

A photograph of three business professionals (two men and one woman) sitting around a table in a modern office or cafe at night. They are looking at laptops and talking. The scene is lit with warm, ambient light from the room and city lights visible through the windows in the background. The woman is on the left, wearing a grey blazer. The man in the middle is wearing a light blue sweater. The man on the right is wearing a dark red shirt and has a beard. There are coffee cups and a small potted plant on the table.

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# Local Authorities as Charity Trustees: Managing the conflicts of interest

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- Managing the charitable trust
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# Charity trusteeship – the basics

- ChA 2011 s.177 “...*the persons having the general control and management of the administration of a charity.*”
- Charitable purposes/objects for the public benefit
- Comply with the governing document and the law
- Act in the charity’s best interests

# Charity trusteeship – the basics

A “Fiduciary Relationship” – A Duty of Loyalty

- No conflict
- No personal profit
- Confidentiality

# CC3: The Essential Trustee

- Ensure your charity is carrying out its purposes for the public benefit
- Comply with your charity's governing document and the law
- Act in your charity's best interests
- Manage your charity's resources responsibly
- Act with reasonable care and skill
- Ensure your charity is accountable

# Identifying charitable trusts

- Identify charity land (e.g. recreation grounds, parks, gardens, playing fields, town halls, museums, war memorials)
- Identify the governing document (Conveyance, Indenture, Will, Trust Deed, Scheme)
- Review gifts of land – are they held on charitable trusts?
- Designated land or permanent endowment issues

# Managing the charitable trust

- What are the objects? Are the assets used in furtherance of the objects?
- Who are the trustees?
- Is the Trust registered with the Charity Commission? If not, should they be (income of over £5,000 per year)?
- Charity trustee duties
- Separate the dealings of the trust from those of the Council
- Manage any assets/building (e.g. insurances, repairs etc.)
- Act in the charity's best interests at all times...BUT...

# Conflicts of interest

A conflict of interest will arise between the Council in its capacity as trustee and in its capacity as local authority

- *“...a person in a fiduciary position... is not allowed to put himself in a position where his interest and his duty conflict”* (Bray v Ford [1896]] AC 44 at 51)
- Conflicts of interest: a guide for charity trustees ([CC29](#))
- Local authorities (or councils) as trustees of charities (additional [CC guidance](#))

# What is a conflict of interest?

- Two types of conflict:
  - **Conflicts of interest** – financial gain/tangible benefit
  - **Conflicts of loyalty** – trustee/director of both organisations
- Cannot act in the best interests of the charity
- Conflicts should be dealt with before decisions are made
- Failure to properly deal can have LEGAL, REGULATORY and REPUTATIONAL consequences

# Conflicts of interest: Key steps

- **IDENTIFY** the conflict of interest
  - Declare
  - Collective responsibility
- **PREVENT** the conflict from affecting decision-making
  - Remove if possible, if not then manage appropriately
- **RECORD** the conflict of interest:
  - Measures taken, outcome, details of any payments made/received

# Managing conflicts of interest

- Appoint independent trustees
- Delegate to a sub-committee made up of a majority of independent members
- Identify serious and low risk conflicts of interest
- Terms of reference and appropriate training
- You must **always** obtain Charity Commission consent for connected party transactions (s.105 ChA 2011)

# Serious conflicts of interest

- Decision not (or could be seen not to be) in the best interests of the charity
- Examples:
  - Transfer of land from charity to the LA (connected party transaction)
  - Issues over grant funding
  - Land swap
  - Effective decision making undermined

# Low-risk conflicts of interest

- Depends on the circumstances
- Judgement call for the unconflicted trustees/committee members
- Examples:
  - Membership (not trusteeship) of another organisation
  - Committee members appointed by the LA to act as independent members (linked to LA through as the appointing body only)

# Conflict of interest policy

- Should be specific to the relevant types of charity
- Set out procedure to IDENTIFY, PREVENT/MANAGE and RECORD
- Provide training to trustees/committee members
- Register of interests
- See CC guidance

# Good practice for councils as charity trustees

- Understand the purposes, governing document and charity trustee role
- Delegate the trustee function to a sub-committee
- Terms of reference to determine scope of delegated powers/set out reserved matters
- Ensure conflicts of interest and loyalty are properly managed
- Ensure charity assets and income are dealt with separately
- Manage any assets (insurances, repairs, staff)
- Review the purposes and governing document
- TAKE ACTION!

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# Thank You

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