

DEED, TRUST AND OBLIGATIONS COMMITTEE CONFLICTS OF INTEREST POLICY

1. Aims and objectives

- 1.1 This Policy applies to all members of the Deed, Trust and Obligations Committee, whether or not they are elected Councillors or co-optees.
- 1.2 The aim of this Policy is to assist the Committee to act with integrity and openness, with a view to identifying situations where their duties to the charities administered by the Committee, might be in conflict with their duties to Council, the Cabinet or other bodies. For the avoidance of doubt, this Policy not only covers conflicts which would arise in situations where the interests of elected Councillors on the Committee clash with their Council duties but also other potential conflicts of interest, which may affect co-optees on the Committee.
- 1.3 This Policy is intended to assist the Committee in identifying conflicts, to avoid conflicts arising at all and where conflicts do arise, this Policy is intended to assist the Committee to manage those conflicts in order to avoid perceived and actual problems occurring.
- 1.4 This Policy takes account of relevant guidance provided by the Charity Commission, Standards for England and paragraphs 5.30 and 5.31 of the First - Tier Tribunal's (Charity) decision dated 16 November 2009 [Case No. CA/2009/0001 & 0002].
- 1.5 This Policy supplements the guidance and advice set out in the Council's ethical governance framework and Constitution.

2. Responsibilities

- 2.1 Members of the Committee may be Cabinet members, elected Councillors or [voting] co-optees. They may owe duties to Council, the Cabinet, or other bodies.
- 2.2 The guiding principle for Committee members is that their primary duty is to act in the best interests of the charities administered by the Committee and those who are beneficiaries of those charities, when they make and implement decisions. That duty takes priority over any duty that might be owed to Council, the Cabinet or other bodies.
- 2.3 Committee members must exercise reasonable care in the manner in which they make decisions. Members must make decisions independently of any influence from Council, the Cabinet or other bodies. Members must ensure

that decisions are made to further the purpose of the charities and those who are beneficiaries of those charities and not to further other purposes.

2.4 Committee members are not charity trustees and do not have the responsibilities and liabilities of a trustee. This does not mean that they do not owe duties to the charities administered by the Committee.

2.5 This Policy includes illustrative examples to assist Committee members in determining the types of interests which need to be declared. However, it is the personal responsibility of each individual Committee member (under guidance of the Monitoring Officer if necessary), to determine whether they feel a matter represents a potential or actual conflict of interest or the perception of such a conflict and should therefore be declared.

3. Identifying conflicts

3.1 Committee members must be alert to the possibility that conflicts of interest may arise. When they carry out the business of the Committee, Committee members must avoid conflicts of interest as far as possible.

The Charity Commission's guidance¹ notes that 'the issue is not the integrity of the trustee concerned, but the management of any potential to profit from a person's position as trustee, or for a trustee 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'.

3.2 A conflict of interest arises in any situation where duties are owed by Committee members to a body other than the charities administered by the Committee, if those duties clash with the duties owed to one or more of the charities. For example, an elected councillor may have a duty to act in the best interests of Council and/or the Cabinet, while at the same time having a duty to act in the best interests of the charities administered by the Committee. If it is not possible to do both at the same time, there is a conflict of interest.

3.3 Where specific decisions have to be made, a decision might be advantageous to Council, the Cabinet or to another body, but may not be the best decision to make for a charity that is administered by the Committee. In that situation, there may be a conflict of interest specific to that decision.

3.4 Where a Committee member has already participated in the business of Council, the Cabinet or some other body that is likely to affect a charity administered by the Committee, that member is likely to have a conflict of interest, if that business has subsequently to be considered by the Committee.

3.5 Relevant interests may be financial or non-financial; direct or indirect.

¹ Conflicts of Interest - a guide for charity trustees

Direct financial benefits or interests include for example employment by the charity of a Committee member as a consultant or advisor, or a company of which a Committee member is a director or shareholder may be considered for a contract by the charity. Other matters of financial interest include the sale of land or the use of a Committee member's property by the charity, or granting of loans by a Committee member to the charity. Such financial benefits require authorisation, usually by the Commission.

- 3.6 Indirect financial interests may arise where potential financial benefits accrue to a close member of a Committee member's family, or even a friend, business partner or colleague, where their finances are interdependent (e.g. joint bank accounts, mortgages or property held in joint names, one party financially dependent on the other, employer/employee/contractual relationship) or where it could otherwise be perceived that such benefits could lead to a conflict of interest, i.e. by influencing the Committee member's decision other than in the best interest of the charity.
- 3.7 Non financial interests, direct or indirect, may arise where a Committee member is also a user of the charity's services, particularly if the Committee member is benefiting from those services in a manner which is exceptional.
- 3.8 Conflict of loyalty interests may arise where an association of a Committee member or of a relative or friend with another body or organisation etc may be perceived as influencing the member in making decisions which may not be in the best interest of the charity.
- 3.9 If a Committee member is unsure whether they are or might find themselves in a position of conflict, that member must err on the side of caution by making the situation known to the Committee as a whole and if necessary, seek the advice of the Monitoring Officer.

4. Avoiding conflicts

- 4.1 In conducting Council or Cabinet business or the business of some other body, Committee members must consider whether participating in that business might prevent them from participating in any aspect of the business of the Committee.
- 4.2 If it is likely that by participating in the business of Council, the Cabinet or another body, a conflict of interest might arise in future with the business of the Committee, a member of the Committee should not participate in the business of Council, the Cabinet or other body. Instead, Committee members should give priority to the business of the Committee.

Example: the maintenance of the Council's corporate park land is one of Cabinet's responsibilities. Cabinet members who sit on the Committee will absent themselves from Committee meetings when the apportionment of maintenance expenses between the charities administered by the Committee and the Council in its corporate capacity is discussed and voted on. Similarly, Committee members who are also members of the Development Control Board, will withdraw from Committee business when a planning issue arises which affects the charities administered by the Committee.

4.3 Committee members must also have regard to the [Member] Code of Conduct. The Code affects whether Committee members can participate in the business of Council and/or the Cabinet when there is already a conflict of interest with a charity administered by the Committee.

5. Managing conflicts

5.1 Elected Councilors and [voting] co-opted members are required by law² to notify the Monitoring Officer of any disclosable pecuniary interests before the end of 28 days beginning with the day they become a member or [voting] co-opted member of the Council, or before the end of 28 days beginning with the day on which the [Member] Code of Conduct takes effect (whichever is the later). The Register is a document which can be consulted when (or before) an issue arises and lets others consider whether or not a Committee member may have a conflict of interest.

5.2 The Council has adopted the 'prejudicial interest' definition and associated public interest test as set out in the Annex to this Policy. Prejudicial interests are not registrable, but do need to be declared when relevant to a matter under consideration by the Committee.

5.3 If a conflict of interest has arisen, the Committee member concerned must not participate in the discussions or decisions of the Committee that are affected by that conflict and must withdraw from the meeting room. That member should not influence the views of any other Committee member. If the member considers that he/she is able to contribute to the discussion and/or provide information to the Committee that might be relevant to the discussion or the decision, he/she must apply for a dispensation in accordance with the Council's constitution. The member should not contribute to the discussion and/or provide the information to the Committee without a dispensation.

5.4 Where a conflict of interest is identified, it must be recorded in the minutes of the Committee and reported to the Audit Board in accordance with the Council's constitutional arrangements. Keeping a record of the business of Council, the Cabinet and other bodies that is likely to affect the business of the Committee will help members to recognise when they should not participate in decisions.

² Localism Act 2011 and The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

- 5.5 Where a general duty to Council, the Cabinet or another body conflicts with a duty to a charity administered by the Committee, the member concerned should have regard only to the duty owed to the charity. The member concerned should have no regard to the duty owed to Council, the Cabinet or that other body.
- 5.6 Where there is a likelihood of a conflict or where a conflict has been identified, the Committee should consider whether any other Committee members might be in positions of conflict. The Committee should give consideration to the possibility that only co-opted members will be able to vote on a specific matter. In situations where all elected Councillors on the Committee are conflicted, the quorum is three (3) [voting] co-opted members.

6. Seeking advice

The Committee should bear in mind that in any case of doubt, advice is available from the Monitoring Officer and that it is preferable to seek advice at an early stage, before any decision is made.

7. Recruitment of co-optees

- 7.1 Applicants must not within the period of five years, have been a councillor, co-opted member or employee of The Dartford Borough Council or be a relative or close friend³ of an elected councillor, employee or co-opted member of the Council.
- 7.2 Applicants must demonstrate a commitment to good governance and sound financial management and act solely in the best interests of the charities administered by the Committee and work with and alongside elected Councillors in managing the charities, for the people of Dartford.
- 7.3 Unless a [voting] co-optee resigns or becomes disqualified in accordance with Dartford Borough Council's Standing Orders, the term of office for co-optees appointed to the Deed, Trust and Obligations Committee, will not usually exceed a period of 4 years. Co-optees are eligible for re-appointment for a second or subsequent term.

³ A closer relationship is implied than mere acquaintance (Standards for England Case Review 2007 (Paragraph 8))

PREJUDICIAL INTEREST DEFINITION AND TEST

A prejudicial interest means an interest (other than a Disclosable Pecuniary Interest) in any matter under consideration at any meeting which may reasonably be regarded as affecting your financial position or the financial position of a person or body you are associated with to a greater extent than other council tax payers, ratepayers or inhabitants of the Council's area. You would have a prejudicial interest where a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice your judgment.

You will not normally have a prejudicial interest if:

- (a) you are a tenant of the Council provided that the matter under consideration does not relate particularly to your tenancy or lease; or
- (b) you are a parent or guardian of a child in full time education, unless the matter under consideration relates particularly to the school which your child attends; or
- (c) you are in receipt of, or are entitled to the receipt of, statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992; or
- (d) as a member of the Council, you are given an allowance, payment or indemnity; or
- (e) as a member of the Council, you are being/have been bestowed a ceremonial honour by the Council; or
- (f) the Council is setting the council tax or a precept under the Local Government Finance Act 1992; or
- (g) you serve as a member of a body exercising functions of a public nature (e.g. other government agencies, other councils, public health bodies, school governing bodies), unless the matter under consideration relates particularly to the body.

Adopted by the Deed, Trust and Obligations Committee 21 April 2010 [Min.No.21]

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