

## **DURHAM SU MANAGEMENT OF INTERESTS POLICY**

### **1. Introduction**

- 1.1 Each trustee owes a duty of loyalty to Durham SU and must always act in its best interests. Trustees should avoid situations where there may be a conflict between a trustee's own interests and the interests of Durham SU. The perception of a conflict of interest has the potential to undermine confidence as much as an actual conflict.
- 1.2 There are some instances where staff and volunteers may also require the guidance in this policy to manage an interest, in either reality or perception. This policy will be drawn to the attention of those staff and volunteers who, in the view of the Chair of the Board and the Chief Executive, are most likely to have need to have regard to its expectations.
- 1.3 Durham SU expects all of its people to constructively and proactively manage their interests. The trustees consider that a failure to comply with this policy is a matter which may be a breach of their Code of Conduct. For staff, a failure to comply with this policy may be investigated under disciplinary policies. Volunteers may be investigated under the Code of Conduct for Student Members.
- 1.4 This policy, however, principally intends to help the trustees demonstrate management of their interests, and any conflicts, further to Article 93. The aim of this policy is to give the trustees guidance on legal requirements, and how to properly manage situations where there may be a conflict of interest. Part A of this policy explains what a conflict of interest is and gives some examples of situations where this policy may be relevant. Part B explains the process that must be followed to identify and manage potential conflicts of interest.

## **PART A – DEFINITIONS AND EXAMPLES**

### **2. How Durham SU understands interests**

- 2.1 There are two common types of interest: financial, and loyalty.
  - 2.1.1 Financial conflicts occur when a trustee, or a person or organisation connected to them (see 2.3) could receive money or something else of value as a direct or indirect consequence of a trustee decision. For the avoidance of doubt: this does not include a trustee's expenses, which are expected to be claimed where appropriate.
  - 2.1.2 Loyalty conflicts are not about financial or other material benefits and occur when, for other reasons, a trustee may not be able to make decisions that are best for the charity.
- 2.2 It is important to recognise how the complex governance arrangements in the Durham University community affect actual and perceived conflicts of interest, particularly loyalty conflict. For example, all Durham SU student groups have the legal personality of Durham SU, some Common Rooms have the legal personality of Durham University, and some Common Rooms have their own independent legal personality. These distinctions will influence trustee decisions. Advice on the governance arrangements can be provided on request by the Chief Executive.
- 2.3 A person 'connected' to a trustee is someone in one of the following categories:
  - Any spouse, civil partner, parent, child, sibling, grandparent or grandchild of a trustee.
  - The spouse or civil partner of any person, as described above.
  - Any other person in a relationship with a trustee which could reasonably be seen as equivalent to the relationships mentioned above.

- Any company, partnership or firm of which a trustee is a director, member, partner or employee and from which that trustee derives benefits in money or money's worth (this does not include companies in which a trustee holds less than 1% of the share capital).
- If a person who is connected to a trustee stands to gain a direct or indirect financial benefit from a decision, that trustee is considered to have a potential conflict of interest and must follow the conflicts of interest management procedure set out in this policy.

### **3. Relationships with other people and organisations at Durham University**

- 3.1 The Durham SU Board of Trustees of is made up of three groups of people:
- Up to five people who become trustees by being elected as Officers, under Article 41.
  - Up to four people who are elected as trustees of Durham SU and must remain students at Durham University for the duration of their time on the Board, under Article 48.
  - Up to five people appointed by the trustees themselves, under Article 51.
- 3.2 Students' unions, including Durham SU, draw on volunteers who are deeply involved in the fuller life of the community and Durham University, and this means there will always be some overlap between service on the Durham SU Board of Trustees and involvement with other organisations. This is particularly relevant for Officers and student trustees. This policy supports participation by managing these opportunities, not preventing them (see 4.4).
- 3.3 Trustees should be mindful of their duties in relation to confidential information including confidential information about or belonging to other organisations (see 4.3.1). Trustees are not individually accountable to the student membership for the collective actions of the Board as they do not 'represent' the interests of a particular constituency to the other trustees. They do not, therefore, seek member representations on trustee business and do not report back on discussions and decisions. Decisions relating to the publication of Board papers and issues discussed by the Board are taken collectively.

### **4. Known conflicts of interest**

- 4.1 There are frequently occurring examples where a Durham SU trustee is likely to have a conflict of interest. This policy states these explicitly such that the expectation of how an interest may be managed is not re-negotiated or re-discussed at each meeting.
- 4.2 Officers, as sabbatical trustees, are remunerated using powers under Article 11.9. The other trustees ensure that no Officer is permitted to contribute to any discussion or decision which could directly benefit their employment. The trustees do not consider it necessary to extend this limitation to general employment policies which a) do not confer any financial benefit, directly or indirectly, and b) do not benefit a specific Officer or Officers in general.
- 4.3 Officers serve on Boards and Committees of Durham University. In general, there is no conflict in these opportunities, as it is understood that advancing the interests of Durham SU, advancing the interests of students, and advancing the interests of Durham University, largely align. It is the Officers' responsibility to comply with the management of interest policies of Durham University where necessary or appropriate.
- 4.3.1 Further to 3.3, the Officers will have Durham University's confidential information. Durham University, in general, encourages sharing confidential information with appropriate Durham SU staff to improve Officers' representative work, but it reserves its right to impose reasonable conditions as appropriate. The Officers will manage their interests in respect of Durham University's confidential information on the advice of the University Secretary, with the support of the Durham SU Chief Executive.

- 4.3.2 The President of Durham SU also serves as a trustee of Durham University on Council and its Committees and must take advice in respect of their responsibilities in this role, as appropriate, from the University Secretary.
- 4.3.3 The Chief Executive and the University Secretary will maintain an open dialogue as to the management of any declared interests, with an annual check-in to confirm that arrangements are satisfactory to all parties.
- 4.3.4 The expectations of 4.3 also apply to any staff or student volunteers appointed or endorsed by Durham SU to act on behalf of the students' union in matters involving Durham University. Their attention will be drawn to this policy as part of their induction and understanding and acceptance is required before they can act for the organisation.
- 4.4 Durham University thrives because of its collegiate community. Annual training and development for trustees helps thoughtful engagement with the risk of conflict arising from participation in the wider community, however, to maintain independent decision-making, further to section 1 of this policy.
  - 4.4.1 In general, the trustees acknowledge that low-level hospitality afforded to its trustees, employed staff and volunteers does not constitute a conflict of interest and facilitates much representative activity.
  - 4.4.2 The provision of 4.4.1 does not extend to personal gifts, or overnight trips outside of Durham on Durham University business. Trustees, staff, and volunteers must receive permission from the Chair of the Board of Trustees, the Vice-Chair of the Board of Trustees, or the Chief Executive, as appropriate, in advance of accepting any such gift or hospitality, and it must be declared to the trustees at their next meeting.
  - 4.4.3 Durham students may also benefit from support available to all students and provided by Durham University, such as welfare services, competition prizes and scholarships. The trustees do not consider, in general, that this would present any conflict of interest but encourage reflection and disclosure if appropriate.
- 4.5 Durham students who are eligible may also join other membership organisations on campus, such as their Common Rooms, the Durham Union Society, or the University and College Union.
  - 4.5.1 Durham SU's Articles of Association (Article 9.5) make clear the students' union's commitment to supporting the development of, and cooperation between, the Common Rooms at Durham University. Many Common Rooms, however, have decided since the Articles were adopted to constitute themselves as independent charities. Durham SU assesses how it maintains its ability to act in its own interest, independent of the interests of any particular Common Room, on an annual basis, in line with Charity Commission guidance. There will be significant overlap of interest, but the trustees will approve a framework which balances these responsibilities.
  - 4.5.2 Those trustees who may be members or supporters of other organisations will acknowledge their responsibility to act in Durham SU's interests. Durham SU assesses how it maintains its ability to act in its own interest, independent of the interests of other campus organisations, on an annual basis.

## **PART B – MANAGEMENT OF INTERESTS PROCEDURE**

### **5. Overview of the management procedure**

- 5.1 Any potential conflict of interest affecting a trustee must be identified, managed in accordance with the law and the Articles of Association, and recorded.

- 5.2 Legislation, regulations and guidance relating to conflicts of interest or loyalty is complex. However, identifying and managing conflicts of interest or loyalty is not usually complex and trustees who comply with this policy will be acting in line with their duties. In any situation where the trustees do not feel they have the knowledge to resolve a difficult conflict of interest situation, they can seek advice from the Chair of the Board or the Chief Executive.

## **6. Identifying conflicts of interest**

### *Declaration of Interests Form*

- 6.1 All trustees must declare their interests using the Declaration of Interests Form. The Declaration of Interests Form should be updated by all continuing trustees annually, and whenever they become aware of a new interest that needs to be declared. There is no legal definition of an 'interest' but this policy gives some common examples. Trustees should err on the side of caution when completing their Form, listing all interests which could possibly give rise to a conflict, or the perception of a conflict.
- 6.2 Prospective trustees will be asked to complete the Declaration of Interests Form before they are appointed and consider whether they have any potential conflicts of interest. Continuing trustees will be made aware of any possible conflicts of interest so that this can be taken into account when deciding on the appointment. For example: if a prospective trustee is likely to have frequent conflicts of interest, the trustees will assure themselves that the appointment is nonetheless appropriate and, if so, ensure that any conflicts of interest can be managed effectively before the appointment is confirmed.

### *Declaration before trustee decision making*

- 6.3 Before, or at the start of, any trustee decision making process (Board meeting, Committee meeting, or decision outside a meeting), trustees must declare to the other trustees any interest they have in relation to matters on the agenda. All interests should be declared, whether or not a trustee thinks their interest may give rise to a conflict. Trustees who are unable to attend or take part in a meeting or decision should declare any interest in advance of the meeting. All agendas will include an item for declaration of interests.
- 6.4 Article 93.2 states that a trustee does not have to declare an interest of which the other trustees should already be aware. Trustees should seek to avoid uncertainty and, in recognition of the high turnover of trustees usual in a students' union increasing the risk of incorrect assumptions of awareness, declare their interests whenever appropriate.
- 6.5 A declared interest only needs to be managed under this policy as a conflict if it could reasonably be regarded as likely to give rise to a conflict of interest, or the perception of a conflict. The trustees should annually review the Register of Interests and determine whether any declared interests cannot reasonably be regarded as giving rise to a conflict of interest or the perception of a conflict. If there is no reasonable belief that a conflict arises, then Article 93 supports full participation in trustee decision making.

## **7. What to do if there is a conflict of interest**

- 7.1 The declaration of a conflict of interest supports other trustees to understand the context within which contributions are made and judge their own response appropriately. This allows the conflicted trustee to remain in the decision making process, as a full member of the Board; exclusion of a trustee is rarely the best way to proceed. Article 93.4 provides for a trustee who has a conflict of interest to count in a quorum for trustee decisions, and take part in decision-making, and vote on a resolution.

- 7.2 The exception to this general provision of 93.4 is where a benefit as in 2.1.1 of this policy could be received by a trustee, or by a connected person. Article 93.4.1 is clear, however that a discussion on non-specific benefits doesn't require a trustee to absent themselves from decision-making. This recognises that Durham SU's trustees are mostly beneficiaries of the charity. For example: if the trustees are discussing the creation of a coaching programme for students to which a trustee has no more or no less ability to access than an ordinary student, there would not be a conflict of interest.
- 7.3 A majority of non-conflicted, trustees have unqualified authority under Article 93.4.2 to consider whether a conflict presents a risk to the integrity of the decision making process and, by vote, limit participation using powers under Article 93.5. It is incumbent on any trustee who has their conflict managed in this way to be constructive and supportive to the other trustees' acting in this way, in line with the Durham SU Code of Conduct for Trustees.
- 7.3.1 There may also be situations where a trustee does not strictly have a conflict of interest as described in this policy, but the other trustees still consider it is appropriate for their participation to be managed because of other issues such as potential allegations of bias. It is important to remember, as in 7.1, that 'managed' participation does not always require recusal from a decision, and may be about the other trustees minuting their recognition of any matter which could bring into question the integrity of their decision, so that the public may be aware of the conflict being identified and managed. For example, the other trustees may want to consider managing a trustee's participation:
- If there are concerns that the trustee may not be able to make decisions in the best interests of Durham SU because of another interest such as a past relationship.
  - If there could be a reasonable suggestion that a trustee's decisions were influenced by improper factors, such as Durham SU awarding a contract to a supplier from which a trustee has received hospitality from in the past.
  - If there is a serious risk that third parties (such as members, press or the Charity Commission) might think a trustee is unable to make decisions in the best interest of Durham SU, even if this is not the case in reality, but the trustees consider that the risks of participation outweigh the benefit of the person's involvement in the decision-making process. This may include a trustee who has been attacked in the press for militant animal rights campaigning deciding Durham SU's position on sale of meat products.
- 7.3.2 A conflicted trustee must not be present, vote or be counted in the quorum when the other trustees are making a decision about how to manage the conflicts. A quorum of the trustees must be unconflicted and participate in such a decision being made. The other trustees may require that a conflicted trustee be managed such that they:
- Withdraw during a vote and have no vote on the relevant issue.
  - Not be counted in a quorum for that part of the decision-making process.
  - Only take part in discussions on the relevant issue to such extent as the other trustees consider is necessary to inform the debate. For example: if the trustee is able to share useful information that is relevant to the issue being discussed the trustees may allow them to remain, but if the discussion involves confidential information that is relevant to the trustee's conflict of interest the trustees may ask them to leave.
- 7.4 In rare circumstances, a trustee may have a very serious conflict of interest that makes it difficult for them to participate in trustee decision making at all. For example, if Durham SU was in a serious legal dispute that involved a trustee or someone connected to them, that trustee may be unable to take part in multiple meetings over a period of time. In this scenario, the trustees will take legal advice to consider the best course of action.

## **8. Situations where multiple trustees have the same conflict of interest**

- 8.1 If more than one trustee has the same conflict of interest, the process set out in section 7 should be followed for each conflicted trustee. None of the conflicted trustees should be present, vote or be counted in the quorum when the other trustees are deciding how the conflict should be dealt with. The conflicted trustees cannot decide how to deal with each other's conflicts where their conflicts are the same.
- 8.2 In rare circumstances, where all trustees have a conflict of interest (or so many trustees have a conflict that quorum cannot be reached), the trustees will seek legal advice.

## **9. Situations where a trustee or connected person stands to benefit**

- 9.1 Trustees and people connected to them should not generally receive any financial benefits. However, Article 11 provides for the following benefits which can be received:
- Benefits in their capacity as a beneficiary.
  - Reasonable and proper remuneration for goods or services, supplied on the instructions of the trustees.
  - Payment of interest at a reasonable and proper rate on money lent.
  - Payment of reasonable and proper rent for premises let.
  - Fees, remuneration or other benefits to any company of which a trustee of a connected person holds not more than one per cent of the capital.
  - Reasonable and proper remuneration for discharging their duties as a trustee in accordance with Article 11.9.
  - Payment of reasonable expenses incurred when acting as trustee.
  - Payment of reasonable and proper premiums for trustee indemnity insurance in accordance with Article 10.25.
- 9.2 All payments or benefits to trustees or people connected to them will be reported in Durham SU's accounts and annual report, with the amounts received listed for the year in question.

## **10. Record keeping**

- 10.1 The Finance Manager is responsible for maintaining a Register of Interests which will be available to all trustees and the senior staff. Any interests declared using the Declaration of Interests form or otherwise will be entered in the Register, and amendments or additions to the Register will be circulated to the trustees with the papers for each trustee meeting or decision making process. The Register is available for inspection by any trustee on request. The Finance Manager will be responsible for ensuring that all trustees review and update their Declaration of Interests at the start of each financial year.
- 10.2 All discussions and decisions about any interests and conflicts of interest must be recorded in the minutes of the relevant meeting. At a minimum this must include:
- Any relevant interests declared by the trustees.
  - Any potential conflicts of interest, including any decisions made as to whether a trustee did or did not have a conflict of interest.
  - The actions taken to manage any conflicts of interest in accordance with this policy.
  - The names of the people who were present during discussions.
  - The names of the people who counted towards the quorum and were permitted to vote.
- 10.3 Any personal data disclosed by trustees as part of the conflicts of interest process may be recorded in Durham SU's Register of Interests, which is available to the trustees and the senior staff, may be recorded in minutes of trustee meetings; and will be processed in accordance with Durham SU's privacy policy.