

# FPCNP General Code of Conduct & Conflicts of Interest Policies

## The Friends' Code of Conduct

Before any organisation can become a Charity it has to demonstrate that it acts in the public interest. As such anyone holding office in the Friends (including Trustee members and co-opted members of the Executive Committee or Sub-Committees) are asked to adhere to the 7 principles set out by Lord Nolan in 1995 for anyone holding a public office.

With regard to the Friends, these may be interpreted as:-

- **Selflessness** They should act solely in terms of the interest of the Friends in furtherance of its 'Objects' for the public as defined in its Constitution. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- **Integrity** They should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their duties
- **Objectivity** In carrying out the business of the Friends, including making appointments, awarding contracts, or recommending individuals for rewards and benefits, they should make choices on merit.
- **Accountability** They are accountable for their decisions and actions to the Charity and, if applicable, the Charities Commission and must submit themselves to whatever scrutiny is appropriate.
- **Openness** They should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider interest of the Charity clearly demands it.
- **Honesty** They have a duty to declare any private interests relating to their duties and to take steps to resolve any conflicts arising in a way that protects the interest of the Charity.
- **Leadership** They should promote and support these principles by leadership and example.

## The Friend's Conflicts of Interest Policy

### Introduction

The prime Governing Document of the Friends, (the Constitution) states that with the exception of the Chairman (External Policy), the Annual General Meeting shall elect the Officers and Executive Committee and that the affairs of the Charity shall be managed by the Executive Committee of members who shall not exceed fifteen in number inclusive of any Officers. In the event of a vacancy arising the Executive Committee may co-opt a member to serve until the next AGM.

The Constitution of the Friends further states that "the affairs of the Charity shall be managed by an Executive Committee of members not exceeding fifteen in number inclusive of any Officers."

Under charity law, any member of a body or committee charged by the Constitution with managing the affairs of a Charity will automatically be regarded as a Trustee of that Charity.

This 'Conflict of Interest Policy' and the 'Code of Conduct' advocating the 7 Nolan principles apply to all Officers and members of the Executive Committee of the Friends of Pembrokeshire Coast National Park

who have been elected to their positions by the Annual General Meeting of the Friends. They also apply to any Officer or co-opted member of any Committee or Sub-Committee of the Friends who have not been appointed by the Annual General Meeting of the Friends.

## **Appointment of Trustees**

*It is extremely common for Trustees to have conflicts of interest, for example, by virtue of their membership to other organisations, business activities, personal interests or a connected person.*

There is no reason on these counts alone why that should prevent a prospective trustee from becoming one so long as that interest is declared and that the **Trustee always acts in the best interest of the Charity according to its objects**. In some cases, depending on the views of the other trustees, it may be decided that the conflict is of such a **low risk** that the Trustee may be allowed to continue to be present and take part in discussions.

## **Responsibilities of a Trustee**

Any trustee must make sure that everything their charity does, helps (or is intended to help) to achieve the purposes for which it is set up, and no other purpose. This means they should:

- ensure they understand the charity's purposes as set out in its governing document
- plan what their charity will do, and what they want it to achieve
- be able to explain how all of the charity's activities are intended to further or support its purposes
- understand how the charity benefits the public by carrying out its purposes

Spending charity funds on the wrong purposes is a very serious matter; in some cases trustees may have to reimburse the charity personally.

The law states that Trustees must be at least 18 years old to be a trustee of any charity and must not be prevented from so doing under the Charities Act, the reasons for which include anyone who:

- has an unspent conviction for an offence involving dishonesty or deception (such as fraud)
- is bankrupt or has entered into a formal arrangement (eg an individual voluntary arrangement) with a creditor
- has been removed as a company director or charity trustee because of wrongdoing

**The Objects** of the Friends is extremely wide reaching, namely, **“to assist, for the public benefit, in the protection, conservation and enhancement of the Pembrokeshire Coast National Park.”**

With such a wide reaching object, it is even more likely that Trustees will from time to time find themselves with a conflict of loyalty not already declared on the Register of Interests especially when it comes to considering planning issues.

Early identification of such conflicts is **key** to ensuring that trustees act only in the best interests of the charity and of the public.

## **The Responsibilities of the Executive Committee**

It follows from the above that all newly elected and co-opted members to the Executive Committee become Trustees and should satisfy the requirements of the law by declaring any known conflicts of interest at the earliest opportunity so that they can be recorded.

In the case of those members of the Executive Committee elected by the AGM, it is difficult to see how the Executive Committee will always be in a position to pre-judge any serious potential conflicts of interest prior to election, since nominations could be out of the control of the Executive.

However, it is the responsibility of all members of the Executive to ensure;-

- that all newly elected and co-opted members of the Executive Committee and other Sub-Committees are made aware that they are subject to and must abide by the rules of the Governing Document (the Constitution) including, inter alia, the 'Conflict of Interests Policy', 'Code of Conduct', Financial protocol, and other agreed 'Terms of Reference'/'Protocols'.
- that the Conflicts of Interest Policy is adhered to and brought up to date (if necessary) by monitoring it at least every year at the earliest appropriate Executive meeting following the Annual General Meeting
- that at the beginning of each Executive meeting the Friends' 'Register of Interests' is brought up to date by recording trustee interests (or any changes to trustee interests previously recorded)
- that any guidance on the procedures to follow when a trustee is subject to a conflict of interest is adhered to
- that this Policy and Code of Conduct is available on the Charity's web-site for the wider membership and public to be made aware whilst also serving to highlight the values contained in all the Charity's codes of conduct and other policies that the trustees are obliged to follow

It should be noted that it will be up to the Executive as a whole to decide whether, in their view, a Trustee's particular circumstances are likely to give rise to continual situations where such serious conflicts of interest will arise that could be difficult to manage and justify. In extremis, the Executive may need to consider securing the resignation of such conflicted trustee. Experience suggests that these circumstances are seldom likely to occur.

## **Procedures to be Followed by the Individual Trustees & The Executive Committee**

### **Identifying Conflicts of Interest**

Each Trustee has:-

- an individual personal responsibility to declare conflicts of interest which affect them

Conflicts of interest usually arise where either:

- there is a potential financial or measurable benefit directly to a trustee, or indirectly through a connected person; or
- a trustee's duty to the charity may compete with a duty or loyalty they owe to another organisation or person
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## **Identifying conflicts of interest in more detail**

- a conflict of interest exists even where there is the possibility that a trustee's personal or wider interests could influence the trustee's decision making
- even the perception that there is a conflict of interest can damage the charity. Where the perception is not accurate because there is no conflict of interest, the trustees should always be able to respond appropriately to the situation by managing the risks to the charity and being prepared to explain how they have made their decisions only in the best interests of the charity.
- conflicts of interest relate to a trustee's personal interests and the interests of those connected to them. This means that there is a conflict of interest where there is a proposed transaction between the charity and a connected person. Similarly, there is a conflict of interest where there is a benefit or a potential benefit to a connected person.

### **The ultimate test is:-**

**"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".**

## **Outline of what must be done to Prevent a conflict of Interest from affecting the decision**

The following procedures outline the general principles that the Executive Committee should follow. They should:-

- ensure all known potential conflicts of interest as defined in the 'Definitions' below be recorded for each Trustee in the charity's 'Register of Interests'
- ensure such interests are declared/brought up to date at the beginning of each meeting
- identify the type of conflict and action to be taken by reference to the following 'definitions' and, specific procedures as set out in Appendix A below
- for minor issues of conflict, consider whether or not to allow a trustee to participate where the existence of his or her other interest poses a low risk to decision making in the charity's interests, or is likely to have only an insignificant bearing on his or her approach to an issue
- for significant financial conflicts, ensure the conflicted trustee is removed altogether from the decision making process by leaving the room during this process
- in exceptional circumstances, seek the authority of the Commission where the conflict of interest is so acute or extensive that following these options will not allow the trustees to demonstrate that they have acted in the best interests of the charity
- record full details of the discussions, decisions made, and the reasoning behind them

In practice, Trustees of the Friends often face conflicts of interest where, for example, a decision is required by the Friends on whether to comment on (or even object to) an individual planning application that has wider implications for the National Park as a whole. It should be remembered that issues surrounding planning applications often become extremely emotive especially in a National Park and invariably involve significant financial benefits for the applicant.

Such an application may lead to a Trustee feeling that there could be a perception of a conflict of interest (conflict of loyalty) if the application involves a person they know well on a personal level. Even though a benefit to the Trustee may not actually exist, the conflict of interest should be declared because of the perception to be able to influence.

In such minor cases, even where other Trustees consider the conflict poses such a low risk as to have an insignificant bearing on any decision making, the conflicted trustee may feel that by taking any part in discussions could be perceived to undermine the validity of any decision. ***The general principle for the Friends to follow in such cases, should be that those involved with the decision making process should be as remote as possible from the applicant.***

However, each case should be considered on its merits. In the unlikely event that all Trustees feel the same perceived conflict of loyalty (possibly if another Trustee is directly involved with the application') without re-considering the circumstances in a different perspective, this could lead to the Friends passing no comment on a controversial application. This would be far more damaging to the reputation and credibility of the Charity especially if such action would be contrary to the Friends' general policy.

Always, the bottom line is, ***any decision or action must be taken in the best interests of the charity in fulfilling its objects.*** In such a situation, the same principle as above should apply with those involved with the decision making process being those who have the least involvement with the applicant.

***Whatever decision is reached and it is for the Executive Committee to decide upon such decision, it is imperative that full details of the discussions, decisions made, and the reasoning behind them are accurately recorded.***

Only in exceptional circumstances, for example, if there are significant financial conflicts so acute or extensive that prevent the Executive from demonstrating that they have acted in the best interest of the Charity, is it necessary to obtain the authority of the Charities Commission.

### **For Benefits to Trustees**

Conflicts of interest often arise because a decision involves a potential trustee benefit. Where this is the case:

Trustees can only benefit from their charity where there is an explicit authority in place before any decision conferring trustee benefit is made.

This means the Executive Committee must have already taken a decision to embark upon a specific course of action or item of expenditure before deciding upon who should undertake it and, if in the best interests of the Charity, thereby conferring a trustee benefit. Such transactions should be recorded as related party transactions in a footnote to the accounts.

### **Identifying Trustee Benefits**

Examples of benefits to trustees are where the trustees decide to:

- sell, loan or lease charity assets to a charity trustee
- acquire, borrow or lease assets from a trustee for the charity
- pay a trustee for carrying out their trustee role
- pay a trustee for carrying out a separate paid post within the charity, even if that trustee has recently resigned as a trustee
- pay a trustee for carrying out a separate paid post as a director or employee of the charity's subsidiary trading company
- pay a trustee, or a person or company closely connected to a trustee, for providing a service to the charity. This covers anything that would be regarded as a service and includes legal, accountancy or

consultancy services through to painting or decorating the charity's premises, or any other maintenance work

- employ a trustee's spouse or other close relative at the charity (or at the charity's subsidiary trading company)
- make a grant to a service user trustee, or a service user who is a close relative of a trustee
- allow a service user trustee to influence service provision to their exclusive advantage

### **Withdrawing from decision making where the conflict of interest is associated with trustee benefit**

Where there are no legal or governing document provisions about managing conflicts of interest, and there is a proposed financial transaction between a trustee and the charity, or any transaction or arrangement involving trustee benefit:

- the trustee benefit must be authorised in advance and
- the affected trustee must be absent from any part of any meeting where the issue is discussed or decided. The individual should not vote or be counted in deciding whether a meeting is quorate

Withdrawing from decision making means withdrawing when the initial discussions and decisions take place, and from any subsequent discussion or decision making on the issue.

It should be noted that the Charities Commission expects that, as a minimum, withdrawal from decision making by a trustee who stands to benefit from a decision is a pre-requisite.

***The above 'Conflicts of Interest Policy' (Which include Trustee Benefits) sets out the Friends Policy with regard to such Conflicts. It is a general policy to guide the Executive in their responsibilities to the Charity and the public. It is by no means definitive as each case should be considered on its merits but it forms the basis of decision making of the Executive involving such issues.***