

The Recreation Ground Trust, Bath

Meeting:	Recreation Ground Trustees
Date:	18 July 2013
Title:	Conflicts of interest policy
Status:	An open public item
Appendices:	1. Proposed conflicts of interest policy

1. Purpose of report

- 1.1 To present a draft conflicts of interest policy to the trustees for consideration and adoption.

2. The requirements for a policy

- 2.1 Trustees have a legal duty to ensure that the decisions they make on behalf of their charities are objective and free from bias. Decision making must be solely in the best interests of the charity.

- 2.2 The Charity Commission's Scheme for the Recreation Ground emphasises this underlying legal requirement. Clause 11 of the Scheme states:

The trustees must:

- (1) exercise their own independent judgement solely in the best interests of the charity;
- (2) ensure that the charity is independent and exists to pursue its own purposes and not to carry out the policies or directions of the Council or of any other body;
- (3) at their first meeting (or as soon as possible thereafter), adopt a conflicts of interest policy (taking account of the guidance issued by the Commission) and adequately manage any conflicts of interest in accordance with that policy.

- 2.3 This report addresses sub-clause (3) above.

3. Charity Commission guidance

3.1 The Charity Commission is in the process of updating its guidance on conflicts of interest. New draft guidance is currently open for consultation and has been taken into account in preparing this report.

3.2 The guidance defines a conflict of interest as:

Any situation in which a trustee's personal interests or loyalties could influence or affect the trustee's decision making. A conflict of interests exists even where there is the possibility that a trustee's personal or wider interests could influence the trustee's decision making.

3.3 It identifies three common types of conflict of interest. These are:

- Where a trustee could obtain a direct financial benefit
- Where a trustee could obtain an indirect financial benefit (eg for a relative or friend)
- Where a trustee's loyalty to the charity conflicts with their loyalty to another organisation or person.

3.4 In order to fulfil their legal duty, trustees must eliminate conflicts of interest or manage them. The guidance points out that conflicts do not always have to be eliminated; they can usually be managed.

3.5 Managing conflicts involves;

- identifying conflicts of interest
- declaring the interest at an early stage and withdrawing from the quorum, discussion and voting, and
- recording the conflict.

3.6 Any specific requirements in the charity's governing document should be followed.

4. Proposed policy

4.1 The guidance identifies the model policy of the Institute of Chartered Secretaries and Administrators as an example which can be adapted as necessary.

4.2 Some minor modifications have been made to the model policy to suit the circumstances of the Recreation Ground. The resulting proposed policy is shown at appendix 1.

5. Financial implications

5.1 There are no financial implications arising from this report.

6. Advice sought

6.1 The Trust's legal advisor has reviewed this report and her comments upon it have been incorporated.

7. Recommendation

7.1 It is recommended that the proposed conflicts of interest policy is considered and adopted.

Background papers:

Managing conflicts of interest; a guide for trustees (draft guidance).
Charity Commission, June 2013.

Model conflict of interest policy.
Institute of Chartered Secretaries and Administrators, June 2007.

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Appendix 1: Proposed Conflicts of Interest Policy

This policy applies to trustees and all staff.

Why we have a Policy

Trustees have a legal obligation to act in the best interests of the Recreation Ground, Bath, and in accordance with the charity's governing document, and to avoid situations where there may be a potential conflict of interest. Staff have similar obligations.

Conflicts of interests may arise where an individual's personal, family or business interests or loyalties conflict directly or indirectly with the interests of the charity. Such conflicts may create problems. They can;

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

The aim of this policy is to protect both the organisation and the individuals involved from impropriety or any appearance of impropriety.

How to identify a conflict of interest

A potential conflict arises when:

- (i) a trustee or a person connected to the trustee by a close family or business relationship stands to gain or lose as a result of a decision to be made by the trustee, for example; where the charity proposes to enter into an agreement for the supply of goods or services with the trustee or connected person;
- (ii) a trustee owes a duty of loyalty to another person or organisation (e.g. the Council or a local sports club) which has an interest in something in which the charity may have an interest, for example; where the charity is applying for financial assistance to a grant-making organisation and one of the charity trustees is connected either with the grant-maker or with another charity seeking assistance from it;
- (iii) a trustee has confidential information which because of an obligation to another body they cannot disclose to the other charity trustees;
- (iv) a trustee would like to disclose to another body or person to which/whom it owes a duty of loyalty, information which the trustee has obtained only through being a trustee of the charity and which it is not in the charity's interests to disclose.

Register of interests

Trustees and all staff must declare their interests, and any gifts or hospitality received in connection with their role in the charity. A declaration of interests form is provided for this purpose, listing the types of interest you should declare.

Your declaration of interests should be updated at least annually and also when any changes occur.

If you are not sure what to declare, or whether or when your declaration needs to be updated, please err on the side of caution. If you would like to discuss this issue, please contact the charity's relevant advisor for confidential guidance.

The register of interests shall also be used to record all gifts of a value over £10 received by trustees and staff.

The register of interests will be maintained by the administrator.

Managing conflicts of interest or loyalty

Conflicts of interest are inevitable but usually can be managed. The exclusion of the conflicted trustee from relevant decision making is the obvious solution.

Another possibility, if several trustees are conflicted, is for the trustees to agree to be bound by independent advice given solely for the benefit of the charity or to delegate the decision to a non-conflicted trustee or staff member with the instruction to take the decision in the charity's best interests.

In cases of doubt it may be necessary to seek legal advice or consult the Charity Commission which may authorise a particular transaction (eg a disposition of land to a connected person).

In the case of a serious and lasting conflict the only solution may be for the trustee to resign, but a former trustee is not allowed to take a benefit where they have resigned in order to obtain a pre-planned benefit.

Decision making

If you face a conflict of interest or loyalty, you should not be involved in any decisions that relate to that interest or loyalty. You should declare your interest at the earliest opportunity and withdraw from any subsequent discussion.

You may, however, participate in discussions about matters in which you have an interest which is shared by all users, or by the general public, or where your benefit is minimal. If you do not stand to benefit personally but are affected by a conflict of loyalty which you have declared, the trustees may also permit you to participate in the discussion or disclose confidential information.

In the event of the 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. Interested trustees will not be counted when deciding whether the meeting is quorate. Interested trustees may not vote on matters affecting their own interests.

All decisions affected by a conflict of interest will be recorded by the administrator and reported in the minutes of the meeting. The report will record;

- the nature and extent of the conflict,
- an outline of the discussion, and
- the actions taken to manage the conflict.

Where a trustee benefits from the decision, this must be reported in the annual report and accounts in accordance with the current Charities SORP.

Where a trustee benefits from a decision, this must be recorded. The Charities SORP requires any payment or benefit in kind received by a trustee or connected person to be reported in the charity's annual report and accounts for the financial year in question, giving details of the amounts and individuals involved.

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

Failure to declare a conflict of interest or loyalty

If you fail to declare an interest that is known to the administrator or the Chair of the trustees, the administrator or the Chair will declare that interest.

If another trustee or a member of staff knows of an interest which the conflicted person has failed to declare, and the conflict is not yet known to the Chair or the administrator, that trustee or member of staff should inform the Chair or the administrator or, failing them, the trustees at the earliest opportunity.

Managing Contracts

You must not be involved in managing or monitoring a contract in which you 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.

Data Protection

The information provided under this policy will be processed in accordance with data protection principles as set out in the Data Protection Act 1998. Data will be processed only to ensure that trustees and staff act in the best interests of the charity. The information provided will not be used for any other purpose.

July 2013