

**DATED**

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**CHARITY TRUSTEES CONFLICTS OF INTEREST POLICY**

**THE LYTHAM INSTITUTE**

**A registered charity in England and Wales (number 1186995)**

## 1. Introduction

1.1 This policy applies to the charity trustees of the Lytham Institute (**Charity**) and sets out guidelines and procedures for identifying, monitoring and managing actual and potential conflicts of interest.

1.2 The Charity Commission considers it good practice for charity trustees to implement a conflicts of interest policy. The Commission's guidance for charity trustees on conflicts of interest is available on its website at: <https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29>.

1.3 In this policy references to:

- (a) "conflicts" or "conflicts of interest" include actual and/or potential conflicts of interest and/or duty;
- (b) persons who are "connected" with a charity trustee means:
  - (i) a child, stepchild, grandchild, parent, grandparent, brother or sister of a charity trustee;
  - (ii) the spouse, unmarried partner or civil partner of a charity trustee or of any person falling within paragraph (i) above;
  - (iii) any person who is in a business partnership with a charity trustee or any person who is in a business partnership with any person falling within paragraph (i) or (ii) above; and
  - (iv) any company, business, trust, or organisation in which a charity trustee (or any other person connected to them) has an interest as a beneficiary or through ownership, control or influence
  - (v) in relation to Fylde Borough Council, any person listed in clause 2.2.

If in doubt about whether a person is connected, a charity trustee should seek advice from a solicitor or other person qualified to advise on the matter; and

- (c) "benefit" includes any payment or material benefit (including property, loans, goods and services), other than reasonable out of pocket expenses.

1.4 The Charity's governing document sets out some procedures in relation to conflicts of interest. This policy should be read in conjunction with the governing document, and relevant provisions in the governing document take precedence over this policy.

## 2. Fylde Borough Council

2.1 The following clauses of this policy do not apply to Fylde Borough Council:

- (a) Clause X.X (Xxxx)
- (b)

2.2 In addition to the person listed in paragraph 1.3(b) above, the following are connected with Fylde Borough Council:

- (a) any member of Fylde Borough Council;
- (b) any employee of Fylde Borough Council;
- (c) any person who has within the previous five years been a member or employee of Fylde Borough Council;
- (d) any person who falls within any of sub-paragraphs 1.3(b)(i)–(iv) in relation to any person falling within any of paragraphs (a) to (c) above.

**2.3** The duties of a charity trustee as set out in this policy also apply to a person representing the council at trustee meetings at that meeting.

### **3. The purpose of this policy**

- 3.1 The charity trustees have a duty to act in the best interests of the Charity and owe a duty of absolute loyalty to the beneficiaries of the Charity.
- 3.2 This means that the charity trustees must not place themselves in a position where they have, or may have, a direct or indirect interest that conflicts with their duties as charity trustee. As a general principle, charity trustees must also not make a profit from their position as charity trustee.
- 3.3 Conflicts of interest can inhibit open discussions and may result in charity trustees taking irrelevant considerations into account or making decisions that are not in the Charity's best interests. They can also damage the reputation of the Charity if it appears that the charity trustees are influenced by personal interests or loyalties. All charity trustees must therefore be alert to the possibility that they, or their co-charity trustees, could be affected by a conflict of interests.
- 3.4 The procedures in this policy will enable charity trustees to identify and manage conflicts of interest so that they can ensure that conflicts do not prevent them from making decisions in the best interest of the Charity. The policy will also help protect both the Charity and the charity trustees from any appearance of impropriety in cases where conflicts of interest arise.

### **4. Identifying conflicts of interest**

- 4.1 A conflict of interest is any situation in which a charity trustee's direct or indirect interests could, or could be seen to, prevent them from making a decision only in the best interests of the Charity.
- 4.2 Conflicts of interest may arise:
  - (a) where a charity trustee (or a person connected to them) stands to obtain a benefit from the Charity; or
  - (b) where a charity trustee has a duty of loyalty to a third party that conflicts with their duty to the Charity.
- 4.3 In relation to Fylde Borough Council, conflicts of interest may also arise where the corporate, community or political priorities of the council or of the person representing the council at a trust meeting conflict with the council's duty to the Charity.
- 4.4 When considering if they have a conflict of interest, a charity trustee must be aware of the following principles:

- (a) a conflict of interest exists if there is a possibility that the charity trustee's personal interest could influence their decision-making, even if the charity trustee's decision-making is not in fact adversely affected by the conflict. A reasonable perception that a conflict of interest exists can be enough for a charity trustee to be in breach of their duties; and
- (b) the interest that gives rise to a conflict may be direct or indirect. A conflict may therefore relate to the interests of someone who is connected to a charity trustee as well as to their own personal interests.

4.5 It is impossible to set out every situation which may result in a conflict, but common situations include:

- (a) selling, loaning or leasing Charity assets to a charity trustee (or a person connected to them);
- (b) the Charity acquiring, borrowing or leasing assets from a charity trustee (or a person connected to them);
- (c) the exploitation by a charity trustee (or a person connected to them) of any property, information or opportunity of which they become aware while acting as a charity trustee;
- (d) paying a charity trustee for carrying out:
  - (i) their role as charity trustee,
  - (ii) a separate paid post at the Charity (even if they have resigned as a charity trustee);  
or
  - (iii) a post at the Charity's subsidiary trading company;
- (e) paying a charity trustee (or a person connected to them) for providing a service and/or goods to the Charity;
- (f) employing a person connected to a charity trustee at the Charity or its subsidiary trading company;
- (g) making a grant to a charity trustee (or a person connected to them) or determining the Charity's grant-making policy where the charity trustee (or a person connected to them) is a beneficiary;
- (h) making decisions in relation to service provision where a charity trustee (or a person connected to them) is a service user;
- (i) a transaction between the Charity and its trading subsidiary (or another charity) where a charity trustee is a director (or charity trustee) of both entities, and the transaction results in the Charity receiving a substantial asset from, or transferring a liability to, the other entity;
- (j) when a charity trustee (or a person connected to them) owes a legal obligation or duty towards another organisation or person (for example, an employer or another charity of which they are a charity trustee) that conflicts with the charity trustee's duty to the Charity;
- (k) when a charity trustee has a personal sense of loyalty to another organisation or person that conflicts with their loyalty to the Charity; and
- (l) when a charity trustee has religious or political views that could interfere with their ability to make decisions in the interest of the Charity.

## **5. Procedure for declaring interests**

- 5.1 All charity trustees have a personal responsibility to declare any interest that might reasonably be regarded as potentially giving rise to a conflict.
- 5.2 On appointment, all charity trustees must complete a declaration of interests form:
- (a) listing any personal interests, business interests or other direct or indirect interests that might potentially give rise to a conflict of interests;
  - (b) listing any interests of persons connected to them that may potentially give rise to a conflict of interest;
  - (c) declaring any gifts or hospitality received or offered to them in their capacity as charity trustee;
  - (d) confirming that they are not aware of any conflict, other than those already disclosed, that exists between their role and their personal circumstances or other interests;
  - (e) confirming that they will update the form annually, or sooner if any changes occur; and
  - (f) confirming that they will declare any conflict that arises in the future.
- 5.3 The information provided by charity trustees must be recorded in a register of charity trustees' interests. At least once in every 12-month period, all charity trustees must review the information relating to them contained in the register of interests and declare that the information is correct or make a further declaration if necessary.
- 5.4 It is for individual charity trustees to decide which matters to declare but, if in doubt, they should make a declaration. If a charity trustee would like to discuss the issue, they may contact the chairman for confidential guidance.
- 5.5 The information provided by charity trustees will be processed in accordance with the principles for processing personal data set out in UK data protection legislation. Data will be processed only for the purposes set out in this policy and not for any other purpose.

## **6. Maintaining the register of charity trustees' interests**

- 6.1 The chairman will be responsible for maintaining the register of charity trustees' interests, and will:
- (a) record in the register all conflicts, interests, gifts and hospitality declared by charity trustees; and
  - (b) circulate amendments or additions to the register (if any) to the charity trustee board at the start of each charity trustee meeting.
- 6.2 The register of charity trustees' interests will be available for inspection by any charity trustee and any member of the public on request.

## **7. Declaration of interests by prospective charity trustees**

- 7.1 Before a prospective charity trustee is appointed, they must be asked to declare any direct or indirect interests they have that might give rise to a conflict of interests.

7.2 If the charity trustees consider it likely that the prospective charity trustee will be subject to serious or frequent conflicts of interest, the charity trustees should consider whether it is appropriate to proceed with the appointment.

## **8. Process for declaring conflicts**

8.1 The first item on the agenda of each charity trustee meeting will be a standing item requiring all charity trustees attending the meeting to declare any conflicts of interest relating to the matters to be discussed at the meeting.

8.2 If a charity trustee considers that they have an actual or potential conflict, they must inform the chair as soon as possible and always before any discussion of the relevant matter. The declaration must specify the nature and extent of any direct or indirect interest that gives rise to the conflict.

8.3 If a charity trustee is aware that another charity trustee has an actual or potential conflict that has not been declared, they must notify the other charity trustees.

8.4 If the chairman is declaring a conflict, they must inform the other charity trustees.

8.5 If a charity trustee is uncertain whether or not they are conflicted, they must err on the side of openness and declare the interest.

8.6 The secretary to the Charity must note all conflicts declared in the minutes of the meeting in which they were declared or, if not declared in a meeting, in the minutes of the next charity trustee meeting.

8.7 A declaration made under paragraph 8.1, paragraph 8.2 or paragraph 8.3 must be made either at a meeting of the charity trustees or by sending written notice to the other charity trustees.

8.8 A charity trustee may give general notice that they or a person connected to them has an interest in a specified company, business or organisation and is to be regarded as interested in any transaction or arrangement with that company, business or organisation that may be entered into by the Charity, after the date of the notice. Such notice must be given at a meeting of the charity trustees, or the relevant charity trustee must take reasonable steps to ensure that it is brought up and read at the next meeting of the charity trustees after it is given. The notice must state the nature and extent of the interest that the charity trustee or a person connected to them has in the company, business, or organisation.]

## **9. Procedure for assessing conflicts at meetings**

9.1 At the start of each meeting of the charity trustees:

(a) the chairman must inform the other charity trustees and the secretary to the Charity of any conflict of interest that has been declared by a charity trustee that relates to the business to be discussed at the meeting; and

(b) the chairman will circulate any amendments or additions to the register of charity trustees' interests made since the last meeting of the charity trustees.

9.2 The way in which conflicts are dealt with will depend on the nature and extent of the conflict. The non-conflicted charity trustees must therefore:

- (a) assess the nature and extent of the conflict;
- (b) assess the risk or threat to decision-making by the charity trustees;
- (c) decide whether the conflict is serious (for example, the conflict is acute or extensive, will or may be seen to prevent the charity trustees from making decisions in the best interests of the Charity, relates to a significant decision or risks significantly damaging the Charity's reputation); and
- (d) decide what steps to take to handle the conflict.

When considering the conflict, charity trustees must take all relevant factors into account, make decisions only in the best interests of the Charity and always protect the Charity's reputation.

9.3 The conflicted charity trustee must not take part in any discussion or decision about the conflict and how to handle it and will not be counted in the quorum for that part of the meeting.

9.4 The non-conflicted charity trustees must consider whether it is necessary to seek the advice of the charity's legal adviser on whether the conflict is serious and/or on how to manage the conflict declared.

## **10. Authorised conflicts of interest**

10.1 The charity trustee's duty to avoid a conflict of interest does not apply if, and to the extent that, the conflict of interest is authorised by any of the following:

- (a) an express provision in the Charity's governing document;
- (b) a statutory provision, such as the powers in the Charities Act 2011 to:
  - (i) pay a charity trustee (or a connected person) for providing services to the charity (sections 185 to 188); or
  - (ii) take out and pay premiums for trustee indemnity insurance (section 189); or
- (c) the Charity Commission or the court.

10.2 In each case, the charity trustee must always follow any conditions that apply to the authorisation.

## **11. Procedures for managing conflicts**

11.1 If the conflict arises owing to a financial transaction between the Charity and a charity trustee (or a connected person), or because a charity trustee (or a connected person) will or may obtain a benefit from the Charity:

- (a) any potential or proposed benefit must be authorised in advance (see section 10 (Authorised conflicts of interest) above); and
- (b) the conflicted charity trustee must:
  - (i) withdraw from all discussions and decisions in relation to the matter; and
  - (ii) not be counted in the quorum for that part of the meeting.

11.2 If the non-conflicted charity trustees decide that a conflict is serious, they must consider:

- (a) securing the conflicted charity trustee's resignation and/or appointing a new charity trustee who is not conflicted;

- (b) not pursuing the course of action that gives rise to the conflict or proceeding in a different way so that the conflict does not arise;
- (c) seeking independent, expert advice about how to handle the conflict; and
- (d) asking the Charity Commission for guidance.

11.3 If a conflict is not serious, the non-conflicted charity trustees must decide what procedures and level of participation by the conflicted charity trustee are appropriate. Steps that can be taken to deal with the conflict include:

- (a) requiring the conflicted charity trustee to withdraw from the meeting for the relevant item and not to be counted in the quorum for that part of the meeting;
- (b) allowing the conflicted charity trustee to remain in the meeting for the relevant item to take part in the discussion, but requiring them to withdraw from the meeting during decision-making and to have no right to vote on the matter; or
- (c) appointing a new, non-conflicted charity trustee.

11.4 If the non-conflicted charity trustees decide that the conflict is low risk (in that it will not prevent the conflicted charity trustee from making decisions in the best interests of the Charity), they may agree that the conflicted charity trustee may continue to participate in discussions and the decision-making process.

11.5 The chairman must inform the conflicted charity trustee of the non-conflicted charity trustees' decision about how to manage the conflict.

11.6 The minutes of the relevant meeting must include a record of the nature and extent of the conflict, an outline of the discussion and the actions taken to manage the conflict.

11.7 Where a charity trustee or a connected person receives a payment or benefit from the Charity, this must be reported in the annual accounts in accordance with the current Statement of Recommended Practice for accounting and reporting by charities (Charities SORP).

## **12. Advisers and conflicts**

12.1 Before appointing any advisers to the Charity, the charity trustees must consider whether the adviser has, or may be seen to have, any actual or potential conflict with the interests of the Charity.

12.2 All advisers to the Charity must be appointed by the charity trustees under terms that include:

- (a) an obligation to inform the charity trustees if any circumstances arise in which they are or may be conflicted; and
- (b) an obligation to address any conflicts that arise in the work they do for the charity trustees.

## **13. Training**

All newly appointed charity trustees must receive training on this policy and on identifying situations that may result in a conflict and ways in which conflicts can be managed in practice. In addition, charity trustees must be familiar with the principles contained in the Charity Commission's guidance on conflicts (see paragraph 1.2).



#### **14. Monitoring, enforcing and reviewing this policy**

- 14.1 Any charity trustee who becomes aware of a breach of this policy must report it to the chairman as soon as possible.
- 14.2 The chairman must:
- (a) report all breaches of the policy of which they are aware to the charity trustees at the next charity trustee meeting; and
  - (b) ensure that all breaches are noted in the minutes of the relevant charity trustee meeting.
- 14.3 The charity trustees have implemented this policy to monitor and manage conflicts of interest. Any failure to comply with the terms of this policy will not, in itself, result in a decision of the charity trustees being invalidated or in any liability to the Charity's beneficiaries.
- 14.4 This policy must be reviewed annually, or sooner if required, by the chairman.