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Ahtutu Conflict of Interest Policy

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### Introduction

This guidance note covers registered charities in England and Wales. Whilst principles of good governance transcends national borders, it is important to bear in mind the specific differences in charity legislation for those charities operating in Scotland, Northern Ireland, and elsewhere. This guidance note has been drafted to reflect the findings of the Charity Commission and ICASA's review project into the governance arrangements in newly registered charities.

The information in this document expands upon, and consolidates, the principles highlighted in Good governance: A code for the voluntary and community sector - <https://charitycommission.blog.gov.uk/2017/07/13/the-new-charity-governance-code-essential-reading-for-all-trustees/> .

Overall purpose Benefits of being a trustee Whilst the role of trustee is a serious duty, there are various positive aspects to the role that can help an individual on a personal and professional basis:

- the knowledge that you are contributing to a worthwhile cause
- building self-confidence and experience of committee work
- acquiring new skills – personal and professional – through training and information and sharing
- the enjoyment to be had from working with a group of individuals from different backgrounds who share a similar passion for a particular cause.

The role of charity trustee is one that can offer considerable satisfaction, challenges and experiences, but it should not be forgotten that the position can be quite onerous and require a significant time commitment.

The aim of this guidance note is to provide charities with guidance on how to recognise and manage perceived and real conflicts of interest amongst members of the trustee board. It offers a generic model document that can be amended to suit the needs of individual organisations, whilst addressing the fundamental issues that arise from real and perceived conflicts of interest. It should be noted that the benefit derived by those trustees who are users of the charity's services should not be over and above that received by any other user or beneficiary of the charity.

### 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. For charitable companies, trustees have a legal duty to avoid conflicts of interest. 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", 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 charity.

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 with which a trustee 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; 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 service 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.

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 charity 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 Ahtutu'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. Where a charity operates a code of conduct for trustees, it is essential that the document 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 meeting.**

By asking trustees to declare their interests and keeping a register of such interests, organisations can monitor potential conflicts of interests on a continuous basis. A 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 a multiplicity of 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 charities seeking to appoint trustees with skills and experience of the wider economic community. If conflicts cannot be avoided, they need to be managed effectively.

#### Declaration of interests

**Potential and new trustees should be informed that they will be expected to declare their interests on appointment** and subsequently, when they arise. They should also be provided with a copy of the conflicts of interest policy, preferably before appointment.

If the potential trustee is concerned about a possible conflict of interest, they should view the policy and discuss the matter with the trustees before agreeing to take up the position. On appointment, trustees should be asked to complete a declaration of interests.

New trustees may be uncertain as to what comes under this heading (in which case they should consult the admin manager), 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.

When asking trustees to complete a declaration of interests, the following areas should 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 membership
- membership of any special interest groups
- investments in unlisted companies, partnerships and other forms of business
- major shareholdings (charities may set a figure here, e.g. more than 1% or 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 or funder
- using, or caring for a user of, the organisation's services
- any contractual relationship between the trustee or a connected person and the charity or its subsidiary. The level of detail required in the register may depend on:
  - the size and culture of the organisation
  - the likelihood of a conflict arising

- the potential damage that could be caused by a conflict.

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. Organisations will need to find a balance between accountability and unwarranted intrusion into the affairs of their trustees.

#### Register of interests

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

Charities will need to consider whether the register of interests is kept as a confidential document, to be maintained and monitored by the charity secretary and accessible

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.

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 chairman of the trustees or charity secretary 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 charity's best interest. This could be costly to them and damage the work and reputation of the charity.

The most common dangers arising out of a conflict of interest are:

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

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 of business', seeking and following appropriate professional advice.

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 charity's governing document. If the transaction is challenged (e.g. by the 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 charity.

## Governance

Within the board itself, poorly managed conflicts of interest will 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.

A conflicts of interest policy is key to managing such conflicts in an open and transparent manner. Even where the governing 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.

The Charities Act 2016 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...", except where a charitable company has an authorisation clause within its governing document permitting the trustees to authorise certain conflicts.

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

Volunteers have similar obligations.

Conflicts of interests may arise where an individual's personal or family interests and/or loyalties conflict with those of Ahtutu.

Such conflicts may create problems; they can:

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

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

## POLICY DOCUMENT

### The declaration of interests

Accordingly, we are asking trustees to declare their interests, and any gifts or hospitality offered and received in connection with their role in Ahtutu.

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.

### Specimen conflict of interest policy, declaration form and register of interests for charity trustees

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 founder trustee for confidential guidance. This register of interests shall be used to record all gifts of a value over [£100] and hospitality over [£100] received by the trustees and staff. Interests and gifts will be recorded on the charity's register of interests, which will be maintained by the admin manager.

The register will be accessible by [level of access, noting any statutory requirements applicable]. Data protection The information provided will be processed in accordance with data protection principles as set out in the Data Protection Act 2018.

Data will be processed only to ensure that trustees act in the best interests of Ahtutu.

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 admin manager 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 charity generally without disclosing such sensitive information that could place the individual in an untenable position.

If you are user of Ahtutu's services, or the carer of someone who uses Ahtutu's services, you should not be involved in decisions that directly affect the service that you, or the person you care for, receive(s). You should declare your interest at the earliest opportunity and withdraw from any subsequent discussion, unless expressly invited to remain.

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 the admin manager and/or founder trustee, they will 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. 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 admin manager 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 Ahtutuare connected to a party involved in the supply of a service or product to the charity, this information will be fully disclosed in the annual report and accounts. This option is only available to those charities which have an express power to authorise situational conflicts in their governing document.

Charity legislation requires the full disclosure of all 'related party' transactions with any third party that may inhibit the charity being able to pursue its separate interests. The Charity Commission strongly recommends that all trustee payments should be disclosed in an appropriate manner, see CC11 Trustee payments and expenses Specimen conflict of interest policy, declaration form and register of interests for charity trustees 18 April 2014 Independent external moderation will be used where conflicts cannot be resolved through the usual procedures. (Organisations should add any further requirements that relate to the nature of the organisation's work) 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.



Category	With whom the interest falls
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 [charities may set a figure here, e.g. more than 1% or 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.	
Do you use, or care for a user of the organisation's services?	
Any contractual relationship with the charity or its subsidiary.	
Any other conflicts that are not covered by the above.	