

# The NHS Confederation

Charity number 1090329

Company number 04358614

## Conflicts of Interest Policy

Date policy agreed by Board of Trustees

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Date of policy review

March 2024

Owner of policy

Director of People & Governance

## Contents

1.0	Purpose of this Policy.....	3
2.0	Scope .....	3
3.0	Roles and Responsibilities .....	3
4.0	Policy Statement .....	4
5.0	Guidance Notes .....	4
5.1	What is a conflict of interest: .....	4
5.2	Examples of common types of conflict are:.....	5
6.0	Procedure.....	5
6.1	Register of Interests .....	5
6.2	Data Protection .....	6
6.3	Managing Identified Conflicts .....	6
7.0	Authorisation of Benefits to Trustees.....	7
8.0	Monitoring and Review.....	7
	Appendix A: Declaration of Interests Form .....	8
	Appendix B: Provisions in the NHS Confederation’s Articles of Association for dealing with Trustee director conflict of interest.....	11

## 1.0 Purpose of this Policy

This policy provides guidance on how to recognise and manage perceived and real conflicts of interest. Trustees have a legal obligation to act in the best interests of the charity, and in accordance with the NHS Confederation's Articles of Association, to avoid situations where there may be a potential conflict of interest. Staff and volunteers have similar obligations.

Conflicts of interests may arise where an individual's personal or family interests and/or loyalties conflict with those 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
- risk the impression that the NHS Confederation has acted improperly

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

## 2.0 Scope

This policy applies to everyone working at or with the NHS Confederation<sup>1</sup>. It applies to:

- all staff, including Chief Executives, Directors, senior managers, employees (whether permanent, fixed-term or temporary), seconded staff, homeworkers, agency workers and volunteers
- consultants and contractors
- Trustees, Independent Committee Members and Non-Executive Directors

Any employing or contracting manager must ensure that all temporary staff, consultants, or contractors are aware of this policy.

By the NHS Confederation, we mean the NHS Confederation charity, any subsidiary companies and any hosted networked organisation.

The NHS Confederation has designated the Director of People & Governance as the individual who is responsible for ensuring that the NHS Confederation implements this policy.

This policy should be read in conjunction with the organisation's Scheme of Delegation, Anti-Bribery policy, Anti-Fraud policy, Whistleblowing policy, Gifts and Hospitality policy and Trustee Remuneration policy.

## 3.0 Roles and Responsibilities

Trustees and senior staff (members of the Group Executive) are required to declare their interests, and any gifts or hospitality offered and received in connection with their role at the NHS Confederation.

There are provisions for managing Trustees' conflicts of interests in paragraphs 15 and 16 of the NHS Confederation's Articles of Association adopted on 16 June 2021 (see Appendix B for details).

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<sup>1</sup> Collectively referred to as workers in this policy

## 4.0 Policy Statement

Trustees/Company Directors of charitable companies, or of a charity's subsidiary company, are subject to the provisions of the Companies Act 2006 in relation to conflicts of interest and how they are managed. Specifically, Directors have a duty to:

- exercise independent judgment
- avoid conflicts of interest
- not to accept benefits from third parties
- declare any interest in a proposed transaction or arrangement
- declare any interest in an existing transaction or arrangement

To avoid a breach of their duties, Trustees/Company Directors must ensure they abide by this policy.

Additionally, the Charity Commission expects Trustees to identify and address effectively any conflicts of interest that affect them or their charity.

Trustees should not benefit from the charity (other than where explicitly authorised) and should not be influenced by their wider interests when making decisions affecting the charity<sup>2</sup>.

Similarly staff need to be mindful of potential conflicts of interest when they are taking decisions that are within their delegated powers, such as awarding contracts or selecting a supplier. Staff have a responsibility to ensure that they adhere to this policy, as well as the NHS Confederation's Scheme of Delegation, Gifts and Hospitality policy, Travel and Expenses policy, Anti-Bribery policy, Anti-Fraud policy and Procurement and Value for Money policy at all times. Failure to do so could lead to disciplinary action and, in some circumstances, may constitute gross misconduct, which would be dealt with in accordance with the organisation's Disciplinary policy.

## 5.0 Guidance Notes

### 5.1 What is a conflict of interest:

The Charity Commission defines a conflict of 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 only in the best interests of the charity."

Conflicts of interest arise when the interests of Trustees, or "connected persons" are incompatible or in competition with the interests of the charity. Such situations present a risk that Trustees or staff will make decisions based on these external influences, rather than the best interests of the charity.

- a) s.188 of the Charities Act 2011 defines a "connected" person as:
- b) a child, parent, grandchild, grandparent, brother or sister of a Trustee;
- c) spouse or civil partner of Trustee, or of (a) above;

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<sup>2</sup> Further information on the Commission's guidance on conflicts of interest for Trustees can be found at: <https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29>

- d) business partner of Trustee or (a) or (b);
- e) institution controlled i) by Trustee or (a), (b), or (c) above or ii) by two or more persons falling within i) when taken together ;
- f) a body corporate which i) the Trustee or connected person in (a) to (c) has a substantial interest or, ii) two or more persons falling within i) when taken together have a substantial interest.

## 5.2 Examples of common types of conflict are:

- direct financial interest - when a Trustee obtains a direct financial benefit via:
  - the payment of a salary to a Trustee by the charity
  - the award of a contract to a company with which a Trustee is involved
  - the sale of assets at below market value to a Trustee
- indirect financial interest - this arises when a close relative of a Trustee benefits from the charity:
  - the awarding of an employment contract to a Trustee's spouse; or
  - awarding a contract for services to a Trustee's business partner or relative's business partner
- non-financial or personal conflicts – occur where Trustees receive no financial benefit, but are influenced by external factors:
  - influencing board decisions on service provision to their own advantage
  - to gain some other intangible benefit or kudos
  - awarding contracts to, or making decision that favour friends
- conflicts of loyalties - Trustees may have competing loyalties between the charity to which they owe a primary duty and some other person or entity.

Additionally, Trustees and staff may gain access to confidential or privileged information by virtue of their roles. All information they acquire in their role should remain confidential and not be used to the advantage of themselves, an external individual, or entity. Trustees should adhere to the NHS Confederation's Code of Conduct at all times.

Occasionally, there may be cases where an apparent conflict is actually in the organisation's best interests. While the Trustees may well act with integrity, the mere appearance of a conflict can be damaging to both the charity and the Trustees, so conflicts need to be managed effectively.

A key means of preventing conflicts of interest from affecting decision-making is to identify potential conflicts in advance. This gives Trustees time to consider the implications and to respond appropriately.

## 6.0 Procedure

### 6.1 Register of Interests

Potential, new and current Trustees, Independent Committee Members, Subsidiary Company Directors and Non-Executive Directors, the Chief Executive and Group Executive level staff will be informed that they are required to declare their interests and provided with a copy of the conflicts of interest policy and declarations of interest form (appendix A) as part of the appointment process/induction.

If the potential Trustee or senior staff member is concerned about a possible conflict of interest, they should view the policy and then discuss the matter with the Director of People & Governance before agreeing to take up the position.

When completing the form, the following areas should be considered for declaration:

- employment
- any previous employment in which the Trustee still has a financial, or other, interest any other appointments (voluntary or otherwise) e.g. Trusteeships, Directorships, local authority membership, tribunals
- professional and organisational membership
- membership of any special interest groups
- investments in unlisted companies, partnerships and other forms of business
- major shareholdings and beneficial interests
- gifts or hospitality offered to the Trustee by external bodies and whether this was declined or accepted
- family connections where relevant, such as the Trustee's spouse/partner working for a similar organisation or funder
- any contractual relationship between the Trustee or a connected person and the charity or its subsidiary.

The information provided will be added to the charity's Register of Interests, which is managed by the Governance Manager. It is the responsibility of each individual to ensure that any material changes to their register are reported to the Governance Manager throughout the year to enable their entry to be kept accurate and up-to-date. The updated Register of Interests will be shared with the Director of Finance and IT for monitoring purposes.

The Register of Interests will be formally updated on an annual basis at the start of each financial year, and the updated Register of Interests will be provided to the Board of Trustees at their May meeting each year for information.

A request for declarations of interest is made at the start of each of the NHS Confederation's Board and Committee meetings to ensure that conflicts can be identified and appropriate action taken.

## 6.2 Data Protection

The information provided will be processed in accordance with data protection principles set out in the Data Protection Act 2018 and UK GDPR 2021, as outlined in the NHS Confederation's Data Protection policy. Data will be processed only to ensure that Trustees and senior staff act in the best interests of the charity. The information provided will not be used for any other purpose.

## 6.3 Managing Identified Conflicts

When a Trustee or senior staff member has an interest in an item being discussed or decided, it is their responsibility to declare this to enable consideration of whether or not it represents a conflict. Each Board and Committee meeting will include a request for declarations of interests at the start, to ensure that conflicts can be identified and appropriate action taken.

In the event of the Board or Committee having to decide upon a question in which a Trustee or member of staff has an interest, a quorum must be present for the discussion and decision, however, interested parties will not be counted when deciding whether the meeting is quorate. Interested Board members may not vote on matters affecting their own interests and may be excluded from the discussion.

All decisions under a conflict of interest will be reported in the minutes of the meeting.

The report will record:

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

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

Any payments or benefits in kind to Trustees will be made to Trustees or their employers in accordance with the NHS Confederation's Trustee Remuneration policy. Any payments or benefits in kind to Trustees or their employers will be reported in the charity's annual report and accounts, with amounts for each Trustee listed for the year in question.

Where a member of staff is connected to a party involved in the supply of a service or product to the charity, this information will be fully disclosed in the annual report and accounts.

## 7.0 Authorisation of Benefits to Trustees

Trustees acting outside the terms of their governing document, without permission from the courts or the Charity Commission, will be in breach of trust. A breach of trust will occur if a Trustee knowingly accepts a benefit from the charity without proper authority.

In accordance with the Articles of Association and the permission granted by the Charity Commission, the Chair of the NHS Confederation is remunerated. This payment is fully disclosed within the annual report and accounts and will be reviewed upon re-appointment or election of a new Chair.

Other occasions when it may be permissible to remunerate Trustees are clearly set out in the Confederation's Trustee Remuneration policy.

## 8.0 Monitoring and Review

The Director of People & Governance will monitor and review the implementation of this policy, regularly considering its suitability, adequacy and effectiveness, taking into account legal developments and changes in the organisation's business.

## Appendix A: Declaration of Interests Form<sup>3</sup>

As Trustee / Non-Executive Director / Independent Committee Member / employee / volunteer\*, I have set out below my interests in accordance with the NHS Confederation's Conflict of Interest policy (*\*please delete as appropriate*):

Category	Please provide details of interests that apply to yourself.	Where appropriate, please provide details of interest that apply to a member of your immediate family, connected person or some other close personal connection.
Current employment and any previous employment in which you continue to have a financial interest		
Appointments (voluntary or otherwise) e.g. Trusteeships, Directorships, local authority membership, tribunals etc		
Membership of any professional bodies, special interest groups or mutual support organisations		

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<sup>3</sup> This form to be used for all companies within the NHS Confederation group



Category	Please provide details of interests that apply to yourself.	Where appropriate, please provide details of interest that apply to a member of your immediate family, connected person or some other close personal connection.
Investments in unlisted companies, partnerships and other forms of business, major shareholdings and beneficial interests		
Do you and/or a relative <sup>4</sup> have a contractual relationship with the Confederation or its subsidiaries? If yes, please provide details		
Do you and/or a relative have shares in a business that may be awarded a contract to do work or provide services for the Confederation or are you and/or a relative a director, partner or employee of such a business? If yes, please provide details		
Any other conflicts that are not covered by the above		

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<sup>4</sup> 'Relative' is defined as a child, parent, grandchild, grandparent, brother, sister, spouse or civil partner

To the best of my knowledge, the above information is complete and correct.

I undertake to update as necessary the information provided, and to review the accuracy of the information on an annual basis.

I give my consent for it to be used for the purposes described in the conflicts of interest policy and for no other purpose.

Signed: \_\_\_\_\_

Name (please print): \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Please return to Tina Rosenow, Governance Manager, via email - [tina.rosenow@nhsconfed.org](mailto:tina.rosenow@nhsconfed.org).

## Appendix B: Provisions in the NHS Confederation's Articles of Association for dealing with Trustee/Director Conflicts of Interest

### 1. DIRECTORS' CONFLICTS

- 1.1 A "**conflict situation**" means a situation in which a director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company:
- 1.1.1 including a situation relating to the exploitation of any property, information or opportunity, irrespective of whether the Company could take advantage of the property, information or opportunity;
  - 1.1.2 excluding a situation which could not reasonably be regarded as likely to give rise to a conflict of interest; and
  - 1.1.3 excluding a situation involving a transaction or arrangement.
- 1.2 A director shall not infringe his duty to avoid a conflict situation if the matter or situation which would otherwise result in that director infringing that duty arises out of or results from that director or alternate:
- being a director, officer, employee, consultant or member of any other group company;  
or
- 1.2.1 being (directly or indirectly) involved with or interested in, any other group company; for the reason that any such matter or situation is hereby authorised and no further authorisation, whether pursuant to **article** 15.3 or otherwise, is required in respect of such matter or situation. In addition, any such director shall not be in breach of any other duties he owes to the Company, including the duty to exercise independent judgment, as a result of him being involved in other group companies in the manner referred to in this **article** 15.2.
- 1.3 Any other matter or situation which would otherwise result in a director infringing his duty to avoid a conflict situation may be authorised by the Directors. Any such authorisation will only be effective if:
- 1.3.1 the quorum at the meeting of the Directors at which that matter or situation is considered is met without counting the director in question or any other interested director; and
  - 1.3.2 the matter or situation was agreed to without their voting or would have been agreed to if their votes had not been counted.
- 1.4 Any authorisation given by the Directors in accordance with **article** 15.3:
- 1.4.1 may (at the time it is given or at any subsequent time) be made subject to such terms and such conditions as the Directors consider appropriate; and
  - 1.4.2 may be revoked or varied by the Directors (any such revocation or variation will not affect anything previously done by the relevant director in accordance with such prior authorisation).

1.5 Where in relation to a director, a matter or situation is authorised under **article** 15.2 or specifically authorised by the Directors under **article** 15.3, that director shall, irrespective of his interest in the matter or situation giving rise to the conflict situation, and subject, at all times, to the terms and conditions (if any) of any authorisation:

1.5.1 be entitled to:

- (a) receive any papers or other documents in relation to or concerning, such matter or situation;
- (b) attend any meeting (or any part of any meeting) of the Directors or of a committee of the Directors, at which such matter or situation is discussed or absent himself from any such meeting (or any part of any such meeting); and
- (c) be counted in the quorum and vote at, any such meeting; and

1.5.2 not be required to:

- (a) disclose to or use for the benefit of the Company, any confidential information relating to such matter or situation if such disclosure or use would constitute a breach of confidence; and
- (b) account to the Company for any benefit which he derives from such matter or situation.

## 2. **DIRECTORS' INTERESTS IN TRANSACTIONS AND ARRANGEMENTS**

2.1 A "**situation involving a transaction or arrangement**" means a situation in which a director is in any way, directly or indirectly, interested in a transaction or arrangement with the Company in circumstances where the provisions of sections 177 or 182 of the Act apply.

2.2 The provisions of **article** 15 shall not apply to a situation involving a transaction or arrangement.

2.3 Any director may be interested in a situation involving a transaction or arrangement as long as he declares the nature of his interest in accordance with section 177 or, as the case may be, section 182, of the Act.

2.4 Where, in relation to a director, a situation involving a transaction or arrangement has arisen and the director has declared the nature of his interest in accordance with section 177 or, as the case may be, section 182, of the Act, that director shall, irrespective of his interest in the matter giving rise to the situation involving a transaction or arrangement, be entitled to:

- 2.4.1 receive any papers or other documents in relation to or concerning, such matter;
- 2.4.2 attend a meeting (or any part of any meeting) of the Directors or of a committee of the Directors, at which such matter is discussed; and
- 2.4.3 be counted in the quorum and vote at, any such meeting.