

Communication Matters (CM) Conflict of Interest Policy

Introduction

Under charity law all trustees have a duty to act in the best interests of Communication Matters and its beneficiaries. In order to do so, Trustees must avoid conflicts of interest, or, where these are unavoidable, must manage them transparently. A conflict of interest can arise where:

- a Trustee's decision making in respect of the charity may be influenced by their relationship with another person or organisation. This may be their employment, an organisation they are a member of or volunteer with, a close family member etc.
- a Trustee receives a benefit from the charity that is not properly authorised within the CM Constitution

The Charity Commission provides the following guidance for Trustees.¹ *Transparency is achieved by requiring explicit authorisation of the benefit, and by ensuring that any particular conflict of interest is properly and openly managed.*

The Companies Act 2006 introduced a duty on directors/ trustees of charitable companies to avoid situations where a conflict might arise rather than just the conflict itself.

This policy aims to ensure that Trustees do avoid potential conflicts of interest as far as possible and do manage them when they are unavoidable.

This policy applies to all Trustees.

1. What is a Conflict of Interest?

The most common types of conflict of interest are the following:

- Direct financial gain by a Trustee, such as payment for goods and services supplied to the charity, payment for acting as a Trustee, sale of land to a Trustee, use of a Trustee's property by the charity.
- Indirect financial gain by a Trustee, most commonly where a Connected Person² receives a payment for goods or services supplied to the charity, or through a contract of employment with the charity. A Trustee may also receive an indirect financial gain if the charity awards a contract to an organisation in which the Trustee holds an interest. This would include the employer of a trustee.
- Where a Trustee may receive a financial or non-financial benefit as a user of the charity's services.

¹ Source: A Guide to Conflicts of Interest for Charity Trustees. Charity Commission.

² Connected Person. (a) Any spouse, civil partner, parent, child, brother, sister, grandparent or grandchild of a Trustee; or (b) any other person in a relationship with a Trustee which may reasonably be regarded as equivalent to such a relationship; or (c) any company or firm of which the Trustee is a paid director; partner or employee, or shareholder holding more than 1% of the capital

- When a Trustee has a conflict of loyalties between the charity and their personal or other interests (such as a role with another organisation) and may be unduly influenced by these in relation to their stewardship of the charity.

2. **Managing Conflicts of Interest**

2.1 **General Principles**

- When Trustees meet, they must leave all their outside interests and loyalties at the door. If this is not possible, or if the conflicts are so frequent as to limit the usefulness of a Trustee, then s/he must step down as a Trustee of CM.
- Trustees must be able to identify conflicts of interest when they arise and to ensure, if they receive a material benefit as a result of the conflict of interest, that the benefit is authorised by the CM Memorandum and Articles of Association, or by the Charity Commission. The Commission will only provide authority where there are clear advantages to the charity.
- If there is no material benefit to a trustee, no authority will be required, but the Trustees will need to ensure that the conflict of interest is properly managed.
- Conflicts of interest which are unavoidable must be managed transparently. For this reason, CM has a Register of Trustee Interests disclosing personal interests, and a procedure for identifying and declaring conflicts, withdrawing from discussion and decision making, and the minuting of such a process.
- A Trustee must play no part in decisions where they have a conflict of interest.
- Failure to disclose an interest may create significant risks for CM, in terms of poor decision making and loss of reputation. A Trustee who does not comply with this policy may be removed from office.

Honesty and openness are key to minimising conflicts of interest. This policy puts in place a system in which actual or potential conflicts of interest, whether financial or more general, are properly managed and formally recorded.

2.2 **Declaration of Interests**

Trustees should be meticulous about declaring any actual or potential conflicts of interest affecting themselves and connected parties.

Relevant interests and potential conflicts of interest should be declared in writing and regularly updated. CM asks Trustees to declare their interests on a Declaration of Interests form as follows:

- [a) pre-selection: any prospective Trustee is asked to complete a Declaration of Interests form as part of their application in order that any relevant issues may be explored during selection. This declaration is confidential and would be erased from the record if the prospective Trustee were in the end not to become a Trustee.
- b) on appointment: every new Trustee should amend their Declaration of Interests form if necessary, at the time of appointment if this is not at the time of the annual declaration.
- c) annually at the start of a new financial year.

d) when anything significant changes: and always within 28 days of any change.

In addition, Trustees should declare an interest:

e) verbally at any meeting where specific relevant conflicts may arise (see 3.2.2 below).

The Communication Matters Trustee Declaration of Interests register may be requested by an associate member or a member of the public or another body but only in exceptional circumstances. Public access to the register would further the interests of accountability and transparency, as well as demonstrating that the charity is following best practice in relation to managing conflicts of interest.

However, there may be sections of the declaration, or levels of detail within certain sections, which trustees want and decide to keep confidential. The requirement that the whole register be publicly available may serve as a disincentive to trustees joining the board, or declaring their full range of interests. Possible compromises include:

- arranging for some sections of the register to be publicly available, whilst maintaining the confidentiality of other sections
- making sections of the register accessible to the organisation's membership, again maintaining the confidentiality of the remaining sections
- making the complete register available to all trustees.

Data Protection

The information on the Trustee Declaration of Interests form will be processed in accordance with data protection principles as set out in the GDPR, i.e. certain conditions must be met in order to establish that personal data has been processed fairly and lawfully. Data will be processed only to ensure that Trustees act in the best interests of CM. The information provided will not be used for any other purposes.

Declarations of Interest in Trustee Meetings

Whenever a Trustee has a personal interest in a matter to be discussed at a meeting (whether a general meeting or a Trustees' meeting) or in relation to which a decision is proposed to be made, or whenever a Trustee has an interest in another organisation whose interests are reasonably likely to conflict with those of the Charity in relation to a matter to be discussed at a meeting (whether a general meeting or a Trustees' meeting), he/she must:

- declare an interest before discussion begins on the matter;
- withdraw from that part of the meeting unless expressly invited to remain or decline to participate in any discussion on the matter unless expressly invited to do so;
- in the case of personal interests not be counted in the quorum for that part of the meeting; and
- in the case of personal interests withdraw during the vote and have no vote on the matter.

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

All decisions under a conflict of interest will be recorded and reported in the minutes of the meeting. The minutes will show:

- 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

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

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

2.3 Users/Beneficiaries as Trustees

As potential or actual beneficiaries of CM activities, Trustees may find themselves dealing with many potential conflicts of interest and these should be carefully managed.

The basic principle regarding user Trustees is that they should not receive any benefit over and above those that are available to other beneficiaries, and should not be able to influence decisions that have a direct impact upon them. In practice, this means that Trustees should withdraw from discussions and decisions that could result in them receiving a benefit that would be personal to them, and not available to other users of CM "services"

Similarly, if a Trustee is a user of CM's "services", or the carer of someone who uses CM's services, they should not be involved in decisions that directly affect the service that they, or the person they care for, receive. They should declare their interest at the earliest opportunity and withdraw from any subsequent discussion. The same applies if they face a conflict for any other reason.

A Trustee may, however, participate in discussions from which they may indirectly benefit, for example where the benefits are universal to all users, or where their benefit is minimal. If it is hard to separate the benefits of a Trustee from those of the wider membership or users of the charity, the Trustee should always declare an interest.

2.4 Managing Contracts

A Trustee must not be involved in managing a tender process or a contract in which they have an Interest (for example if their employer or their brother is bidding for the work)

3. Accounts Disclosure

Under the financial reporting requirements, we are required to disclose details of any connected party transactions in the Charity accounts. This includes details of properly authorised payments to Trustees and also any other transactions in which the Trustee or a connected person has an interest. This latter category will include access to the charity's services, for example attendance by a Trustee's children on activities organised by the charity. This information will be taken from the Declaration of Interests form.

4. Examples of other potential situations where conflict of interest for CM trustees might occur:

If a Trustee (or a person closely connected to them) is any of the following:

- A governor of a school which specialises in communication/AAC
- A Trustee of another AAC related charity
- The owner of, or having a significant interest in an organisation that supplies/may supply goods or services to CM. This would include being an employee as there would be potential conflict of loyalty to employer, and of indirect financial gain as the employer pays their wages.
- The owner of, or having a significant interest in an organisation which supplies goods or services to AAC users (as above re being an employee)
- A Local Councillor or politician
- A local or national government official
- A board member or executive of any organisation which is involved in the development of policy for, or commissioned to deliver services in, health, education or social care.
- A volunteer at another AAC related charity (such as CM trustees helping out at the 1Voice residential weekend)
- Active on social media (see Media Policy for details)