

Conflicts of interest

27 MAY 2014

CATEGORY:

ARTICLE

The Charity Commission has published new detailed guidance, *Conflicts of interest: a guide for charity trustees* (CC29), in addition to a high level summary and a paper setting out the guidance's legal underpinnings. The revised guidance is intended to improve trustees' levels of understanding about this common and frequently mishandled issue and to set out what is expected of all charities.

The Commission advises that in its experience, conflicts of interest occur most often where:

1. a person is in a position where their duty as a trustee may conflict with any personal interest they may have;
2. a person may not be able to act properly in a particular capacity because of a person or matter with which they are connected; or
3. a person may profit personally from decisions made in their capacity as trustee or from knowledge gained through holding such position.

The guidance emphasises the serious consequences that might result from such conflicts. These include: trustees being liable to repay the charity for any loss caused by their breach of trust; a duty to account to the charity for any unauthorised benefit trustees may receive; and setting aside a disposal of charity property where there has been a conflict of interest, even where there was no benefit to the trustee who was in breach of these rules.

To manage conflicts of interest the guidance suggests a new three-step approach: identify, prevent and record. The emphasis is on preventing conflicts from arising, meaning that potential conflicts of interest may need to be considered before trustees are appointed. There is also an increased emphasis on the responsibility of individual trustees to identify and declare any conflicts of interest.

The Charity Commission is urging all charities to adopt a policy on conflicts of interest. In light of this revised guidance, it would be prudent to review existing conflicts of interest policies and procedures which should include reviewing induction processes for new trustees.