Conflict of Interest Policy for Trustees

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1. Our Articles

English PEN's articles define a trustee of interest as follows:

Trustees "*must declare the nature and extent of:*

22.1.1 any direct or indirect interest which he or she has in a proposed transaction or arrangement with the Charity; and
22.1.2 any duty or any direct or indirect interest which he or she has which conflicts or may conflict with the interests of the Charity or his or her duties to the Charity.
22.2 There is no need to declare any interest or duty of which the other Trustees are, or ought reasonably to be, already aware".

With respect to decisions:

"*If a Trustee's interest or duty gives rise (or could reasonably be regarded as likely to give rise) to a conflict of interest or a conflict of duties with or in respect of the Charity, he or she may participate in the decision-making process and may be counted in the quorum and vote unless:*

the decision could result in the Trustee or any person who is Connected with him or her receiving a benefit other than:

(a) any benefit received in his, her or its capacity as a beneficiary of the Charity (as permitted under Article 4.4.1) and which is available generally to the beneficiaries of the Charity;
(b) the payment of premiums in respect of indemnity insurance effected in accordance with Article 3.1.30;
(c) payment under the indemnity set out at Article 6; and
(d) reimbursement of expenses in accordance with Article 4.4.2; or

22.4.2 a majority of the other Trustees participating in the decision-making process decide to the contrary, in which case he or she must comply with Article 22.5.

22.5 If a Trustee with a conflict of interest or conflict of duties is required to comply with this Article 22.5, he or she must:

take part in the decision-making process only to such extent as in the view of the other Trustees is necessary to inform the debate;
22.5.2 not be counted in the quorum for that part of the process; and
22.5.3 withdraw during the vote and have no vote on the matter."

2. Key points about identifying conflicts of interest

The Charity Commission guidance on defining Conflict of Interest uses two categories: benefit and loyalty. The guidance tends to stick closely to decision making, though an external perception of a conflict of interest is seen as potentially damaging (see below).

"A conflict of interest is any situation in which a trustee's personal interests or loyalties could, or could be seen to prevent the trustee from making a decision only in the best interests of the charity.

A conflict of interest exists even where there is the possibility that a trustee's personal or wider interests could influence the trustee's decision making.

Even the perception that there is a conflict of interest can damage the charity. Where the perception is not accurate because there is no conflict of interest, the trustees should always be able to respond appropriately to the situation by managing the risks to the charity and being prepared to explain how they have made their decisions only in the best interests of the charity".

This paper explores how English PEN could define conflict of interest as stated in our articles 2.1.1 and 2.1.2.

2 Financial or measurable benefits

2.1 there is a potential financial or measurable benefit directly to a trustee, or indirectly through a connected person.

Conflicts of interest relate to a trustee's personal interests and the interests of those connected to them. This means that there is a conflict of interest where there is a proposed transaction between the charity and a connected person. Similarly, there is a conflict of interest where there is a benefit or a potential benefit to a connected person. Examples of this could be if the charity:

- sell, loan or lease charity assets to a charity trustee
- acquire, borrow or lease assets from a trustee for the charity
- pay a trustee for carrying out their trustee role
- pay a trustee for carrying out a separate paid post within the charity, even if that trustee has recently resigned as a trustee
- pay a trustee for carrying out a separate paid post as a director or employee of the charity's subsidiary trading company
- pay a trustee, or a person or company closely connected to a trustee, for providing a service to the charity - this covers anything that would be regarded as a service and includes legal, accountancy or consultancy services through to painting or decorating the charity's premises, or any other maintenance work
- employ a trustee's spouse or other close relative at the charity (or at the charity's subsidiary trading company)
- make a grant to a service user trustee, or a service user who is a close relative of a trustee
- allow a service user trustee to influence service provision to their exclusive advantage

2.2 Conflicts of loyalty (*any duty or any direct or indirect interest which he or she has which conflicts or may conflict with the interests of the Charity or his or her duties to the Charity).*

These conflicts of interest arise because, although the affected trustee does not stand to gain any benefit, the trustee's decision making at the charity could be influenced by his or her other interests.

For example, a trustee's loyalty to the charity could conflict with his or her loyalty to

- another organisation, such as their employer
- another charity of which they are a trustee
- a member of their family
- another connected person or organisation

The test is always that there is a conflict of interest if the trustee's other interest could, or could be seen to, interfere with the trustee's ability to decide the issue only in the best interests of the charity.

Some conflicts of loyalty arise because a trustee has a competing legal obligation or duty to another organisation or person. Others result from conflicting loyalties which trustees owe or may feel towards family, friends or other people or organisations who are part of the trustee's network. A conflict of loyalty could also arise where the religious, political or personal views of a trustee could interfere with the ability of the trustee to decide the issue only in the best interests of the charity.

It should be noted that the Charity Commission's guidance is always with respect to decision making. It is not about more general allegiances. However, where the Trustees are making decisions on aspects of policy, there would be an overlap with their views or allegiances. In addition there is the question of perceived reputational damage.

We have asked Trustees to sign up to the PEN Charter. If trustees undertake activities which are deemed to be in conflict with the Charter this may or may not be in direct relation to decision making. It is for the trustees to decide in what incidences there might be a conflict of interest or a serious conflict of interest. It is also for trustees to decide at what point the activities of an organisation for which an individual trustee works, or where they are a trustee/director, implicate the individual concerned and how. (For example, with respect to forming policy, remuneration and commercial gain, campaigning).

What activities could cause a conflict of interest?

- Inciting hatred against peoples
- Actions which seriously hinder the freedom of the press
- Censoring free expression and inhibiting the international sharing of ideas and literature

There may be instances where there is a potential conflict of interest because a trustee has a loyalty to a person, charity or organisation that causes reputational damage to English PEN. Such cases could arise for a number of reasons and may not always relate to the activities above. They will always be treated as individual cases.

3.Registering Conflicts of Interest

Every trustee has a personal responsibility to declare conflicts of interest if they are to fulfil their legal duty to act only in the best interests of the charity.

Every trustee must record and update their conflicts of interest annually. English PEN will keep annually updated records.

Declared conflicts of interest must include:

- Employer(s)
- Other trusteeships
- Other Non Executive Directorships
- Business and personal interests of any close family members/partner/spouse

4. Procedure when there is a potential conflict of interest

4.1 At meetings/decision making

Trustees must declare any potential conflicts of interest at the start of a business meeting. This is a standing item for all trustee meetings.

If a trustee has a conflict of interest according to our articles, he/she may:

(22.5.1) Take part in the decision-making process only to such extend as in the view of the other Trustees is necessary to inform the debate;
(22.5.2) not be counted in the quorum for that part of the process; and

(22.5.3) withdraw during the vote and have no vote on the matter

If a there is a potential serious conflict of interest which might affect the future financial stability of English PEN the Charity Commission will be consulted.

4.2 Wider conflict of loyalty

If there is a perceived conflict of interest due to a Trustees loyalties or actions (as above) externally to English PEN that may cause reputational damage to English PEN or be contrary to the values as stated in the PEN Charter the following process will be undertaken.

An investigation of the perceived conflict of interest will be undertaken by a sub-group of Trustees appointed by the Chair (unless the Chair is the subject, in which case the Deputy Chair).

English PEN adheres to an evidence based approach. The board will not take decisions without having done its utmost to establish facts. Care will be taken to hear different points of view and to gather evidence from a range of sources. The investigation will include the following:

- Establishing facts as far as possible
- Taking evidence from stakeholders who perceive there has been a conflict of interest, the Trustee concerned, external experts and other stakeholders.

The sub-group will present their report, with recommendations, to either the next board meeting or to an EGM, whichever is required. A minute will be taken of any decision.

If the board decides to call for the resignation of a Trustee as a result of the sub-groups findings the procedure as laid out in the articles will be followed.

Review of Policy

The Conflict of Interest Policy will be reviewed by the Governance committee at five year intervals.

Complementary policies

This policy accompanies and is in the context of the following documents:

- Ethical financial and partnership policy
- The Nolan Principles
- The PEN Charter
- The Articles of English PEN.

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