



department for
culture, media
and sport



Charitable Museums and Galleries: A guide to conflicts of interest policies, trustee benefits and transactions between trustees and charities

DCMS's aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence.

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1 Introduction

What is this guidance about?

This guidance explains how charity trustees can identify and manage conflicts of interest which arise in their charities and how they should deal with any transactions which involve a trustee benefit or are conducted between a trustee and the charity.

Who should read this guidance?

It is intended principally for members of the governing bodies of charitable museums, galleries and libraries including those that are sponsored by the Department for Culture, Media and Sport (DCMS). The members of the governing bodies of charitable museums, galleries and libraries are charity trustees.

The legal requirements and good practice recommendations are also applicable to other charities.

Who has prepared it?

It has been prepared by the Charity Commission (the Commission) and the DCMS and is endorsed by the Museums, Libraries and Archives Council.

The Commission is the independent regulator of charities in England and Wales. More information about the Commission together with a range of guidance for charities can be found on its website: www.charitycommission.gov.uk, or by ringing its contact line: 0845 300 0218.

The DCMS is responsible for Government policy on museums and galleries, the arts, sport, the National Lottery, tourism, libraries, broadcasting, creative industries, press,

licensing, gambling and the historic environment. It currently sponsors 22 museums and galleries, most of which are charities. More information about the DCMS can be found on its website: www.culture.gov.uk, or by ringing its contact line: 020 7211 6200.

What is the scope of this guidance?

This guidance reflects the Commission's regulatory approach to dealing with conflicts of interest and transactions which involve a trustee benefit or are conducted between a trustee and the charity. Charities are also able to approach the Court for authorisation in respect of these matters. However, charities are advised to approach the Commission first.

In using this guidance, a "**must**" means it is a specific legal or regulatory requirement affecting trustees or a charity. Trustees must comply with these requirements. The word "**should**" is used for items regarded as good practice, but for which there is no specific legal requirement.

The Annex to this guidance is intended as a guide to how to deal with some of the common conflict of interest and trustee benefit situations that may arise in charitable museums and galleries. It is not intended to be an exhaustive guide on how to deal with all issues or to the legal framework which underpins these issues. Whether the general guidance is appropriate in a particular case will depend on all of the facts of that case. If the trustees are uncertain how to deal with a particular situation that arises, we recommend that they contact the Commission for advice.

Terms used in this guidance

Charity trustees

In this guidance the term 'trustee' means charity trustee. Charity trustees are the people with responsibility for the general control and management of the administration of the charity. In the charity's governing document they may be known as trustees, directors, board members, governors or committee members.

Governing document

Governing document means the document that sets out the charity's purposes and, usually, how it is to be run. The most common forms of governing document are formal legal documents such as trust deeds, constitutions and memorandum and articles of association. In the case of the national museums and galleries sponsored by the DCMS, the governing document will be the relevant Act or Acts of Parliament that set out their charitable purposes, for example the Museums and Galleries Act 1992.

A governing document may contain specific powers in relation to conflicts of interest and benefits to trustees. It should be consulted whenever these issues arise or an important decision has to be made.

Exempt charities

Many museums and galleries are charities, including those that are sponsored by DCMS.

Some charities are exempt from the Commission's supervisory regulation. This is because they are supervised by, or are accountable to, some other body. Most of the

national museums and galleries that are accountable to the DCMS are exempt charities. Exempt charities must still comply with charity law.

The Charities Act 2006 introduces the concept of principal regulators who are responsible for the regulation of particular charities. In the case of exempt charities that are museums and galleries, the DCMS is their principal regulator.

The Commission can help exempt charities in a number of ways. For example, it can provide information and advice and it can authorise certain transactions which would otherwise be contrary to charity law. The Charities Act 2006 also extends the Commission's role for exempt charities by amending the Charities Act 1993.

Further guidance on exempt charities can be found in the Commission's guidance, Exempt Charities (CC23) which is available on its website at: www.charitycommission.gov.uk/publications/cc23.asp

Why is this guidance important?

It is recognised that it is inevitable that conflicts of interest will arise from time to time in the course of a charity's business. However, unmanaged conflicts of interest and unauthorised benefits to a trustee can damage the charity's reputation and the reputation of the individual trustee. Even the appearance of a conflict of interest can damage a charity's reputation, so conflicts must be managed carefully. Many conflict of interest situations will also involve transactions between the charity and the trustee. Trustees must be aware of the rules, separate to those for conflicts of interest, which govern these transactions.

If trustees do not manage conflicts and ensure that they act within their powers, they may incur personal liability. Transactions may also be open to challenge and as a result the reputation of the charity and its ability to effectively carry out its purpose may be damaged.

What general responsibilities do trustees have?

Trustees have and must accept ultimate responsibility for directing the affairs of a charity and ensuring that it is solvent, well-run, and delivering the charitable outcomes for which it has been set up. They must ensure that the charity complies with charity law and the requirements of the Commission, as well as with the requirements of the general law and other regulators which govern the activities of the charity. Trustees must always use reasonable care and skill in their work, using their personal skills and experience as needed. Trustees must also comply with the requirements set out in the charity's governing document.

When applying the charity's income, trustees must spend it solely for the charitable purposes set out in the charity's governing document. They should avoid undertaking activities that might place the charity's funds or assets at undue risk. They should consider taking professional advice on matters where there is a significant risk to the charity, or where they may be in breach of their duties.

An effectively run charity considers the impact that it has and wants to have on the people who benefit from it. It should be clear about its objects and mission and how these will be achieved. In order to achieve its mission and deliver its services efficiently, a charity needs appropriate structures, policies and procedures which should be followed and its

resources should be ordered to enable it to optimise its potential. A charity should be accountable to the public and other stakeholders and be flexible enough to influence and adapt to changes to meet the needs of its beneficiaries.

Trustee bodies should be clearly identifiable and have the right balance of skills and experience to enable the trustees to act in the best interests of the charity's beneficiaries. Trusteeship is a skill that grows over time with experience and, where necessary, training. The selection, recruitment and induction of new trustees should be handled in a manner that allows new trustees to make an immediate contribution to the quality of a charity's governance and work. This should aid the charity to produce better results for its beneficiaries and stakeholders and also greater confidence and fulfilment for the new trustees themselves.

More information on the role, duties and responsibilities of charity trustees can be found in the Commission's publication, 'The Essential Trustee: What you need to know' (CC3) which is available on its website at:

www.charitycommission.gov.uk/publications/cc3.asp

More information about charity effectiveness can be found in the Commission's publication, 'The Hallmarks of an Effective Charity' (CC60) which is available on its website at:

www.charitycommission.gov.uk/publications/cc60.asp

More information about trustee recruitment, selection and induction can be found in the Commission's publication, 'Trustee Recruitment, Selection and Induction' (RS1) which is available on its website at:

www.charitycommission.gov.uk/publications/rs1.asp

2 Conflicts of Interest

i) What is a conflict of interest?

A conflict of interest is any situation in which a trustee's personal interests or responsibilities that they owe to another body may, or may appear to, influence or affect the trustee's decision making.

Trustees must act reasonably and prudently in all matters relating to the charity and must always bear in mind that their prime concern is the charity's interests. This means that trustees must avoid putting themselves in a position where their personal interests or responsibilities conflict with their duty to act in the interests of the charity.

However we recognise that conflicts of interest do arise. Many trustees have a variety of interests which is often to the charity's advantage and the majority of trustees act with integrity. However, even the appearance of a conflict of interest can damage the charity's reputation, so conflicts need to be managed carefully.

ii) How do trustees identify a conflict of interest?

Conflicts of interest may come in a number of different forms. Broadly speaking conflicts of interest affecting trustees arise in three ways: direct financial gain or benefit to the trustee; indirect financial gain or benefit to the trustee and conflicts of loyalty. Common situations where conflicts of interest arise are described in section 2 (v) below.

iii) What action are trustees required to take?

If the trustees have identified a potential conflict of interest, the first thing to do is to establish whether the situation includes benefits to any trustees. If this is the case, the

benefit must be authorised. Further information on trustee benefit is set out at section **3 (i)** below.

If there is no benefit to any trustee, no authority will usually be required, (although if the conflict of interest involves a transaction between the charity and the trustee consideration will need to be given to the rules in this area – see section **5** below), but the trustees must ensure that the conflict of interest is properly managed.

iv) How do trustees ensure that a conflict of interest is properly managed?

All trustees need to be aware of possible conflicts of interest that they might have and that there may still be a conflict which needs managing even if a trustee has recently resigned. A key aspect of managing conflicts of interest is to be open and transparent. All trustees should advise their fellow trustees of any actual or potential conflicts of interest as soon as they arise.

The Commission recommends that charities should have a policy on how they will deal with any conflicts of interest and should operate a trustee register of interests which will assist the charity in identifying areas where conflicts of interest are likely to arise. Further information on what a good conflicts of interest policy should contain is set out in section **6 (i)** below.

The Commission encourages trustees to make the operation of the charity as transparent as possible. With this in mind the trustees may decide to make their policy on conflicts of interest available to the public and to make some or all of their register of interests publicly available.

It is good practice to ensure that prospective trustees consider the question of possible conflicts of interest before they are appointed. If new trustees are elected by the charity's membership, we recommend that the membership is made aware of any possible conflict of interests involving the individuals standing for election, so that they can take this into account when voting. It is good practice to ensure that when trustees are appointed, the person appointed and their appointing body are aware of their responsibilities as trustees, including in relation to conflicts of interest.

It is good practice at the beginning of a meeting for every trustee to declare any personal interest which he or she has in an item to be discussed, and certainly before any discussion of the item itself.

Where conflicts of interest arise in relation to a particular issue, for example in relation to the purchase of artwork or other property from a trustee, the trustee concerned should not vote on the issue and should withdraw from any meeting or discussion at which it is considered. Withdrawal from the meeting is likely to be the only way of adequately managing most conflicts of interest. However there may be some conflicts of interest, for example a conflict of loyalty, which may be considered to be so insignificant that withdrawal might not be necessary. Ultimately it is for the trustees to decide whether withdrawal is necessary when a conflict has been declared. It is good practice for a charity's governing document to include provisions to deal with conflict of interest situations and if a governing document does not include such provisions, trustees should consider amending it to do so.

When conflicts of interest arise, all details of the discussions and decisions made and the actions taken by the trustees to

manage the conflict should be properly recorded and documented. Entering the details in the register of interests should form one part of this recording and documenting and should be supported by clear minutes of any meeting at which the matter is discussed.

Although outside the scope of this guidance which is only concerned with trustees, to ensure openness and transparency, the charity may also wish to have policies to ensure that the conflicts of interests of its honorary officers and senior employees are also managed.

v) What are the common situations where conflicts of interest arise?

There are a number of situations in which conflicts of interest arise. The most common are:

Direct gain or financial benefit to a trustee, for example:

The charity buys goods or services from a trustee even if the charity pays the trustee less than the commercial rate. The trustees may wish to pay one of their number for providing particular services to the charity such as legal, accountancy or curatorial services, for undertaking a particular piece of work for the charity, or for acting as a trustee. Alternatively, the trustees may wish to employ one of their number in a separate post in the charity. These examples may constitute a direct benefit even if the trustee has resigned or proposes to resign.

More information about direct benefit where a trustee has resigned or proposes to resign can be found in the Commission's publication, 'Payment of Charity Trustees' (CC11) which is available on its website at:

<http://www.charitycommission.gov.uk/publications/cc11.asp>

The rules governing transactions between trustees and charities will also apply to these situations. See section 5 below for further details.

Indirect financial gain by a trustee, for example:

The charity employs a spouse or a partner of a trustee and the two individuals are financially interdependent. For example, if a partner of a trustee is an agent selling artwork to the charity or the charity awards a contract to another organisation which is controlled by a trustee or in which he or she has a substantial interest, such as a contract with a firm where one of the trustees is a partner.

The rules governing transactions between trustees and charities may also apply to these situations. See section 5 below for further details.

Conflict of loyalty affecting a trustee, for example:

A trustee is appointed to the charity by a local authority and the charity is subsequently involved in a transaction with that local authority.

A friend of a trustee is considered for employment by the charity.

These three situations are explored in more detail in sections 3 and 4 below.

3 Direct and indirect financial gain or benefit to a trustee

i) What is a trustee benefit?

Trustee benefit includes receipt of any property, goods or services which have a monetary value, as well as money. The law requires that trustees must not receive any direct or indirect benefit or financial gain from their charity unless they have express legal authorisation to do so. This authorisation will usually come from a clause in the charity's governing document, the Commission or the provisions of the Charities Act 1993 (as amended by the Charities Act 2006) ("The Charities Act").

There is a power for trustees to be paid for the provision of services in the Charities Act. Whether this statutory power can be used will depend on the terms of a charity's governing document. This power will include indirect benefits where a trustee's family member, company or firm are providing the goods or services. Several conditions will need to be satisfied before the trustees can make the payment, for example the payment terms must be reasonable.

The reimbursement of legitimate out-of-pocket expenses properly incurred by trustees in carrying out their duties as a trustee is not a benefit. This would include refunds of reasonable costs incurred for accommodation, travel or childcare in order to attend a trustee meeting.

ii) When is authority required?

If the charity's governing document or the Charities Act does not contain a suitable power to benefit trustees then the trustees must obtain prior authorisation from the Commission. This authorisation must be obtained for any

direct or indirect benefit to a trustee. The majority of cases where there is a trustee benefit will also involve a transaction between that trustee and the charity and therefore the special considerations for these transactions will also apply. Further information about this is set out in section 5 below.

However benefits to trustees can also arise incidentally. For example, this could happen where a Gallery buys and exhibits work by an emerging artist and a trustee also owns work by the same person. An incidental benefit could come from an increase in value to the trustee's personal property.

Whatever the nature of the benefit, it is always necessary to ensure that the conflict of interest is properly managed, for example by ensuring that the trustee involved does not participate in the decision to buy and exhibit that work.

Assessing whether there is in fact a benefit can be difficult in some circumstances. If the trustees are uncertain whether or not there is a benefit or a transaction requires authority from the Commission, we recommend that they contact the Commission for advice.

iii) What action are trustees required to take?

The trustees must ensure that all trustee benefits requiring authority are properly authorised.

Where there is no clause permitting trustee benefit in a charity's governing document and the power in the Charities Act does not apply, the trustees must contact the Commission for authority **prior** to paying the benefit to the trustee.

Where the charity is buying work or services from a trustee, it is important that the charity's internal acquisitions and

other relevant policies are followed. If internal procedures are not followed then trustees should be able to show that there is a good reason for not doing so. Internal decision making and wider governance principles should be followed, and the trustees' consideration of the issues should be properly recorded.

If trustees are in any doubt whether they have the appropriate authority to benefit trustees, we recommend that they contact their professional advisers or the Commission, or in the case of exempt charities, their Principal Regulator.

iv) What approach does the Commission take to trustee benefits?

Authorising trustee benefits:

The Commission usually considers requests to authorise trustee benefits on a case by case basis. The charity will need to demonstrate that the arrangement is clearly in the interests of the charity, that the rate of payment and other terms are reasonable and that the conflict of interest can be properly managed.

The Commission aims to ensure that the actions it takes are proportionate to the issue. In practice, this means that we may adopt different approaches to differing types of benefits to trustees. For example, the Commission has a more straightforward procedure for authorising payments to trustees for goods or services or under an employment contract if the payment is less than £50,000 in one year. The Commission does not expect charities to request authorisation for benefits to all its trustees totalling less than £1,000 each year, other than in exceptional

circumstances, for example where a transaction is likely to prove controversial. However, the trustees should not agree benefits for trustees even below £1,000 unless they consider that it is in the interests of the charity to do so.

Unauthorised trustee benefits:

If a trustee has received an unauthorised benefit from a charity, the Commission, or another interested party, could challenge the decision on the basis that the benefit was not authorised. Whether or not it is challenged, the trustee would be liable to repay the benefit or make good any loss unless the Commission forms the view that they should not. If the situation was also one which involved a transaction between the trustee and the charity then the transaction itself would be capable of being set aside (i.e. declared to be of no effect) – see section 5 below.

In forming a view, the Commission assesses the situation on its merits and ensures that any action it takes is proportionate and appropriate to the issue. In order to assess what action, if any, the Commission should take, it will require an explanation of why the benefit has been paid, whether there was any evidence of deliberate wrongdoing, the quality and clarity of the decision making process, what advantages, if any, the charity received from the situation and how the trustees would prevent a similar situation occurring in the future.

In many cases, if the Commission is content that no further action needs to be taken against the charity, then this in practice will be the end of the matter. However if a trustee is concerned about their personal liability arising from receiving an unauthorised benefit, the Charities Act provides

the Commission with the power to relieve a trustee's personal liability.

It is important to note that even where the Commission is content that no action needs to be taken against the charity, it does not have the power to authorise payments retrospectively. The Court, in exceptional circumstances, can authorise a trustee to keep an unauthorised payment. The Commission should be approached for advice if a charity is considering this option.

4 Conflicts of loyalty

Trustees' overriding duty is to act in the interests of their charity. Conflicts of loyalty are situations in which, although the trustee does not stand to gain any benefit as a result of a particular transaction, their duty to the body which appointed them, another organisation, another charity of which they are a trustee, or to a member of their family or other connected person may (or may appear to) influence or affect their decision making. Transactions in such situations do not strictly require authorisation from the Commission, but any conflict of loyalty must be properly managed. The trustees may wish to seek the advice of the Commission, for example if they have concerns about managing such conflicts and these may arise particularly if a transaction is controversial or in the public domain.

Trustees appointed by another organisation, such as by another Museum or Gallery or sponsoring body have exactly the same duties and responsibilities as other trustees. When conducting trustee business they must act only in the interests of the charity and not the appointing body.

5 Special considerations if there is a transaction between the trustees and the charity

i) What are these special considerations?

In law a charity has no power (without authorisation from the Commission or its governing document) to enter into a transaction with one of its trustees (sometimes known as "self dealing"). Such transactions can be set aside. This will generally only happen if it is concluded that the transaction has not been for the charity's advantage. If the transaction is set aside, the practical consequences include that the property or monies transferred will need to be returned as well as reputational consequences for the charity.

ii) When is authority required?

If a transaction between the trustees and the charity also results in a benefit to a trustee, then if not authorised by the governing document or the Charities Act, the Commission's prior authorisation must be obtained in any event as set out above. For transactions between the trustees and the charity which do not involve a trustee benefit, the Commission's regulatory approach is that, despite the legal position set out above, authorisation does not need to be sought unless the trustees are concerned that there is a risk of challenge, for example if the transaction is controversial.

iii) What if it is a gift to the charity from one of its trustees?

Gifts from charity trustees are not strictly caught by the self dealing rules. However, they may involve a benefit to the trustee (e.g. where donated artwork is accepted by a national gallery, this may raise the profile of the trustee artist, potentially increasing the value of his works) and if there is a benefit, then it will need authorisation as set out above. The trustees should also consider whether there are any other conflicts of interest which should be appropriately managed.

6 Drawing up a conflicts of interest policy

i) What should a good policy contain?

A good policy should include guidance on the procedures to follow when a trustee is subject to a conflict of interest, such as:

- declaring interests at the beginning of each meeting;
- removing the trustee concerned from the decision-making process; and
- recording details of the discussions and decisions made.

We also recommend that trustees establish a register of interests. In recording all their other interests openly, any actual or potential conflicts of interest can be identified more easily. The register of interests should be regularly updated.

A good policy should:

- Define and distinguish between conflicts of interest, trustee benefits and transactions between trustees and charities;
- Set out how and by whom it will be monitored and enforced;
- Highlight the requirement to obtain legal authority before any transaction involving trustee benefit is undertaken;
- Be widely communicated and understood within the charity;
- Define all interests that trustees should declare, including business, personal and political interests and those of their spouse, partner, family and close relatives;

- Be part of a wider policy framework, for example a trustee handbook. It should also signpost and advocate the values contained in all relevant codes of conduct and other policies that the trustees are obliged to follow by the charity's sponsoring bodies.

7 Accountability and transparency

i) Why is it important for charities to be accountable and transparent?

By explaining their activities and decisions in an open and transparent way, including the extent to which charitable aims are being achieved, charities can demonstrate their effectiveness and be accountable to the public and other stakeholders.

Accountability and transparency can also help charities to demonstrate their independence from other bodies. This is important because charities must act to carry out their own charitable purposes and not be seen to act for the purpose of implementing the policies or directions of a governmental authority or of any other bodies.

Accountability and transparency also means welcoming both positive and negative feedback from stakeholders. Charities should develop well-publicised, effective and timely procedures for dealing with complaints about the charity and its activities. They should also develop a communications strategy that ensures that accurate and timely information is given to stakeholders including donors, beneficiaries and the media.

By operating in an accountable and transparent way, charities can avoid giving the impression of secrecy and help to promote public trust and confidence not only in that individual charity but also in the wider sectors in which they work.

ii) What is required by law?

Charities' Annual Report and Accounts are key documents in ensuring accountability and transparency. All charities are required to produce annual accounts, but there are different rules about the type of accounts that they must produce, depending on their financial size, whether they are incorporated as companies and whether they are exempt charities.

Charities are required by the Statement of Recommended Practice 2005 to disclose the full details of all related party transactions and trustee remuneration and benefits in their Annual Report and Accounts.

8 Selected further reading on conflicts of interest policies and trustee benefits

- *Payment of Charity Trustees* (CC11), The Charity Commission;
- *A Guide to Conflicts of Interests for Charity Trustees*, The Charity Commission;
- *Good Governance: A Code for the Voluntary and Community Sector*, 2005, Governance Hub;
- *Living Policy: A complete guide to creating and implementing policy in voluntary organisations*, 2004, NCVO;
- *The ICSA best practice guide to managing conflicts of interest in the not-for-profit sector*, 2005, ICSA;

Annex

Can our board decide to include an item from a trustee's collection or an art work of a trustee in one of its exhibitions? Even if the item or art work was made available to the museum or gallery on a free basis, he or she could benefit if the item or work increases in value as a result of the exhibition. The trustee might later be able to sell the item or work for a higher price.

Including trustee work in an exhibition or the gallery's permanent collection may advance the charity's purposes and be in its interests. A key question for trustees is whether prior authority is needed. Authority could come from the governing document or an application might need to be made to the Commission.

If the artist trustee is to receive any payment or fees for his or her work, the charity must have prior authorisation. This is the case whether or not there is to be a formal contract or agreement with the trustee.

Where the arrangement doesn't involve payments or fees to the trustee, there may still be incidental benefits, in this example, a consequent increase in value of the item or work. There could also be an incidental benefit to a trustee whose reputation as a collector is enhanced as a result of the item or work from his collection being exhibited.

Whether the benefit is direct or incidental, there will be a conflict of interest which should be recorded and must be managed, for example by the trustee not being involved in the decision to include his or her works in the exhibition.

In some cases it can be difficult to decide whether prior authority is required. Individual transactions often include sensitive, novel or controversial elements. If the trustees are

in any doubt whether authority is needed, they should ask the Commission or their Principal Regulator for advice.

What about those circumstances where the trustees decide that there is a clear advantage to the charity in buying goods or services from a trustee? For example, buying an item from a trustee's collection, buying work from an artist trustee, commissioning an artist trustee to produce work for the collection, or using a trustee to curate an exhibition. The trustees might decide that a member of the board is best placed to write a publication or give a lecture.

Trustees must only proceed in these scenarios if there is prior authority. Authority could come from the governing document, the Charities Act (for the provision of services) or an application might need to be made to the Commission.

There will be a conflict of interest which should be recorded and managed.

The trustees should consider the number of payment arrangements they have at any point in time which involve trustees. The higher the proportion of paid trustees, the greater the risk of undermining the charity's decision making process and exposing the trustees to criticism.

Inevitably some of our trustees have their own collections. They all have prior knowledge of our exhibition programme, which is discussed at board meetings. This could enable them to buy works or items that will be exhibited in the future at favourable prices, knowing that their value will increase because of the exhibition. Is this a problem?

In general, knowledge obtained by a trustee can be used by them for their own benefit or the benefit of other organisations unless:

- It has been given in confidence; or
- The knowledge is not available to the general public and has special value that could be used by a trustee for their personal benefit.

In this scenario it is likely that the information is commercially sensitive or confidential. The trustee must not use the information for their own benefit without seeking the prior authorisation of the Commission.

Sometimes there are occasions when one of our trustees has a connection with someone or a company that we are working with. The trustee might have a connection with an artist whose work we are planning to buy or exhibit. Alternatively, they may have a connection with the agent or dealer for the artist or with a company which proposes to sponsor an exhibition. How should we handle this?

Where these scenarios arise, a key question for the trustees is whether prior authority is needed. If authority is needed it could come from the governing document, the Charities Act, or an application might need to be made to the Commission.

Payments to an individual or organisation connected to a trustee may be an indirect trustee benefit that requires authority and it depends on the connection. Authorisation would be required where an individual with whom the charity was dealing was a member of the trustee's immediate household and had a financial relationship with the trustee.

If a museum or gallery is proposing to deal with a company in which a trustee has control or a substantial interest, authority will again be required. Generally we consider a

substantial interest to mean where a trustee or trustees have an interest in shares comprised in the equity share capital of that company with a nominal value of more than one fifth of that share capital or is able to exercise or control one fifth of the company's voting rights.

Whether or not there is an indirect benefit to be authorised, there will be a conflict of interest which should be recorded and managed.

Trustees should consider developing a clear framework for how they will assess and deal with contracts with commercial organisations such as sponsors. This may include clear guidelines on decision making processes the charity will follow and clear guidelines on what type of organisations with which the charity will associate itself. When developing this framework, the trustees should bear in mind the reputation and standing of the charity.

The Commission is happy to advise in complex or borderline cases.

Are we able to provide our trustees with free tickets/copies of museum or gallery publications?

Yes, where they need to receive publications or attend charity events as a means of effectively carrying out their trustee role. Where this is not the case, a trustee receiving free copies of publications produced by the museum or gallery could be a trustee benefit and the question of authority does arise. However, the Commission's usual regulatory approach is that it does not need to be involved if the benefits to trustees in one year total £1,000 or less but only if the trustees are satisfied that granting the benefit is in the interests of the charity.

One of our trustees is also a member of another board. In her other capacity she will be asked to make a decision which will affect our museum – how should this be dealt with?

Many trustees have a range of interests, both personal and professional, which may on occasion compete with their position at their charity. Competing loyalties do not prevent anyone from being a trustee, but as trustees must not put themselves in a position of personal conflict, if a conflict of interest arises, it should be managed.

In this case the trustee in question should follow the other organisation's conflicts of interest policy and act in the interests of that other organisation. The trustee will need to consider whether the decision is confidential or commercially sensitive and whether she can discuss it with the charity.

Conflicts of interest do arise in charity administration. We do not expect trustee bodies to avoid all conflicts because this will not always be in the charity's interests.

The conflict of interest should be recorded and managed.

This document is endorsed
by the Museums Libraries
Archives Council



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