

MDI CONFLICT OF INTEREST GUIDELINES



What is a conflict of interest and what issues does it raise?

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

It is inevitable that conflicts of interest occur. The issue is not the integrity of the director concerned, but the management of any potential to profit from a person's position as director, or for a director to be influenced by conflicting loyalties. Even the appearance of a conflict of interest can damage the charity's reputation, so conflicts need to be managed carefully.

How do I identify a conflict of interest?

Conflicts of interest may come in a number of different forms:

1. Direct financial gain or benefit to the director, such as: payment to a director for services provided to the charity.
2. The award of a contract to another organisation in which a director has an interest and from which a director will receive a financial benefit.
3. The employment of a director in a separate post within the charity, even when the director has resigned in order to take up the employment.
4. Indirect financial gain, such as employment by the charity of a spouse or partner of a director, where their finances are interdependent.
5. Non-financial gain, such as when a user of the charity's services is also a director.
6. Conflict of loyalties, such as where a director is appointed by the local council or by one of the charity's funders, or where a friend of a director is employed by the charity.

MDI expect directors to 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. MDI will provide authority where there are clear advantages to the charity. If there is no material benefit to a director, no authority will be required, but the director will need to ensure that the conflict of interest is properly managed.

Where MDI find, or are alerted to, an unauthorised benefit, the action taken will depend on the extent of the benefit and conflict of interest and the impact which it has on the charity. MDI will also take into account other factors, such as the reason why the director did not obtain authority. MDI are likely to be more supportive if the director can show that the failure to obtain authority was an oversight. However, MDI will generally not take a sympathetic line where the organisation have previously advised the director that the benefit needs to be authorised or where a solicitor is acting for the directors.

Where the arrangements are in the interests of the charity MDI will give advice on the management of conflicts of interest and the authorisation of future benefits to directors. However, MDI may investigate in some cases, with the possibility that the organisation might use statutory powers to

protect the charity. These include where directors appear to have placed their personal or other interests ahead of those of the charity in order to derive significant benefit at the charity's expense, and where they have deliberately ignored the requirements of the law or of previous advice.

What do I do if I identify a conflict of interest affecting a director?

If the board director has identified a conflict of interest, the first thing to do is to find out whether or not the director involved will receive a material benefit from the conflict of interest and, if so, whether the benefit is authorised.

The first place to look to see if the necessary authority exists is the charity's governing document. If the governing document does provide authority, the board of directors must ensure that the authority is used appropriately, and that the necessary arrangements are in place to manage the conflict of interest.

If the governing document does contain authority, it will usually be in relation to a director's benefit arising from a specific type of conflict of interest, rather than a general authority for director benefits arising from all types of conflict of interest. For example, it may include authority to pay a director who is also a solicitor or accountant for work done on behalf of the charity, but it is unlikely to authorise any other type of payment to a director, such as payment to a director who is a builder for repairs carried out to the charity's property.

If the benefit from which the conflict of interest arises is not authorised by the charity's governing document, directors will need to apply to MDI Board of Directors in writing for the necessary authority. If the Board of Directors is in any doubt about whether the governing document contains sufficient authority, MDI would encourage them to take professional advice.

In order for us to consider authorising the benefit, directors will need to show why it is in the charity's best interests to permit the benefit and resulting conflict of interest. MDI will also need to be satisfied that there are arrangements in place to ensure that the conflict of interest will be properly managed once the benefit has been authorised.

It is important to remember that it is not simply enough for the benefit arising from the conflict of interest to be authorised. Directors also need to ensure that the charity has adequate procedures in place to manage the conflict of interest once the benefit has been authorised.

In what circumstances will MDI authorise a benefit arising from a conflict of interest?

There is a relationship between the potential benefit to the director and the strength of the case the director will need to make. MDI will need to be able to demonstrate that the arrangement is in the best interests of the charity and that the conflict of interest is transparently managed.

Directors will need to consider things like:

- whether or not the benefit and conflict of interest will be on-going or a one-off situation.
- the procedures which the directors have in place to ensure that conflicts of interests are managed transparently.

How can conflicts of interest be managed effectively?

All directors need to be alert to possible conflicts of interest which they might have and to how they can minimise their effects. A key aspect of minimising the effects of conflicts of interest is to be open and transparent about such situations when they arise. MDI recommend that all directors advise their charity of any actual or potential conflicts of interest of which they are aware, as soon as they arise. The Secretary will maintain a confidential register of the interests of each director. The Register will be updated on a half yearly basis. Changes in interests should be notified to the Secretary in the interim as soon as possible. Only the Chairman, CEO and Secretary will have access to the register.

MDI Conflict of Interest Guidance Policy:

MDI conflict of interest guidance policy includes procedures to follow when a director is subject to a conflict of interest, such as:

- The removal of the trustee concerned from the decision making process.
- Managing the conflict of interest once a decision has been made.
- Recording details of the discussions and decisions made.

It is good practice at the beginning of a meeting for every charity director to declare any private interest which he or she has in an item to be discussed, and certainly before any discussion of the item itself. Simply declaring that a conflict exists and withdrawing from the discussion and any decision making will be all that is required if the director is not receiving any material benefit as a result of the conflict of interest. However, if a director is receiving a material benefit this will need authority.

MDI would encourage directors to make the operation of the charity as transparent as possible. With this in mind, MDI may wish to make their policy on conflicts of interest available to the public.

It is good practice to ensure that prospective new directors consider the question of possible conflicts of interest before they are appointed. If new directors are elected by the charity's membership, MDI 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. This is particularly important where personal interests may be significant enough to make it difficult for the individual concerned to make a full and rounded contribution to the decisions and discussions of the board.

Conflicts of loyalty:

Directors should bear in mind that when they are dealing with the business of the charity, their overriding duty is to act in the best interests of the charity. There may be situations in which a director's loyalty to the charity conflicts with their loyalty to the body which appointed them, to another charity of which they are a member or to a member of their family. Such conflicts of loyalty will not stop anyone from being a director, but they can occasionally cause conflicts of interest.

Any director who has a conflict of loyalty should declare this and it should be included in the register of interests. They should also declare the interest at the beginning of any meeting at which an issue

is to be discussed that is subject to the conflict and should take no further part in the discussions on the issue. This will help to ensure transparency and avoid any accusations of impropriety.

What are the consequences of an unmanaged conflict of interest?

There can be a number of consequences arising from an unmanaged conflict of interest. If a director has received a benefit from the charity which is not authorised by the charity's governing document, they will be acting outside the terms of the charity's governing document and may be in breach of trust. Even if the governing document does provide a power for directors to receive benefits from the charity, if this power has been used in a way which is not in the best interests of the charity (for example, if a director is buying part of the charity's property for a much reduced price) then a breach of trust might still have occurred. If a breach of trust has occurred, then the transaction could be challenged by the Board, MDI or by another interested party, such as a beneficiary of the charity. Where a director has received an unauthorised benefit, or where a director doesn't personally benefit but does not act in the best interests of the charity, the transaction may not be valid and the director could be liable to pay back the value of the benefit to the charity.

In cases where it seems that directors have deliberately placed their own interests ahead of those of the charity in order to gain significant benefit at the expense of the charity, MDI will investigate and, if appropriate, refer the matter to the police. An unmanaged conflict could also adversely affect the way in which the board of directors / executive committee operates. Directors may find it difficult to make a decision on a matter which involves a fellow director.

In addition to the legal consequences of an unmanaged conflict of interest, directors also need to be aware of the effect that an unmanaged conflict can have on the charity's reputation. If those outside the board have the impression that the directors have acted in their own interests rather than those of the charity, this could damage the reputation of both the charity and the directors, even where the directors have acted in the charity's best interests. This could affect the charity's fundraising and the confidence of staff, volunteers and beneficiaries in the charity. Additionally, if the publicity is widespread, directors may need to give time and resources to defending the decision they have made, which will divert resources away from carrying out the objects of the charity.

When dealing with conflicts of interest, directors should be aware of how the situation may appear to someone from outside the charity, and make sure that a policy and procedures are in place which will allow directors to demonstrate that such situations have been dealt with properly.

Signed: _____

Position: _____

Date: _____