

BRAILLISTS FOUNDATION CONFLICTS OF INTEREST POLICY

Background

This policy applies to all persons – Trustees, Members, Staff and Volunteers – involved with Brailleists Foundation (BF).

What a Conflict of Interest is Not.

It's very common, even at the mere mention of a "Conflict of Interest", for people to start thinking suspiciously of the individuals concerned having covert agendas and disreputable schemes for greedy selfish gains.

So we need to be absolutely clear that there's nothing immoral or illegal in Conflicts of Interest per se. On the contrary, they are absolutely normal and inevitable in individuals and groups who are enthusiastic, active and dynamic in their interests – exactly the kind of people who make good charity Trustees and volunteers.

Impropriety and illegality only come in when what would otherwise be entirely legitimate Conflicts of Interest are not properly declared, acknowledged and managed.

Why Conflicts of Interest Occur.

This can be due to deliberate exploitation of the situation by one party for their personal benefit. Fortunately this is relatively uncommon. By "deliberate exploitation" is meant that the party concerned knows (or, at least, suspects) that what they are doing is wrong/immoral/illegal but carries on doing it anyway. Such deliberate exploitation is clearly totally unacceptable, is often illegal (particularly in a charity situation if charitable funds are being diverted away from the charitable activities for which they were donated) and must be stopped as soon as it is recognised and the individual "dealt with appropriately".

More commonly, it can be due to people being unaware of the legal environment in which they are operating and so act in an improper (perhaps even illegal) way under the misapprehension that they are doing the right thing in the best interests of the organisation. But "Ignorance of the law is no defence" is a widely held and accepted maxim.

Also very common is the assumption that a person is "very honest and respectable and therefore wouldn't do anything that wasn't in the best interests of the charity" - ie: wouldn't have any Conflicts of Interests. Trustees who adopt a cavalier dismissive approach to either/both their own Conflicts of Interest or to those of others will find little sympathy from the Charity Commission should those Conflicts of Interest result in significant misuse of the charity's funds or resources.

It is therefore vitally important that all Trustees take a very open approach to declaring any Conflicts of Interest that they think they might have ("If in doubt, declare it" is a good maxim) and are very accepting and supportive of the Conflicts of Interest declared by others (including other volunteers, members and staff, as well as fellow Trustees). A well-maintained Register of Conflicts of Interest (see below) is the best defence against suspicions or accusations of impropriety against individual Trustees.

What a Conflict of Interest is.

The Charity Commission's guidance publication CC29 defines Conflicts of Interest as:

“any situation in which a trustee's personal interests or loyalties could, or could be seen to, prevent them from making a decision only in the best interests of the charity.”

Examples of Conflicts of Interest include (but there are others, too):

- direct financial gain or benefit to the trustee, such as:
 - ◆ payment to a trustee for services or goods provided to the charity
 - ◆ the award of a contract to another organisation in which a trustee has an interest and from which a trustee will receive a financial benefit
 - ◆ the employment of a trustee in a separate post within the charity, even when the trustee has resigned in order to take up the employment
- indirect financial gain, such as employment by the charity of a spouse or partner of a trustee, where their finances are interdependent
- non-financial gain, such as when a user of the charity's services is also a trustee
- conflict of loyalties, such as where a trustee is appointed by the local authority or by one of the charity's funders, or where a friend of a trustee is employed by the charity

Why We Have a Policy

Trustees have a legal obligation to act in the best interests of BF in accordance with its governing document, and to avoid situations where there may be a potential conflict of interest. All staff, Members and Volunteers working with BF have similar obligations. Where Conflicts of Interest occur and are not properly acknowledged and managed they can:

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

The aim of this policy is to support honesty and integrity through the open declaration of any Conflicts of Interest that may arise and, thereby, to protect both the organisation and the individuals involved from any appearance of impropriety should such interests not be declared.

It is the responsibility of the Board of Trustees of BF to monitor and enforce the Conflicts on Interests Policy.

This Policy takes account of the Constitution of BF, in particular, sections 6 & 7, which state:

6. Benefits and payments to charity trustees and connected persons

(1) General provisions

No charity trustee or connected person may:

- (a) buy or receive any goods or services from the CIO on terms preferential to those applicable to members of the public;*
- (b) sell goods, services, or any interest in land to the CIO;*
- (c) be employed by, or receive any remuneration from, the CIO;*
- (d) receive any other financial benefit from the CIO;*

unless the payment or benefit is permitted by sub-clause (2) of this clause, or authorised by the court or the prior written consent of the Charity Commission (“the Commission”) has been obtained. In this clause, a “financial benefit” means a benefit, direct or indirect, which is either money or has a monetary value.

(2) Scope and powers permitting trustees’ or connected persons’ benefits

(a) A charity trustee or connected person may receive a benefit from the CIO as a beneficiary of the CIO provided that it is available generally to the beneficiaries of the CIO.

(b) A charity trustee or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the CIO where that is permitted in accordance with, and subject to the conditions in, section 185 to 188 of the Charities Act 2011.

(c) Subject to sub-clause (3) of this clause a charity trustee or connected person may provide the CIO with goods that are not supplied in connection with services provided to the CIO by the charity trustee or connected person.

(d) A charity trustee or connected person may receive interest on money lent to the CIO at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).

(e) A charity trustee or connected person may receive rent for premises let by the trustee or connected person to the CIO. The amount of the rent and the other terms of the lease must be reasonable and proper. The charity trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.

(f) A charity trustee or connected person may take part in the normal trading and fundraising activities of the CIO on the same terms as members of the public.

(3) Payment for supply of goods only – controls

The CIO and its charity trustees may only rely upon the authority provided by sub-clause (2)(c) of this clause if each of the following conditions is satisfied:

(a) The amount or maximum amount of the payment for the goods is set out in a written agreement between the CIO and the charity trustee or connected person supplying the goods (“the supplier”).

(b) The amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question.

(c) The other charity trustees are satisfied that it is in the best interests of the CIO to contract with the supplier rather than with someone who is not a charity trustee or connected person. In reaching that decision the charity trustees must balance the advantage of contracting with a charity trustee or connected person against the disadvantages of doing so.

(d) The supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the CIO.

(e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of charity trustees is present at the meeting.

(f) The reason for their decision is recorded by the charity trustees in the minute book.

(g) A majority of the charity trustees then in office are not in receipt of remuneration or payments authorised by clause 6.

(4) In sub-clauses (2) and (3) of this clause:

(a) "the CIO" includes any company in which the CIO:

(i) holds more than 50% of the shares; or

(ii) controls more than 50% of the voting rights attached to the shares; or

(iii) has the right to appoint one or more directors to the board of the company;

(b) "connected person" includes any person within the definition set out in clause [30] (Interpretation);

7. Conflicts of interest and conflicts of loyalty

A charity trustee must:

(1) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the CIO or in any transaction or arrangement entered into by the CIO which has not previously been declared; and

(2) absent himself or herself from any discussions of the charity trustees in which it is possible that a conflict of interest will arise between his or her duty to act solely in the interests of the CIO and any personal interest (including but not limited to any financial interest).

Any charity trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the charity trustees on the matter.

Policy

The Declaration of Interests

All trustees, staff, associates and volunteers are required to declare their interests, these include business and personal interests and those of their spouse, partner, family and close relatives, and any payments or benefits (including, but not limited to, benefits in kind such as gifts, hospitality, preferential treatment, etc) received in connection with their role in BF where such interests would, or might, conflict with, or otherwise influence their decision-making in respect of the charity's activities.

As the nature and issues involved in Conflicts of Interest can vary considerably there is no prescribed form for declaring a Conflict of Interest.

At all meetings of the Board of Trustees there will be an agenda item at the start of the meeting requiring trustees to declare any actual or potential conflicts of interest.

What To Do if You Face a Conflict of Interest

If you have, or think you might have, a Conflict of Interest, as described in the section above you must notify the Board of Trustees and declare your Conflict of Interest or involvement at the earliest opportunity.

If you are not sure what to declare, or whether/when an earlier declaration needs to be updated, please err on the side of caution. If you would like to discuss this issue, please contact one of the Trustees of BF for guidance.

Declaring an Conflict of Interest is not, per se, a declaration of any impropriety on your part or by anyone else. It is only failing to declare a Conflict of Interest which carries with it a significant risk of impropriety, particularly if the Conflict of Interest were to result in a failure to comply properly with charity law.

If a Trustee or Member of BF becomes aware that you have, or might have, a Conflict of Interest they are obliged to report it to the Board of Trustees even if you do not.

When a Conflict of Interest is declared.

All declarations of Conflicts of Interest will be treated with appropriate confidentiality.

All declarations of Conflicts of Interest will considered by the Trustees to assess the level of risk to BF and what actions need to be put in place to eliminate or, at least, mitigate the risk. In more complex cases, the Trustees may appoint one (or more) of their number to look into the matter in more detail. If it is felt that more information is required to assess the Conflict of Interest more fully the Trustee leading the assessment will contact the individuals involved.

All declarations of Conflicts of Interest will be recorded in the BF's Register of Conflicts of Interest, even if, having considered the declaration, the Trustees conclude that the declared Conflict of Interest presents no significant risk to BF. For further details of the Register see the section "Register of Conflicts of Interest" below.

Any Trustee who is implicated in a Conflict of Interest, whether directly or as a connected person, may not participate in the assessment of the risk but may be called by the Trustee(s) undertaking the assessment to provide further details or answer specific questions.

Trustees may, however, participate in general discussions from which they may indirectly benefit, for example where the benefits are universal to all users, or where the benefit is minimal to individual trustees.

Data Protection

The information provided will be processed in accordance with data protection principles as set out in the current Data Protection legislation. Data will be processed only to ensure that trustees, staff, associates and volunteers act in the best interests of BF. The information provided will not be used for any other purpose.

Decisions Taken Where a Trustee or Member of Staff has an Interest

In the event of the Board of Trustees 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 required. A quorum must be present for the discussion and decision. Any such person, whether or not a Trustee, will not be counted when deciding whether the meeting is quorate and may not vote on matters affecting their own interests.

All decisions where there is a Conflict of Interest will be recorded in the minutes of the meeting. The report will record:

1. the persons involved;

2. the nature and extent of the Conflict(s) of Interest;
3. whether the Conflict of Interest was declared in advance;
4. an outline of the discussion;
5. whether anyone withdrew from the discussion;
6. the actions taken to manage the Conflict(s) of Interest in the best interests of BF.

Where it is determined that a Trustee with a Conflict of Interest may nevertheless legitimately benefit from the decision, this will be reported in the annual report and accounts.

All payments or benefits in kind to Trustees will be reported in the BF's Trustees Annual Report and Statement of Financial Activity, with amounts for each Trustee listed for the year in question.

Where a member of BF's Trustees, staff or Associates are connected to a party involved in the supply of a service or product to the charity, this information will also be fully disclosed in the Trustees Annual Report and Statement of Financial Activity.

Independent external moderation will be used where conflicts cannot be resolved through the usual procedures.

Removing the Conflict of Interest

Trustees must consider the issue of the conflict of interest so that any potential effect on decision making is eliminated. This means that in cases of serious conflicts of interest they may decide that removing the conflict of interest is the most effective way of preventing it from affecting their decision making and demonstrating that they have acted only in the best interests of the charity.

Serious conflicts of interest include, but are not limited to, those which:

- are so acute or extensive that the trustees are unable to make their decisions in the best interests of the charity, or could be seen to be unable to do so
- are present in significant or high risk decisions of the trustees
- mean that effective decision making is regularly undermined or cannot be managed in accordance

with the required or best practice approach

- are associated with inappropriate trustee benefit

In practice removing the conflict of interest is likely to mean:

- not pursuing the course of action
- proceeding with the issue in a different way so that a conflict of interest does not arise - this might mean deciding not to consider using a trustee's company to do some work for the charity if this would mean that the number of payments to trustees, although authorised, is at risk of introducing levels of conflict of interest which could be difficult to manage and to justify - it could, exceptionally, mean seeking the Commission's prior authority to a continuing and widespread conflict of interest
- securing the resignation of a trustee affected by a conflict of interests
- not making trustee appointments which will introduce a conflict of interests

Managing Contracts

Where a Trustee, member of staff, volunteer or associate has a Conflict of Interest, they must not be involved in managing or monitoring a contract in which they 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.

Register of Conflicts of Interest

The Charity will maintain a Register of all reported Conflicts of Interest which will contain, as a minimum, the following information.

- a) The date on which the Conflict of Interest (CoI) was first reported, supplemented where appropriate by the dates on which any changes to the Conflict of Interest were reported, including the date on which the Conflict of Interest ceased to be an issue.
Note: once reported, a Conflict of Interest will remain “on the record” for a minimum of 3 complete reporting years after the Conflict of Interest ceases to exist (eg: if the individual concerned, or any connected persons, ceases to be involved with the charity);
- b) The name of the individual involved and, in the case of a Conflict of Interest involving one or more connected persons, the names of those connected persons and their relationships;
- c) The position/role/responsibilities within BF of the individual involved;
- d) The type of Conflict of Interest (eg: personal benefits, family involvement, business involvement, other);
- e) Details of the Conflict of Interest, including its potential impact on BF;
- f) Mitigation of the Conflict of Interest – ie: the steps taken by the Trustees to ensure that the Conflict of Interest does not adversely influence the charitable activities of the BF.

This register of interests shall also be used to record all gifts of a value over £20 received by the trustees, staff, associates and volunteers.

Some specific examples of how Conflicts of Interest should be managed

1. BF will from time to time assess and review items of braille technology and these could include products produced, or sold, by an organisation to which a trustee is connected. That trustee will be excluded from any discussion and decision about what products BF decide to review and will not be allowed to be involved in the process of reviewing any products (whether from the connected company or those from other organisations). The right to respond to any comments contained within a review will only be offered to the connected company on the same terms as for any other organisation and the trustee will not otherwise see any reviews for products prior to them being made generally available. In addition, the trustee will not have access to any information that any other organisation might provide to BF relating to its products.
2. BF could be approached by organisations who wish to make special offers to BF members. Any trustee connected to that organisation will be excluded from any BF discussion and decision about whether to accept any such offers and will not have access to any information that any other organisation might provide in support of its proposal to BF.
3. From time to time, BF may wish to purchase items of equipment for use in seminars or for teaching purposes. Any trustee who is connected to a company that produces, or sells,

items that meet BF's requirements will be excluded from any discussion and decision about what products BF decide to purchase and will not have access to any information that any other organisation might provide to BF relating to its products.

4. An organisation may offer to sponsor or support specific projects or events, or general activity managed by BF. Any trustee connected to that organisation will be excluded from any discussion and decision about whether BF regard the proposal as acceptable in terms of the benefits to BF both financially and otherwise in meeting its aims, and in comparison with similar offers from other organisations. That trustee will not have access to any information that any other organisation might provide to BF relating to its sponsorship or support.

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