraw their vote.
- 5.15 A declaration of interests is the responsibility of each individual Trustee or Committee Member, but if a Trustee is aware of an undeclared conflict of interest affecting another Trustee, they should notify the Chair.

RECORDING A CONFLICT

- 5.16 Trustees must be able to demonstrate that their decisions are made only in the best interests of the Foundation. A formal written record (eg. in minutes of the relevant meeting) of any conflicts of interest and how they were handled should be maintained, showing:
- 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 Foundation
- 5.17 Trustees may, exceptionally, need to seek the authority of the Office of the Scottish Charity Regulator (OSCR) where the conflict of interest is so acute or extensive that the Trustees consider they are unable to clearly demonstrate that they have acted solely in the best interests of the Foundation.

6 REGISTER OF INTERESTS

- 6.1 The Foundation shall maintain a Register of Interests which shall be reviewed by the Board every twelve months.
- 6.2 The Register of Interests shall include Trustee and Committee Member interests as recorded in their individual Declarations of Interest. The Register shall also contain any material conflicts notified by senior managers or other employees and volunteers.

- 6.3 Any information provided will be processed in accordance with data protection principles and retained in accordance with Data Protection legislation only in order to demonstrate compliance with this policy and to ensure the avoidance of impropriety.
7. PERSISTENT MATERIAL CONFLICTS
- 7.1 In the event that there is a persistent material conflict of interest which affects the ability of a particular Trustee or Committee Member to carry out his or her duties then the Trustee or Committee Member concerned should consider whether it is in the best interests of the Foundation that (s)he continues as a Trustee or Committee Member.
- 7.2 In the event that a conflict is considered by a majority of the unconflicted Trustees to be so fundamental or pervasive that it would be inappropriate for the individual to remain as a Trustee or Committee Member, then the individual will be asked to resign from the Board or Committee, as appropriate. In such a case the individual should respect the majority decision and resign at the earliest opportunity.
8. RELATED PARTY TRANSACTIONS
- 8.1 All trustee benefits must be disclosed in the Foundation's Annual Report and Accounts.
- 8.2 Most Related Party transactions must also be disclosed in the Foundation's Annual Report and Accounts. The Charities SORP requires these disclosures to provide transparency to users of the accounts so that they can assess whether the relationship between the Foundation and the other party or parties to a transaction may have been influenced by interests other than those of the Foundation. Disclosing related party transactions also shows how far, if at all, the reported financial position and activities may have been affected by such transactions.
- 8.3 Trustees will be required to disclose related party transactions of any value as part of their annual Declaration of Interests.



Declaration of Interests Form

I declare that to the best of my knowledge and having read the Foundation's Conflict of Interest Policy and associated guidance, the interests recorded below include each and every interest which might be considered to have a potential to influence the exercise of impartial judgement by me in my connection with the Foundation for the year ended 31 March 2020. 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 Foundation's Conflicts of Interest policy and for no other purpose.

Name:

Role:

Signature: Date:

Please record your interests under the appropriate heading in the table below.

1. Remuneration

List the names of any organisations (including your present employer) from which you currently draw a salary or other remuneration including honoraria, long-term or regular consultancies, and any directors' fees or other emoluments from private companies or PLCs. Short-term or one-off consultancies need not be included unless the organisation concerned is likely – or possibly seeking – to do business with the Foundation. In no case are you expected to disclose the level of salary or other payments. Please note the date the interest first arose.

2. Directorships

List the names or any private companies or PLCs of which you are currently a director, or of which you have been a director at some point during the last three years, or of which you expect to become a director within the next year (whether paid or unpaid). You are not expected to disclose the level of any directors' fees or other emoluments.

3. Significant Shareholdings

List the names of any companies or businesses – whether incorporated or unincorporated, private or publicly-quoted – in which you hold a significant shareholding (or equivalent). 'Business' should be taken to include consultancies, partnerships and the like; you will be deemed to have a 'significant shareholding' if you own more than 5 per cent of the business (normally 5 per cent or more of the issued share capital). You are not expected to disclose the level of your financial interest in these companies or businesses.

4. Grants received from the Foundation
<i>List the names of any organisations of which you are a trustee, member or director that receives grants from the Foundation</i>
5. Unremunerated work in the pursuance of activities related to those of the Foundation
<i>List the names of any unpaid offices you hold – for example, in a company, higher education institution, charity or not for profit, or public body – which you consider might have a bearing on your role as a Trustee or member of the senior management team of the Foundation. You should include any charity trusteeships you hold or any other way in which you participate in the management of a charity or not for profit organisation.</i>
6. Membership of organisations or associations
<i>List the names of any organisation of association memberships including professional bodies, special interest groups or mutual support organisations, political pressure groups where their objectives or activities overlap with those of the Foundation.</i>
7. Gifts and Hospitality
<i>List any gifts or hospitality offered to you by external bodies in connection with the Foundation in the last twelve months and whether they were declined or accepted. An approximate monetary value should be disclosed.</i>
8. Contractual relationships
<i>List any organisations you are connected with that have any contractual relationship with the Foundation or its subsidiaries</i>
9. Family Interests
<i>List any interests you have through members of your family having interests which might be considered to have a potential to influence the exercise of impartial judgement by you in your connection with the Foundation.</i>
10. Actual conflicts of interest
<i>Have any of the positions you (or a connected person) hold (as detailed above) caused any actual conflicts of interest in the past twelve months?</i>
11. Any other conflicts that are not covered by the above
<i>List any other interests not declared above which you wish to draw to the attention of the Foundation in the interests of open and transparent decision making.</i>