



Conflicts of Interest Policy

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Version Control

Version	Reviewed	Changes since last version
1	September 2019	Original
2	January 2024	Updated to include new Declaration of Interests Form; minor updates including updating appendix references

All existing and new Trustees shall receive a copy of this policy and shall be deemed to have accepted it.

1. Introduction

- 1.1. The aim of this document is to give guidance on the legal requirements and set out the policy of Mulberry Schools Foundation (“the Foundation”) in relation to conflicts of interest.
- 1.2. Each Trustee owes a duty of loyalty to the Foundation and must always act in its best interests. Failure to do so may constitute a breach of trust and may result in the Trustee being personally liable.
- 1.3. Trustees must act in accordance with the Foundation’s Articles and must properly manage situations where there may be a conflict of interest.

2. What is a conflict of interest?

- 2.1. A conflict of interest will arise if a Trustee has any direct or indirect interest in a matter (whether personal, by virtue of a duty of loyalty to another organisation or otherwise) and that interest conflicts, or could conflict, with the interests of the Foundation. A conflict of interest includes a conflict of loyalty; that is a conflict between any duty a Trustee owes to the Foundation and any duty he or she owes to another person or organisation.
- 2.2. Conflicts of interest are not just about personal benefits or benefits received by people or organisations connected with a Trustee. Certainly, the conferring of such benefits will give rise to conflicts which need to be authorised and managed. However, a conflict (or appearance or possibility of a conflict) can arise simply because a Trustee has interests in or loyalty or other duties owed to other organisations whose interests might conflict with those of the Foundation.
- 2.3. Where a conflict of interest arises for a Trustee as a result of circumstances affecting a connected person, it is the Trustee that must comply with this policy – not the connected person (unless the connected person is also a Trustee).
- 2.4. The following are typical examples where a trustee of a charity is likely to have a conflict of interest:
 - 2.4.1. The charity wants new office premises. A trustee has some suitable premises to rent, and he or she would expect to be paid for renting them to the charity.
 - 2.4.2. A trustee has an interest in a third party to which the charity is considering awarding a grant.
 - 2.4.3. The charity is considering funding a project or a trip in which a trustee or a member of his/her family will participate, receiving personal benefit.
 - 2.4.4. The charity is advertising a job and a trustee or a member of his/her family is considering applying.

2.4.5. The charity is considering awarding a contract to a third party and a trustee has received corporate hospitality from that third party in the past.

2.4.6. The charity is considering a mutually beneficial relationship with a commercial company where a trustee is employed.

2.5. In each case, the level of benefit received by the trustee will be key to deciding if there is a conflict of interest.

3. Overview of the conflicts procedure

3.1. A Trustee must declare any interest in a matter to be decided by the Trustees.

3.2. Any conflict between the interests of the Foundation and the interests of a Trustee; and any conflict between the duty of loyalty owed to the Foundation and the duty of loyalty a Trustee may have to any other organisation must be:

- identified;
- managed in accordance with the Articles; and
- minuted.

3.3. The law relating to conflicts of interest for companies is complex. It is summarised in Appendix A for reference. However, identification and management of conflicts of interest is not complex and Trustees who comply with this policy will not breach their legal duties.

4. Declaring interests

4.1. All Trustees must declare their interests, and any gifts or hospitality received in connection with their role in the Foundation. There is no legal definition of what is an “interest”. It is just a question of common sense whether circumstances are such that a Trustee has an interest.

4.2. A Trustee Declaration of Interests Form is attached at Appendix B. This should be completed:

- by all new Trustees;
- annually by all existing Trustees; and
- when any existing Trustee becomes aware of a new interest.

4.3. Trustees should err on the side of caution when completing their Declaration of Interests form, listing all interests which may give rise to a conflict of interests.

4.4. A Register of Trustees’ Interests (“Register”) will be maintained by the Company Administrator or if none, the Chair, and be accessible to the Trustees. A model Register is attached at Appendix C.

5. Identifying conflicts of interest

- 5.1. Each agenda for Trustee meetings (or for a Trustee decision to be made outside a meeting) will include an item for declaration of interests and identification of any conflicts or potential conflicts of interest.
- 5.2. Prior to, or at the beginning of any Trustee decision making process (or committee meeting), Trustees must declare any interest in relation to matters on the agenda and whether or not they think this may give rise to a conflict of interest. Trustees not attending the meeting or taking part in the decision making process should declare any interest in advance to the Chair. Notwithstanding Article 21.2 which states there is no requirement to disclose interests of which the other Trustees ought reasonably to be aware, the Foundation's policy is that all interests relevant to the agenda should be declared at each meeting to avoid uncertainty.
- 5.3. The declaration can be by oral notification to the Chair or by using the form attached as Appendix B. Any new interests declared in this way will be entered in the Register.
- 5.4. If a Trustee's interest or duty cannot reasonably be regarded as likely to give rise to a conflict of interest or a conflict of duties with or in respect of the Foundation, he or she is entitled to participate in the decision-making process, to be counted in the quorum and to vote in relation to the matter. This is a situation where there is a coincidence of interest, as opposed to a conflict.
- 5.5. Any uncertainty about whether a Trustee's interest or duty does in fact give rise to or can reasonably be regarded as giving rise to a conflict shall be determined (without the interested Trustee being present) by a majority decision of the other Trustees taking part in the decision-making process. The interested Trustee cannot vote or be counted in the quorum in relation to the decision about whether their interest does or does not give rise to a conflict.

6. What to do if there is a conflict of interest

- 6.1. The Articles permit Trustees with a conflict of interest to remain, vote and be counted in the quorum in certain situations. The starting point is that the Trustee can participate in the decision making process, be counted in the quorum and vote unless:
 - 6.1.1. a majority of the other Trustees participating in the decision-making process decide to the contrary; or
 - 6.1.2. the decision could result in the Trustee or any person who is connected with him or her receiving a benefit. However, there are four benefits where the Trustee can still participate, be counted in the quorum and vote and these are:
 - a) any benefit received in his, her or its capacity as a beneficiary of the Foundation and which is available generally to the beneficiaries of the Foundation;

- b) the payment of premiums in respect of trustee indemnity insurance;
- c) payment under the trustee indemnity set out in the Articles; and
- d) reimbursement of expenses in accordance with the Articles.

6.2. But note even in the situations described in a) to d) in 6.1.2 above, it is still open to the other Trustees to decide that the Trustee should not vote or be counted in the quorum.

6.3. If a majority of the other Trustees decide a Trustee should not participate in the decision-making process, or a Trustee will receive a benefit other than one of the four outlined above then, the Trustee with a conflict of interest must:

- 6.3.1. 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;
- 6.3.2. not be counted in the quorum for that part of the meeting; and
- 6.3.3. withdraw during the vote and have no vote on the matter.

6.4. The steps in this policy are summarised in the flowchart attached at Appendix D.

6.5. Trustees with a conflict of interest or duties to the Foundation and who have complied with their obligations will not be in breach of their duties to the Foundation by withholding confidential information where disclosure would cause the Trustee to breach any other duty of confidence. Similarly, the Trustee will not be accountable to the Foundation for any benefit expressly permitted under the Articles which he or she or any person connected with him or her derives from any matter, office, employment or position.

7. Additional considerations where interests arise from potential benefits to a Trustee

7.1. The Trustees and certain persons regarded as “connected” with them cannot receive any benefits from the Foundation except to the extent permitted by:

- 7.1.1. the Articles of the Foundation;
- 7.1.2. the Charity Commission, Companies House or the Court.

7.2. The benefits permitted under the Foundation’s Articles are:

- 7.2.1. benefits to a trustee (or person who is connected to a trustee) in their capacity as a beneficiary;
- 7.2.2. the payment to trustees of reasonable out of pocket expenses incurred on behalf of the Foundation (although these are not, strictly speaking, a benefit);
- 7.2.3. payment to trustees or a person connected to a trustee of interest at a reasonable rate on money lent to the Foundation;
- 7.2.4. payment to trustees or a person connected to a trustee of a reasonable rent or hiring fee for premises let or hired to the Foundation;

- 7.2.5. reasonable and proper remuneration to any trustee or person connected to a trustee for any goods or services supplied to the Foundation (and including, for a connected person only, services performed under a contract of employment with the Foundation). Provided that no more than half the trustees shall benefit in this way in any financial year;
 - 7.2.6. benefits under a trustee indemnity insurance policy; and
 - 7.2.7. payments to trustees under the indemnity contained in the Articles.
- 7.3. Appendix B includes a definition of who is regarded as “connected” to a Trustee.
- 7.4. If a proposed benefit to a Trustee is not permitted under the Articles, legal advice should be obtained before proceeding.

8. Trustees appointed by external bodies and ex-officio Trustees

- 8.1. Ex-officio Trustees and Trustees appointed by external bodies are likely to face potential conflicts and they must manage conflicts carefully.
- 8.2. It is a general principle of charity law that appointed trustees must act independently of the body which appointed them and act only in the best interests of the charity. If this would lead to a Trustee acting in a way which conflicts with the interests of the body appointing them, the Trustee must consider whether they personally have a conflict of interest – they may do if they owe a duty of loyalty to the appointing body.
- 8.3. Any conflict of interest must be managed in accordance with this policy and the Foundation’s Articles.

9. Situations where all the Trustees have a conflict of interest

- 9.1. There may be situations where all the Trustees have an interest and arguably a conflict of interest. In such situations, a Trustee may participate in decisions from which he or she indirectly benefits provided either:
 - 9.1.1. the benefits are universal to the public or available to all the beneficiaries of the Foundation; or
 - 9.1.2. it is a general policy or practice decision affecting the service in which the Trustee, along with other users, participates.
- 9.2. In any other situations where the full board is conflicted, the Trustees should seek legal advice. Options include seeking an order from the Charity Commission (under Section 105 of the Charities Act 2011) sanctioning the proposed action.

10. Declaration of interests by prospective Trustees

10.1. Prospective Trustees will be asked to consider where there are any potential conflicts of interest before they are appointed. Those deciding on the appointment shall be made aware of any possible conflicts of interest involving the prospective Trustees and shall take this into account when deciding.

11. Record keeping

11.1. All discussions and decisions about a conflict of interest must be recorded and reported in the minutes of the meeting. The report should record:

- 11.1.1. any relevant interests of the Trustees;
- 11.1.2. any conflicts of interest, including any decisions made as to whether a Trustee did or did not have a conflict of interest;
- 11.1.3. the actions taken to manage the conflict in accordance with the Foundation's Articles;
- 11.1.4. the names of persons present for discussion; and
- 11.1.5. any other relevant information.

12. Data protection

12.1. The information provided by Trustees will be processed in accordance with the requirements under the General Data Protection Regulation 2016/679, the Data Protection Act 2018 and any other related and applicable data protection and privacy laws. The data will be processed only to ensure that the Trustees act in the best interests of the Foundation. The information will not be used for any other purpose.

13. Accounting

13.1. All payments or benefits in kind to the Trustees will be reported in the Foundation's accounts and annual report, with the amounts received for each Trustee listed for the year in question.

14. Policy review

14.1. This policy shall be reviewed every two years.

Appendix A: Conflicts of interest and the Companies Act 2006

Under the Companies Act 2006, the Trustees have the following duties in respect of interests and conflicts of interest:

- to avoid situations in which they have, or can have, a direct or indirect interest that conflicts, or might conflict, with the interests of the charity (section 175);
- to declare an interest in proposed transactions or arrangements (section 177). There is also a separate requirement to disclose interests in an existing transaction or arrangement (section 182); and
- not to accept benefits from third parties (section 176). This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

The duty to avoid conflicts of interest will not be infringed if:

- the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- provisions in the articles for dealing with conflicts of interest have been complied with; or
- the other directors have authorised the situation. For charitable companies, the directors only have power to authorise a conflict if the articles include such a power.

A director also has a duty (s176) not to accept a benefit from a third party conferred by reason of being a director or doing (or not doing) something as a director.

This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

Further Note, in addition to the above dealing with disclosure of interests and management of conflicts of interest, there are further requirements under the Companies Act in relation to certain transactions.

If a director's interest or conflict of interest arises in relation to any of the following there are further requirements under the Companies Act that must be complied with before the transaction can proceed:

- Long term service contract – see s188 to s189;
- Substantial property transactions – see s190 to s196;
- Loans to directors – s197 to s214; and
- Payments for loss of office – s215 to s222.

Broadly speaking each of the above, in addition to any charity law requirements, requires the consent of the company's members although there are some exceptions.

Appendix B: Mulberry Schools Foundation Trustee Declaration of Interests Form



Mulberry Schools Foundation Trustee Declaration of Interests Form

I, _____, as Trustee of Mulberry Schools Foundation, have set out below my interests in accordance with the organisation's Conflicts of Interest policy.

I am a new Trustee.

I am an existing Trustee.

Category	<i>Please give details of the interest and whether it applies to yourself or, where appropriate, a member of your immediate family, connected* persons or some other close personal connection.</i>
Current employment and any previous employment in which you continue to have a financial interest	
Businesses (of which a partner or sole proprietor)	
Company directorships	
Charity trusteeships	
Appointments (voluntary or otherwise), including trusteeships, directorships, local authority membership, tribunals, etc.	
Membership of any professional bodies, membership organisations, public bodies, special interest groups or mutual support organisations	
Investments in unlisted companies, partnerships and other forms of business, major shareholdings and beneficial interests	
Gifts of hospitality offered (when acting as a trustee) by external bodies in the last twelve months and whether these were declined or accepted	
Relation to an employee of the Mulberry Schools Trust or a pupil at any of its schools	

Use of the organisation's services by yourself or someone in your care	
Any contractual relationship with the Foundation or its member, the Mulberry Schools Trust (for the supply of goods and/ or services)	
Any other interests not covered by the above which could give rise to a conflict of interest	

To the best of my knowledge the information supplied above is complete and correct. I understand that it is my responsibility to declare any conflict of interest/loyalty, business or personal, that relates directly or indirectly, to myself or any relation in any contract, proposed contract or other matter when present at a Trustees meeting where such contract or matter comes under consideration. I understand that I must withdraw from any meeting during the discussion of such contract or matter and must not vote in respect of it.

By signing, I confirm that I have read and understood the Foundation's Conflicts of Interest Policy.

I agree to review and update this declaration annually and give consent for the information provided to be used in accordance with the Trust's conflict of interest policy.

Signed: _____

Position: _____

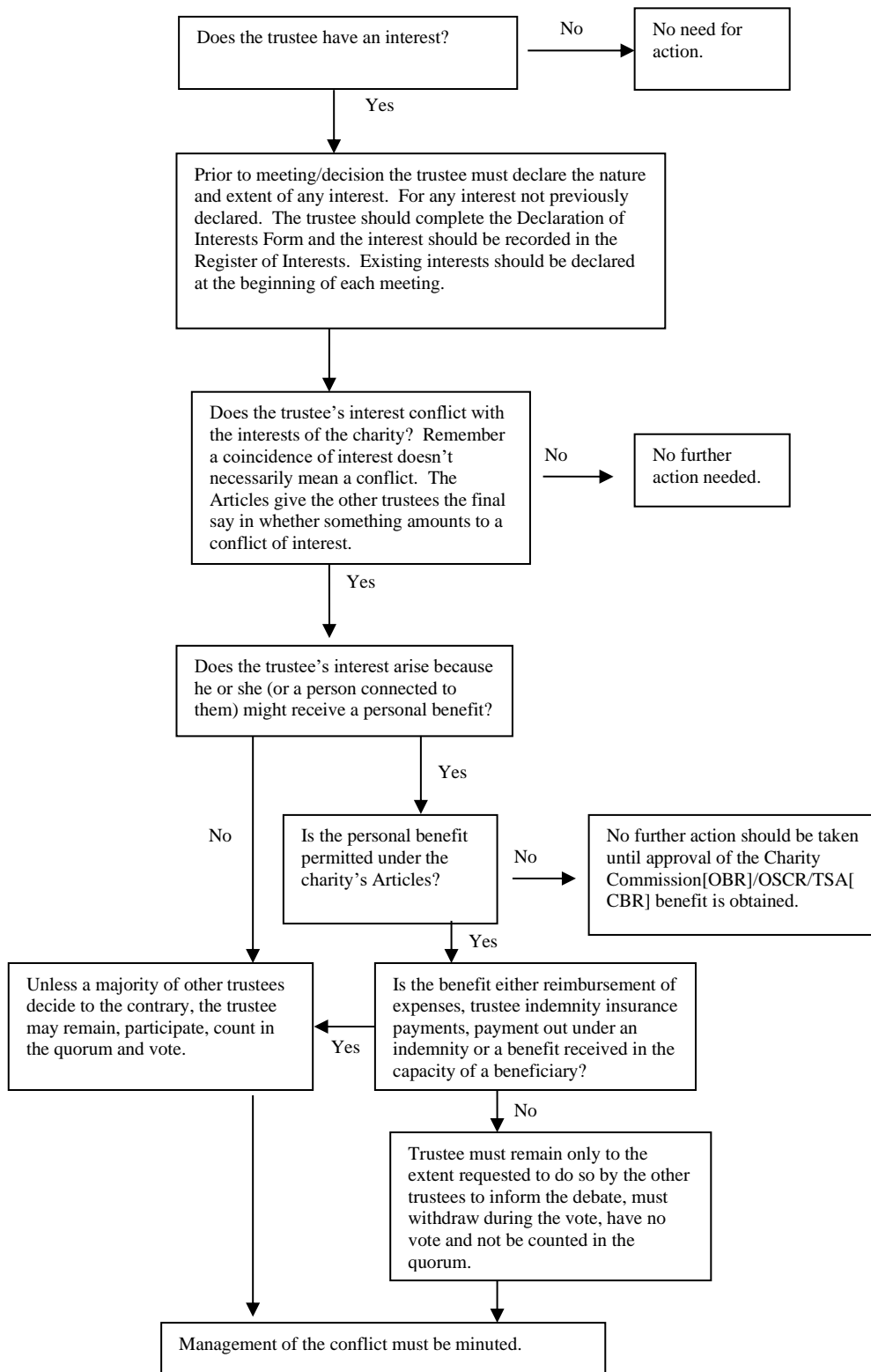
Date: _____

*** Definition of "connected"**

"Connected" means any person falling within one of the following categories:

- Any spouse, civil partner, parent, child, brother, sister, grandparent or grandchild of a Trustee; or
- The spouse or civil partner of any person in (a); or
- Any other person in a relationship with a Trustee which may reasonably be regarded as equivalent to such a relationship as is mentioned at (a) or (b); or
- Any company, partnership or firm of which a Trustee is a paid director, member, partner or employee, or shareholder holding more than 1% of the capital.

Appendix D: Management of Conflicts of Interest Flow Chart



Note this flowchart is specifically tailored to reflect the provisions in Foundation's Articles relating to conflicts of interest and is not appropriate for general use by other organisations