

Company Directors & Conflicts of Interest

Produced in consultation with Bates, Wells & Braithwaite LLP

Company Directors have a legal duty:

- to avoid conflicts of interest
- not to accept benefits from third parties
- to declare any interest of their own in proposed transactions or arrangements.

A conflict of interest is any situation in which a Company Director's personal interests or interests which they owe to another body might clash with the interests of the Company.

Where might conflicts of interest arise?

The first step in deciding how your Company will deal with conflicts of interest is to decide what they are. Some examples are:

Direct financial gain:

- Payment to a Director for services provided to the Company: Some performing arts organisations appoint Directors for expertise in fields where they might also contract them as suppliers e.g. marketing, fundraising, writing, technical work. Such Directors should not be present for the discussion of such contracts. Contracts should not generally be awarded to Directors without the Board having satisfied itself that they are the most capable and cost-effective choice
- Award of a contract by the Company to an organisation in which a Director has an interest and/or will receive financial benefit: This might be a contract for services, as above, it might also be a contract between a performing company and a receiving venue or a company and a festival.
- Employment of a Director in a separate post within the Company: An Artistic Director is an employee who is frequently on the Board of a Company. They should not participate in discussion about their own terms of employment or pay and (particularly if the Company is a charity) possibly not that of other members of staff.

Indirect financial gain: Employment of a Director's spouse or partner by the Company.

Conflict of loyalties: For example where a trustee is appointed by a funder. Where a friend of a trustee is employed or commissioned by the Company.

Keeping track of conflicts of interest

On appointment: Give new Directors your Conflict of interest policy and ask them to complete a Conflict of Interest form which will provide information to go into a Conflict of Interest Register.

Register: All Companies should have a register of Directors, which can be expanded to include a "Conflicts of Interest" column and should be reviewed annually.

Meetings: All Company Directors should be made aware that if an item on a Board Meeting Agenda might cause a conflict of interest for them they should declare this at the beginning of the meeting and be prepared to withdraw whilst the rest of the Board decides what to do about this. It may be that the

conflict is not considered to be significant, it may be so significant that the Director will have to leave for that item or it may fall between those points e.g. the Director can participate in discussion but not have a vote.

Sample Conflict of Interest Form

(based on material from the Institute of Chartered Secretaries & Administrators)

I XXX as a Director of Company XXX have set out below my interests in accordance with the organisation's conflicts of interest policy.

| Category | Please give details of the interest and whether it applies to you or, where appropriate, a members of your immediate family or some other close personal connection |
|---|---|
| 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) & 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 not covered by the above. | |

To the best of my knowledge, the above information is complete and correct. 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 conflicts of interest policy and for no other purpose.

Signed:

Position:

Date:

Sample Conflict of Interest Register

(based on material from the Institute of Chartered Secretaries & Administrators)

| Name of Trustee | Description of Interest | Does the interest relate to a trustee or a person clearly connected with the trustee (describe) | Is the interest current? |
|-----------------|---|---|-----------------------------------|
| Mr T Smith | Joint owner of catering company | Trustee, other joint owner is trustee's daughter. | Current |
| | Member of the local Authority | Trustee | Current |
| Mrs A Jones | Employee of charity XXX with similar aims and objectives and work | Trustee | No, trustee resigned post in 1999 |
| Mr A Wright | Trustee of XXX charity | Trustee | Current |

Draft a Policy

This should establish where conflicts of interest are likely to arise in the context of your organisation and sets out action that will be taken if such a conflict does occur. The following are suggested headings to cover:-

Who does the policy apply to? Only to Directors or to Directors and staff?

Why does the company have a policy?

- Legal obligations under the Companies Act.
- Legal obligations under the Charities Act (if appropriate)
- Obligations arising from the company's own Memorandum and Articles of Association
- Problems that conflicts of interest are likely to create, e.g: inhibition of free discussion, decisions or actions that are not in the interests of the Company, give the public the impression that the Company has acted improperly.

How does the Company deal with conflicts of interest?

- Asking Directors to declare any interest on appointment
- Asking Directors to declare gifts received from third parties in connection with their role in the Company
- Keeping an up to date Register of Interests (obviously processed in line with Data Protection legislation).
- Having a procedure for dealing with conflicts of interest at Board meetings
- Setting out what a Director should do if faced with a conflict of interest
- Explaining circumstances where the Company's constitution specifically authorises transactions that might otherwise give rise to a conflict.

Useful websites

Charity Commission
Companies House
Institute of Chartered Secretaries & Administrators

www.charity-commission.gov.uk
www.companieshouse.gov.uk
www.icas.org.uk