

## Appendix 2: Conflicts of Interests and Loyalty Policy (Including Gifts and Hospitality)

### Supporting information

The following is a draft policy and supporting information for Court and governance committee members and the Senior Management Team relating to the identification, declaration and management of conflicts of interests and loyalty.

### Context

It is a requirement of Scottish charity law and the Scottish Code of Good Higher Education Governance 2022 (the Code) that charity trustees act in the best interests of the charity (Chapter 9, S66(1), Charities and Trustee Investment (Scotland) Act 2005). The Code states:

Institutions must have a policy in place setting out what conflicts of interest are and how they are managed. This must clearly outline the obligation of individual members of the governing body to declare conflicts. (para. 30, 2022 version).

Guidance from OSCR (Conflicts of Interest, 2016) relating to the identification and management of conflicts of interests requires a policy to include: what a conflict of interest is and relevant examples; the difference between a conflict arising from an appointment or personal situation; when to declare a conflict and what to include; references to the governing instruments on conflicts (where there are any); and how to manage conflicts especially where a trustee is required to withdraw.

This policy meets the legal and regulatory requirements expected of the University (as a registered charity) and supports good governance practice in the identification, recording and management of conflicts of interests and loyalty for Court, its committees and the Senior Management Team.

This policy should be read in conjunction with the University's relevant policies and procedures relating to the Bribery Act 2010 (covering measures for anti-bribery and anti-corruption, for example) and the University's Code of Conduct for Court and lay members.

### What is a conflict of interest or loyalty?

Trustees have a duty under common law to act in the best interests of the charity they serve. Trustees, generally, should not benefit from the charity and should not be influenced by their wider interests when making decisions affecting the charity. The interests of the beneficiaries and those of the University will – for the most part – be consistent or complementary, but on the occasions where a conflict does arise, the responsibility of all the trustees is to the charity.

A conflict of interest is defined by OSCR as:

“ ...any situation where there is a potential for a charity trustee's personal or business interests (or the interests of someone they are connected with) to be

different from the interests of the charity.”

Conflict of Interest guidance, OSCR, 2016.

A conflict of interest can be both real and perceived and can 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 will make decisions based on these external influences, rather than the best interests of the charity.

OSCR highlights two common types of causes for a conflict of interest:

- An appointment conflict – where the interest of the person or organisation that appointed the trustee may conflict with the best interests of the charity; and
- A personal conflict – where an individual trustee’s personal or business interests conflict with the best interests of the charity.

These conflicts can manifest in different ways, such as:

- A direct financial interest – when a trustee obtains a direct financial benefit via:
  - the payment of a salary or other remuneration to a trustee by the University;
  - the award of a contract to a company with which a trustee is involved; or
  - the sale of property at below market value to a trustee.
- An indirect financial interest – this arises when a close relative of a trustee benefits from the University. For example, the awarding of an employment contract to a person connected to the trustee.
- A non-financial or personal conflicts – occur where trustees receive no financial benefit, but are influenced by external factors:
  - influencing Court decisions on activities and plans to their own advantage;
  - to gain some other intangible benefit or kudos; or
  - awarding contracts to friends.
- Conflicts of loyalties – trustees may have competing loyalties between the University to which they owe a primary duty and some other person or entity.

A conflict of interest can also arise from any access that all trustees may gain to confidential or privileged information by virtue of their trusteeship. All trustees should remain alert to the fact that whatever information they acquire in their role should remain confidential and not be used to the advantage of themselves, an external individual, or entity. Further information relating to confidential information can be found in the University’s Code of Conduct for Court members.

Occasionally there may be cases where an apparent conflict is actually in the University’s best interests. While the trustees may well act with integrity, the mere appearance of a conflict can be damaging to both the University and the trustees, so conflicts need to be managed effectively. When considering how a situation may be perceived, a simple rule of thumb might be to ask: how could this be portrayed in the media?

### **What to declare?**

On appointment, and twice annually, trustees will be asked to complete a declaration of interests. Trustees should advise the Governance and Executive Support Team of any material changes to that declaration within 30 days of becoming aware of that change.

The Governance and Executive Support Team will review and revise, where necessary, the register of interests twice per year: September and February.

When completing a declaration of interests submission, Court members, lay committee members and SMT are asked to consider the following issues:

- Current employer and the work involved (not applicable for SMT);
- Any previous employment in which the individual still has a financial, or other, interest;
- Any other appointments (voluntary or otherwise) e.g. trusteeships, directorships, local authority membership, tribunals;
- Professional and organisational memberships;
- Membership of any special interest groups;
- Investments in unlisted companies, partnerships and other forms of business;
- Major shareholdings of more than 1% of issued capital and any beneficial interests;
- Family connections where relevant, such as the individual's spouse/partner, working at the University, or in a similar or connected body;
- A student or family member of a student at the University; and
- Any contractual relationship between the individual or a 'connected person' and the University (or any of the University's subsidiaries or associated entities).

For the purpose of this policy, a 'connected person' is defined as:

- Any person the individual in question is living with as a spouse or partner;
- Any child, stepchild or other child brought up as the individual's own or that of their partner or spouse, parent, grandchild, grandparent, brother or sister of the individual (and their spouse/partner);
- Any organisation controlled by the individual or connected to them via the first two bullet points (whether directly or through one or more nominees);
- A body corporate in which the individual or the connected persons described above has a substantial interest, i.e. more than 1% of issues shared or a controlling stake in an unlisted company; and
- A Scottish partnership in which one or more of the partners is a member of Court, its committees or SMT or connected to a member of Court, its committees and SMT.

Declarations of Gifts (over £50) or Hospitality (over £100), whether accepted or declined, should be made to the Governance & Executive Support Team.

### **Disclosure of Interests**

An up-to-date register of interests will be presented to the Governance and Nominations Committee twice each year and subsequently reported to Court. Any member of Court and SMT will be able to review the full registers on the board papers portal.

The register relating to the conflict of interests will be made partially open to the public (via the University's website), with sensitive information kept confidential.

The register of gifts and hospitality (offered, declined and accepted) will be made publicly available. This will be available via the University's website.

Full versions of the registers for the conflicts of interest and gifts and hospitality will be made available, upon request, at the University Offices.

Each register will be operated in line with the University's commitment to transparency, good governance and legal or regulatory requirements, such as General Data Protection Regulations (GDPR).

### **Policy**

#### **University of Aberdeen conflict of interests and loyalty policy (incorporating gifts and hospitality)**

This policy applies to all Court members – including independent, elected, nominated and ex officio – lay members of governance committees and the Senior Management Team (SMT).

#### **Why we have a policy**

Charity trustees have a legal obligation to act in the best interests of the University of Aberdeen (the University) and in accordance with the University's governing instruments, and to avoid situations where there may be a potential or real conflict of interest. Staff have similar obligations and this is covered in a separate protocol (Code of practice on conflicts of interests in research and commercialisation).

Conflicts of interests may arise where an individual's personal or family interests and/or loyalties conflict with those of the University. Such conflicts may create problems that:

- Inhibit free discussion;
- Result in decisions or actions that are not in the interests of the University; or
- Risk the impression that the University has acted improperly.

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

#### **The declaration of interests**

Accordingly, all charity trustees/governors, lay members of Court committees and SMT are asked to declare their interests, and any gifts or hospitality offered and

received in connection with their role as a charity trustee, committee lay member or SMT of the University. This declaration should include not just the individual but any that arise through 'connected persons' (see above for a definition of a connected person). A declaration of interests form is provided for this purpose, listing the types of interests you should declare.

Declarations will be requested of individuals by the Governance and Executive Support Teams twice per year (September and February) and revised accordingly. Where an individual becomes aware of any material changes to their declarations they must advise the Governance and Executive Support Team (GESTs) in writing within 30 days of that awareness.

If you are not sure what to declare, or whether/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 Governance and Executive Support Teams for confidential guidance.

A redacted version will be publicly available via the University's website, in accordance with the University's disclosure policy and any legal or regulatory requirements.

### **Declaring gifts and hospitality**

The University currently maintains a register of gifts and hospitality for staff. This records offers of all gifts of a value over £50 and hospitality over £100, and whether they were accepted or declined by the individual(s) concerned. This register will be extended to members of Court and its committees.

The register will be accessible to Court and committee members via the board papers portal or at the University's Offices, where a formal request is received.

The offer, receipt or refusal of a gift or hospitality should be communicated to GESTs within 30 days; confirming the value, context and identity of those providing the gift or hospitality.

### **Data protection**

The information provided will be processed in accordance with data protection principles as set out in the Data Protection Act 2018. Data will be processed only to ensure that trustees, Court lay members and SMT act in the best interests of the University. The information provided will not be used for any other purpose.

### **What to do if you face a conflict of interest or loyalty**

If you believe you have a real or perceived conflict of interest or loyalty you should:

- Declare the interest at the earliest opportunity; and
- Withdraw from discussions and decisions relating to the conflict.

Any individuals covered by this policy with family members studying at or working for the University should not be involved in decisions that directly affect the course or service that you, or the person you are related to, receive(s).