

# Policy and procedure on conflicts of interest

## 1.0 Purpose and background

- 1.1 The purpose of the Foundation's conflicts of interest policy and procedure is ultimately to ensure that the decisions taken by the Foundation are independent of outside interests and seen to be so. The Foundation interprets this to mean that whether there is a reasonable external perception that a conflict (as set out in paragraph 3.1) may exist is a key consideration, in addition to the existence of an actual or potential conflict.
- 1.2 This policy and procedure covers the awards and contracts that the Foundation enters into, as well as the actions of governors, staff and other individuals working on behalf of the Foundation. The Chief Executive in tandem with the relevant director raising the issue together with the Chair of the board (or a nominated representative), should agree whether there was reasonable external perception of conflict or not.
- 1.3 Observance of this policy and procedure plays an essential part in the Foundation's ongoing work to build and maintain credibility in the eyes of stakeholders in the field in which it operates.
- 1.4 The governors, as trustees of the charity (and company law directors) have a personal legal duty responsibility to declare potential conflicts of interest, as part of their legal duty to act only in the best interests of the charity.
- 1.5 All staff, other individuals as defined by this policy and procedure, and independent members of board committees also have a personal responsibility to declare potential conflicts of interest.
- 1.6 Any departure from this policy and procedure must be approved in writing by: i) the Chair and Chief Executive, if the individual in question is a governor (provided in the case of governors that the departure is permitted by the Foundation's Articles of Association) or independent member of a board committee, or ii) by the Chief Executive, if the individual is a member of staff or any other individual. The Chief Executive will report all such instances to the board.
- 1.7 If the individual concerned is the Chief Executive, then the Chair of the board will decide on the appropriate course of action.

1.8 The policy and procedure, which complies with Charity Commission guidance, will be monitored by the Chief Operating Officer or Head of People and OD and issues arising from it will be escalated via the Chief Executive as necessary.

1.9 The policy and procedure is to be published prominently on the Foundation's website.

## 2.0 Who the policy and procedure covers

2.1 The policy covers:

- governors and independent members of board committees
- all Health Foundation staff (including those on fixed-term contracts)
- other individuals as defined below

### *Other individuals*

2.2 These would include individuals who are covered by the following list, even if they are also covered by section 2.4:

- involved in assessing or selecting applicants for Foundation awards including peer reviewers (NB members of the college of assessors are already required to declare their interests)
- involved in selecting suppliers of goods or services for the Foundation
- involved in the Foundation's work in policy economics or data analytics
- temps who will be in the Foundation's offices for longer than a week, interns or secondees. All other temps should be briefed on conflicts of interest.

2.3 In all of these cases, the default arrangement is that the individuals must declare their interests and will be subject to this policy and procedure. If there is a compelling reason to depart from the default approach, please discuss with the Chief Operating Officer or Head of People and OD in the first instance.

2.4 In the cases of any of the following or similar, where the individual concerned is not covered in the list at 2.2 above, we should invite them to tell us anything that might cause the Foundation a problem if they were to carry out work for / with us:

- clinical associates, academics funded by the Foundation, visiting fellows or senior advisers, members of external advisory groups etc;
- speakers at major THF events, external bloggers on THF website.

2.5 There is no need for us to provide the whole conflicts of interest policy and procedure to any individuals covered by the bullets in section 2.4 above.

## 3.0 Defining a conflict of interest

3.1 The Charity Commission defines an 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 solely in the best interests of the charity.

3.2 While the Charity Commission's definition applies strictly to trustees (the governors of the Foundation), as a matter of best practice this policy and procedure takes this definition and applies it similarly to independent

members of board committees, staff and other individuals (as defined above); an 'interest' is defined accordingly.

**3.3** Conflicts may arise as follows:

- in the Foundation's work to make or manage awards
- in its work to award or manage contracts
- in its in-house work including policy, economics, communications and strategy
- in the case of financial gain by an individual from any of the Foundation's activities
- in the case of any non-financial gain by an individual
- in any other case that might be described by section 1.1 above

**3.4** Sections 4.0 – 8.0 take each of the first five of these in turn and summarise the Foundation's approach.

**3.5** In all of this, a conflict of interest also exists if someone connected to an individual stands to gain, as defined in sections 4.0 – 8.0. The definition of a connected person is anyone falling within the following categories:

- a) any spouse, civil partner, parent, child, brother, sister, grandparent or grandchild of the individual; or
- b) the spouse or civil partner of any person in (a); or
- c) any other person in a relationship with the individual which may reasonably be regarded as equivalent to such a relationship as is mentioned at (a) or (b); or
- d) any company, partnership or firm of which the individual is a paid director, member, partner or employee, or shareholder holding more than 1% or £10,000 of the capital;

**3.6** In any other situations not specifically covered in the policy and procedure but which are obviously implied by its stated purpose in section 1.0 above, the Chief Executive (and Chair if it involves governors or independent members) will come to an appropriate judgement.

**3.7** In cases of doubt as to whether a conflict of interests exists, or might reasonably be perceived to exist, consult the Chief Operating Officer or Head of People and OD in the first instance (and Chair if it involves governors or independent members).

**4.0 Making or managing awards**

**4.1** The Foundation's approach to defining and managing conflicts in its award making and management is given from the perspectives of each of:

- governors and independent members of board committees
- staff
- other individuals including but not limited to external assessors, members of selection panels.

*Governors and independent members of board committees*

**4.2** A governor or independent member may not take part in any aspect of award-making or selection where they have an interest in any of the applications.

**4.3** Subject to sections 4.1 - 4.2 governors and independent members may occupy formal roles at organisations that make an application or hold an award, so long as all of the following are true:

- they are not in receipt of funds from a Foundation award paid to them as an individual either i) as an individual award-holder or ii) as a part of an award that is funding a project on which they are working
- the interest is declared following the Foundation's procedure for doing this
- they have no direct dealings with Foundation staff as a part of either the assessment of an application, the decision to award or the management of an award ie they are not the Foundation's point of contact
- they are not the individual within the award-holding institution who endorses, signs off etc anything on behalf of the award holder (including original application material) even if it would normally be within their remit to do so.

#### *Staff*

**4.4** Members of staff may occupy a non-executive (but not an executive) role in an organisation applying for awards or holding awards. However, at no point may they:

- provide any information or intelligence to the organisation in question that might confer an unfair advantage with regard to applying for an award; or
- play any part in the assessment or selection (including but not limited to, long and short listing) of any programme or round in which the organisation in question has an application.
- play any part in the management of an award to the organisation in question ie in any part of the process that leads to payments being made to that award holder.

**4.5** Any awards proposed to former members of staff, or to organisations that might reasonably be seen to have a strong relationship with a former member of staff, should be signed off by the Chief Executive before confirming the award and then reported to the board retrospectively. Where a former member of staff has been involved, prior to their departure, in the assessment or selection of an award to a relevant organisation, the Chief Executive shall not confirm the award without the prior approval of the board.

#### *Other individuals*

**4.6** Our policy also extends to external assessors and members of interview panels. Where such other individual is i) a current employee of an organisation submitting an application or ii) a member of an advisory panel on a project, our policy is not to allow such individuals to take part in assessment or selection.

## 5.0 Making or managing contracts

5.1 The Foundation's approach to defining and managing conflicts in its awarding and management of contracts for goods or services is summarised from the perspectives of each of:

- governors and independent members of board committees
- staff
- other individuals eg members of decision panels.

### *Governors and independent members of board committees*

5.2 The Charity Commission permits governors to carry out and be paid for contracted work for the organisation of which they are governor if all of a number of specific requirements are in place and if the Commission's general guidance on its website is also observed:

- there is a written agreement between the charity and the governor or connected person who is to be paid
- the agreement sets out the exact or maximum amount to be paid
- the governor concerned may not take part in decisions made by the board about the making of the agreement, or about the acceptability of the service provided
- the payment is reasonable in relation to the service to be provided
- the governors are satisfied that the payment is in the best interests of the charity
- the board follows the 'duty of care' set out in the Trustee Act 2000 (i.e. in summary they must act honestly and in good faith, and must exercise all reasonable care and skill in reaching their decision)
- the total number of governors who are either receiving payment or who are connected to someone receiving payment are in a minority.

5.3 Legally, there is therefore no conflict if the arrangement in question meets all the bullets above. **However, the Foundation's approach is to permit this solely for the supply of specialist expertise that a governor possesses and that obtaining this from elsewhere would not be practicable.** See the separate policy on payments to governors.

5.4 The supply of that specialist expertise must be approved by the Chair of the board and the Chief Executive.

5.5 The same rules apply to independent members of board committees.

5.6 A governor or independent member may serve on a selection panel (including long and short listing) to identify a supplier so long as they have no interest in *any* of the bids, but not otherwise.

### *Staff*

5.7 A member of staff may occupy a non-executive role (but not an executive role) in an organisation applying for or holding contracts but may play no part in the delivery of any agreed goods or services.

5.8 At no point may they provide any information or intelligence to the organisation in question that might confer an unfair advantage with regard to tendering for a contract.

- 5.9** They may not play any part in the decision making (including long and short listing) leading to the awarding of a contract or the management of a contract.
- 5.10** Members of staff may not tender for or hold Foundation contracts as independent consultants.

*Other individuals*

- 5.11** Every effort will be made to ensure that members of selection panels (including long and short listing) do not have any interests in any of the organisations submitting tenders. If it is unavoidable that an individual with an interest has to be a member of a selection panel, then Chief Executive approval must be obtained in writing in advance. In these cases, the interest will be managed as described in section 10.
- 5.12** It is expected that panels undertaking selection (including long and short listing) will always be chaired by members of staff.

**6.0 In-house work including policy, economics, strategy or communications work (including proximity to government)**

*Proximity to government*

- 6.1** The Foundation's approach to proximity to government is summarised from the perspectives of each of:
- governors and independent members of board committees
  - staff
  - other individuals eg paid or unpaid advisors.

*Governors and independent members of board committees*

- 6.2** A governor or independent member may occupy a senior executive government post with a clear health remit but must take no part in any discussion when this leads to conflict. For the purposes of this policy and procedure, government does not include arm's-length bodies eg executive agencies such as Public Health England, special health authorities such as the NHS Improvement or non-departmental public bodies. In these cases, the interest will be managed as described in section 10.

*Staff*

- 6.3** A member of staff may not occupy a senior executive post with a clear health remit in government but may do so in an arm's-length body (see 6.2 above) at the discretion of the Chief Executive.

*Other individuals*

- 6.4** Individuals who occupy a senior executive government post with a clear health remit may only be involved in the Foundation's policy, economics, strategy or communications work at the discretion of the Chief Executive.

*An affiliation that might compromise the message arising from a piece of work (including but not limited to public party-political affiliation)*

- 6.5** The Foundation's approach to these affiliations is summarised from the

perspectives of each of:

- governors and independent members of board committees
- staff
- other individuals eg paid or unpaid advisors.

#### *Governors and independent members of board committees*

- 6.6** Governors or independent members who either occupy a current public party-political role eg candidate, campaigner, manager, agent, active supporter etc on appointment **or** who acquire such a role during their term at the Foundation may not either take part in any decision making on contracts or awards, including long and short listing, or chair or comment on policy work.

#### *Staff*

- 6.7** Senior staff (heads and upwards, plus affairs team) may not occupy a current public party-political role eg candidate, campaigner, manager, agent etc except at the discretion of the Chief Executive. The Chief Executive will report any such usage of discretion to the board.
- 6.8** All staff who are ever likely to publish, speak on a platform, engage in other media work directly on our objectives of improving health or health care, must have a biography on the website that includes any relevant declarations of interest.

#### *Other individuals*

- 6.9** Individuals with public affiliations to other bodies whose remit is relevant to a piece of work being carried out by the Foundation on policy, economics, public affairs, data analysis etc may only be involved in that work at the discretion of the Chief Executive. The Chief Executive will report any such usage of discretion to the board.
- 6.10** All external bloggers must have told us anything that might cause the Foundation a problem if they were to carry out work for us / with us in order for us to publish their work on the website.

### **7.0 Financial gain**

- 7.1** Except for any of the circumstances described in sections 4.0 – 6.0 and, separately, in the Foundation's policy on receipt of hospitality and gifts, an individual may not gain financially from any transaction entered into by the Foundation. This includes
- receipt of anything with a monetary value
  - financial gain by a partnership of which the individual is a partner
  - financial gain from a company of which the individual is a director or in which the individual owns shares and therefore stands to gain from the company's profits.
- 7.2** A conflict of interest is also deemed to exist where the individual has an interest in more than 1%, or £10k, of the share capital of a company. Any such interests will be managed according to the approach laid out in section 10.

## **8.0 Non-financial gain**

- 8.1** This policy and procedure recognises that individuals as defined in section 3.0 above may gain from the Foundation's activities in ways that do not benefit the individual financially but are nonetheless still tangible.
- 8.2** As one indication only, this might include securing an award from the Foundation for another organisation and using the fact of it to acquire a role there (even if unpaid) or enhanced prestige for any of the individuals defined in section 3.0.
- 8.3** It is difficult to track all eventualities here, or indeed take a view on the many possible permutations but essentially it is anything that could be described by section 1.1 above.

## **9.0 Declaring interests**

- 9.1** The Health Foundation keeps records of all relevant interests in respect of all individuals covered by this policy and procedure, who will be asked as a matter of course to update them in an annual exercise, using the template at appendix 1. If at any other time, an individual becomes aware of a relevant interest, regardless of whether a conflict is anticipated or not, the individual should notify the Chief Operating Officer or Head of People and OD. The interest will then be added to the records of the individual's existing interests.
- 9.2** The register of interests will be made available to governors on request. The interests of governors and senior staff (Chief Executive and directors) will also be made available at all board meetings. The first item of all board and committee meetings requires all interests relevant to any item on the agenda to be declared.
- 9.3** Declarations of interest by former staff are retained by HR for as long as the individual's employee records are retained. Declarations by former governors or independent members are retained for as long as their files are retained according to the Foundation's policy on this.

## **10.0 Procedure when a conflict of interests has arisen and needs to be managed**

*When a conflict of interests arises in respect of a transaction etc at a board meeting or at a meeting of a committee of the board, including where the conflict relates governors, staff and independent members of committees*

- 10.1** The guidance in this section of the policy and procedure reflects the section of the Foundation's governing document which covers conflicts of interest.
- 10.2** The conflict of interest must be declared at the meeting at which the transaction giving rise to the conflict is first considered. It will be for the chair of the meeting to decide whether, given the circumstances of the interest and in line with this policy and the Articles of Association, the individual should:
- take part in the discussion as normal
  - remain present for the discussion but not take part except to answer any



- relevant questions that might reasonably be put to him / her
- leave the meeting for the duration of the discussion.

In the case of the governor, the starting point shall be that the governor shall be allowed to partake in the decision unless the governor or someone connected to them could receive a financial benefit other than those permitted by the Articles of Association, or otherwise unless otherwise decided by the chair.

- 10.3** If it is the chair of the meeting who has the interest, the governors present will decide how to apply 10.2 above.
- 10.4** In all this, the chair of the meeting must ensure that the meeting remains quorate, since governors with conflicts cannot remain part of the quorum, even though they might remain physically present.
- 10.5** The minutes of the meeting will make clear what course of action took place.
- 10.6** A conflict arising after a transaction is first considered, including if a course of action has been agreed, must be declared at the first board meeting thereafter. If the interest arose after a transaction was first considered at a committee meeting, then it must also be declared at the following committee meeting.
- 10.7** In relation to governors only, if an 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 s.188 to s.189;
  - substantial property transactions – see s.190 to s.196;
  - loans to directors – s.197 to s.214; and
  - payments for loss of office – s.215 to s.222.
- 10.8** Broadly speaking each of the above, in addition to any charity law requirements, requires the consent of the Foundation's company law members although there are some exceptions. Specific advice should be sought by the Chief Executive or the Chair in these situations.

*For staff only, when a conflict of interests arises in any other context including, but not limited to, making decisions on awards and contracts (including long and short listing)*

- 10.9** The conflict of interest must be declared at the setting in which the transaction etc giving rise to the conflict is first considered. It will be for the chair of the meeting to decide whether, given the circumstances of the interest and in line with this policy, the individual should:
- take part in the selection process
  - remain present but not take part except to answer any relevant questions that might reasonably be put to him / her
  - leave the meeting for the duration of the selection.
- 10.10** If it is the chair of the meeting who has the interest, the individual's line manager will decide how to apply 10.7 above.
- 10.11** The minutes of the meeting will make clear what course of action took place.

**10.12** If an interest arises in any other setting, it will be for the individual's line manager to decide on what role, if any, the individual should play in the decision that has given rise to the conflict taking advice from the Chief Operating Officer or Head of People and OD as necessary. Summary of what is required from governors and staff

**10.13** This is shown in the table below.

<b>Individual</b>	<b>Requirement</b>
All staff and governors	Annual update of interests
Governors and executive directors	Interests circulated or made available at all board meetings
	All board and committee meetings have declarations of interest as standard item on the agenda
Staff who publish, speak publicly or undertake other media work (including executive directors)	Biographies on website that include any relevant declarations of interest

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