

Compass Learning Partnership: Managing potential conflicts of interest

Key points and summary

Decisions made on behalf of Compass Learning Partnership (CLP) should be made free from any external influences that individuals have, either personal or fiduciary, and should avoid potential reputational risk for CLP.

CLP is a charitable company that predominately receives its funding from taxpayers. It is essential that potential conflicts of interest are identified and responded to appropriately to ensure the integrity of decision making.

Members, Trustees, Governors, and employees are required to fully declare potential conflicts of interest through regular disclosure, at meetings where they may have a conflict of interest, and at the commencement of procedures (such as procurement) where they may have a conflict of interest. All individuals are required to comply with the spirit of the policy as well as its content and to act with high standards at all times. If in doubt, individuals should declare a potential conflict and allow others to evaluate it.

Failure to declare a conflict of interest may be a disciplinary offence for employees, and for governors, trustees and members may result in their removal from office.

Approved by:

Board of Trustees

Approved on:

6th March 2019

Responsibility for review:

Executive Headteacher to recommend to Board of Trustees

Background

Academy Trusts are charitable companies (although regulated by DfE rather than Charity Commission). The Articles of Association and Academies Financial Handbook both contain provisions relating to managing potential conflicts of interest, and about contracting between 'related parties'. While these provisions are primarily focused upon Trustees, it is important that members, governors and employees also avoid conflicts of interest.

Article 97 of the Articles of Association states that:

“Any Trustee who has or can have any direct or indirect duty or personal interest (including but not limited to any Personal Financial Interest) which conflicts or may conflict with his duties as a Trustee shall disclose that fact to the Trustees as soon as he becomes aware of it. A Trustee must absent himself from any discussions of the Trustees in which it is possible that a conflict will arise between his duty to act solely in the interests of the Academy Trust and any duty or personal interest (including but not limited to any Personal Financial Interest).”

This policy requires that members, governors and employees abide by this principle as if Article 97 referred directly to them.

For Trustees, they are the legal directors of the Trust and have a legal obligation and duty of care to act in the best interests of Compass Learning Partnership (CLP) and promote the long-term success of the company. The Companies Act 2006 sets out specific requirements to avoid conflicts of interest (section 175), not to accept benefits from third parties (section 176), to declare interests in proposed transaction or arrangement (section 177), and to declare interests in existing transaction or arrangement (sections 182 – 187). These are drafted widely and require over-disclosure; for instance section 175 (1) states that “a director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.”

A conflict of interest

A conflict of interest arises when the personal interest or loyalty of an individual or a member of their family is or is reasonably perceived to be in conflict with their responsibilities toward Compass Learning Partnership (CLP). Such actual or potential conflicts can inhibit free discussion and could compromise or appear to compromise any CLP decisions in which that individual was involved.

Conflicts of interest can include those where:

- An individual or member of their family could benefit financially or otherwise from the decision; and / or
- A individual's duty to CLP competes with a duty or loyalty to another organisation or person.

A member of their family would include spouse, partner, children, parents and any other close family members as relevant to the potential conflict.

Individuals are required to declare a a potential Conflict of Interest as soon as reasonably practicable after the director becomes aware of the interest.

Procedure

CLP is required to ensure that it has a process for identifying and managing potential or actual conflicts of interest. To this end, it is recommended to adopt a process of:

- Regular disclosure – all Members, Trustees, Governors, and senior staff must complete a Register of Interests form (a template is shown in Annex 1) at this point (i.e. the commencement of the multi-academy trust) and thereafter every time their circumstances require a change to their declaration or at the beginning of each academic year;
- Meeting procedures – at the beginning of each meeting of Members, Trustees or Governors (including any committees or sub-committees), or any meetings of senior staff where potential conflicts of interest could arise (such as awarding contracts following a procurement exercise), individuals will be required to declare any potential conflicts of interest for specific items on the agenda; and
- Procedural safeguards – any individual with a potential conflict of interest within any specified process (such as a procurement process) must declare that potential conflict in advance of having any involvement in the process. For procurement processes, this means not having any involvement in the preparation of the specification, the identification of potential firms to invite to tender, engagements with any potential tenderers, and evaluation of tenders.

For the purposes of this policy, 'senior staff' includes the Accounting Officer, the Chief Financial Officer, all Headteachers / Heads of School, and all deputy Headteachers / Heads of School.

If at any point a potential or actual conflict of interest is identified, the procedure in Annex 2 will be followed.

The Articles of Association and Academies Financial Handbook contain specific provisions regarding trading with Trustees or firms where they have a significant interest. These are outlined in Annex 3.

Annex 1: Template Register of interests form

It is important that Members, Trustees, Governors and staff not only act impartially, but are also seen to act impartially. Members, Trustees, Governors and staff have a responsibility to avoid any conflict between their business and personal interests and those of the academy trust.

Please complete the following form, writing 'None' if that is applicable. Please notify any changes to the form to the Clerk (for Members / Trustees / Governors) or to the Headteacher (for employees). The Register will be reviewed annually or when your circumstances change.

For any interests please also record the date that interest began.

Name	
Role	

Employment	Please list all employers in the last 12 months
Business	Please list all businesses in which you are a partner or sole proprietor
Company directorships	Please list all companies of which you are a director (including Academy Trusts)
Charity Trustee	Please list all charities of which you are a trustee (including Academy Trusts)
Membership of other bodies	Please list all organisations in which you have a position of general control or management (including being a Governor of another school) OR if you are a member of an organisation that has secrecy about rules or membership or conduct
Other interests	Please list any other financial or non-financial interests that could result in a conflict of interest (examples could be significant shareholdings in companies who may seek contracts with the school, employment / directorships / investments of close family members)

Date of completion	
Signature	

Annex 2: Process if a potential or actual conflict of interest is identified

If any interests are declared by Members, Trustees, Governors or employees, in order to prevent the potential Conflict of Interest affecting any decision of the academy trust, the remaining Members / Trustees / Governors (or the Headteacher or Executive Headteacher for staff) will:

1. If the Conflict of Interest relates to an item on a specific meeting agenda:
 - 1.1. Decide whether there is a Conflict of Interest if there is any doubt
 - 1.2. Decide the appropriate role for the individual, specifically whether:
 - 1.2.1. They should be absent during discussion of the item
 - 1.2.2. They should be absent during decision about the item
(Note – it would usually be expected that they should be absent for the discussion and decision; if this is the case they would not count towards whether the meeting was quorate for that item).
 - 1.3. Consider whether the Conflict of Interest means that the anticipated course of action should be changed or not pursued altogether.
 - 1.4. Ensure that the decision of the meeting, its rationale, and any subsequent actions are properly recorded to ensure that the Trust can demonstrate that it made the decision appropriately.
2. If the Conflict of Interest relates to other activity of the Trust that is not under consideration at a specific meeting:
 - 2.1. Decide whether there is a Conflict of Interest if there is any doubt
 - 2.2. Decide what procedural safeguards need to be put in place to ensure that the integrity of Trust decision making is not compromised.
 - 2.3. Consider whether the Conflict of Interest means that the anticipated course of action should be changed or not pursued altogether.
 - 2.4. Ensure that the decision of the Trust, its rationale, and any subsequent actions are properly recorded to ensure that the Trust can demonstrate that it made the decision appropriately

For Conflicts of Interest where an individual or a member of their family could benefit financially from a decision (such as the Trust awarding a contract to a company in which they have a significant interest), it is expected that the remaining individuals would require procedural safeguards to ensure that the individual with the Conflict of Interest has no role in or advantageous knowledge of the procurement process and associated decision making. This would need to be in accordance with the Articles of Association and Academies Financial Handbook (more information is available in Annex 3 in relation to Trustees and Members).

For Conflicts of Interest where there is a conflict of loyalty the remaining individuals will consider the specific circumstances of the conflict before determining whether, and if so what, role the individual with the Conflict of Interest would be able to have in the process.

Annex 3: Related party contracts

General principles

Academy Trusts are charitable companies (although regulated by DfE rather than Charity Commission), and charity law generally expects trustee involvement to be altruistic.

Paying a trustee for their role as trustee would require Charity Commission approval since it would be a 'regulated change', and this is likely to have a high threshold test before approval is granted – i.e. that it is clearly in the interests of the charity and provides a significant and clear advantage over all other options.

Members

In summary, the Articles of Association state that:

- 1) Members cannot be paid for their role as member (and there is no provision for expenses within Articles 6.2 or 6.2A); and
- 2) The Academy Trust can contract with members for “goods or services supplied to the Academy Trust” (6.2b)) so long as the conditions in 6.2A are satisfied (essentially, that appropriate process has been followed to appoint the Member for the supply of goods or services, including avoiding any conflicts of interest, that the reason for the appointment is recorded by the Trustees, and that the remuneration is reasonable).

Trustees

In summary, the Articles of Association state that:

- 1) Trustees can not be paid for their role as trustee (although trustees who are employees can be paid as employees in accordance with Article 6.6c));
- 2) Trustees can be reimbursed for reasonable expenses properly incurred when acting on behalf of the Academy Trust (Article 6.5, although note that this excludes expenses in connection with foreign travel); and
- 3) The Academy Trust can contract with trustees for “the supply of goods or services to the Academy Trust” (6.7b)), or to receive interest on money lent to the Academy Trust (6.7c)), or receive rent from property occupied by the Academy Trust (6.7d)), so long as the conditions in 6.7 and 6.8 are satisfied (essentially, that appropriate process has been followed to appoint the Trustee for the supply of goods or services, including avoiding any conflicts of interest, that the reason for the appointment is recorded by the Trustees, that the remuneration and any other terms are reasonable, that the other Trustees are satisfied that it is best to contract with another Trustee compared to someone who is not a Trustee, and that the majority of Trustees then in office have received no such payments or benefit).

It is important to note that:

- Trustees can only be reimbursed for expenses where cash has been expended – i.e. for travel. This could include costs such as care arrangements for children / relatives where those have been incurred as a result of the Trustee's obligations to the trust.
- Trustees cannot be reimbursed for loss of earnings
- Trustees cannot be given 'attendance allowances' or any variation of this approach.

Academies Financial Handbook regarding trading with related parties

The Academies Financial Handbook sets out clear guidance for trading with related parties – section 3.10. This includes:

- 1) Requirements for even-handed relationships, with obligations upon trustees, members, governors (3.10.1), including specific obligations for Chair of Trustees and Accounting Officer (3.10.2) that include “real and perceived conflicts of interest”
- 2) From April 2019, a requirement to report all transactions with related parties to ESFA in advance of the transaction taking place (3.10.4), and securing ESFA approval if the transactions are novel, contentious and / or repercussive (3.10.5) (novel, contentious and / or repercussive as defined in section 3.2), and ESFA approval in advance where payments would exceed £20,000 (3.10.6)
- 3) Requirements for a Register of Interests for members, trustees, local governors and senior employees (3.10.8 to 3.10.11)
- 4) Academy Trusts must only pay for goods or services “at cost” from (paragraph 3.10.12):
 - a) Members or Trustees, or people related to them or organisations in which they or people closely related to them have more than 20% of the share capital or voting capability at a general meeting (outlined in more detail in paragraph 3.10.13);
 - b) Individuals or organisations able to appoint Members or Trustees, or that are related to those individuals or organisations;
 - c) Sponsors of the academy trust or related to the sponsor.
- 5) The ‘at cost’ requirement applies where the cumulative cost is over £2,500 in any one financial year (paragraph 3.10.18)
- 6) “Related parties” are defined as any Trustee or Member, or anyone who is a close relative, business partner, company with 20% share ownership, company controlled by a Trustee, Member, organisation able to appoint Trustees or Members, or the DfE recognised sponsor. (Paragraph 3.2.3);
- 7) Any commercial arrangements with related parties must be properly procured through open and fair process, including a statement of assurance that the charge does not exceed the cost, and supported by open book accounting to prove that the charge is not above cost (paragraph 3.10.21); and
- 8) The definition of cost is ‘full cost’ so can include direct and indirect costs (i.e. share of overheads), but must not include an element of profit (paragraph 3.10.22).

(This relates to the 2018 edition of the Academies Financial Handbook)