



## **Conflicts of Interest Policy**

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### **British Educational Research Association**

Company Limited by Guarantee

Company Number 08284220, Registered Charity Number 1150237

Updated January 2020

## **Purpose and scope**

1. This document sets out principles for managing potential and actual conflicts of interest or duty affecting the Trustees of the British Educational Research Association (hereby referred to as BERA or the Charity). It applies to all Trustees. Its purpose is to enable the Trustees to ensure the open and proper management of any particular conflict.
2. For further guidance on the issues contained within this policy, Trustees and other should refer to the latest guidance available from the Charity Commission. This includes examples for some of the situations covered within this policy.
3. This policy will be monitored and enforced by the Company Secretary (Executive Director).

## **Definition of a conflict of interest**

4. A conflict of interest is any situation in which an individual's interests, or interests that they owe to another body, may (or may appear to) influence their decision-making. Types of conflict of interest include, but are not limited to:
  - Direct financial gain or benefit e.g. payment to a trustee for services provided to the charity;
  - Indirect financial gain e.g. employment by the charity of a spouse or partner of a trustee;
  - Conflict of loyalties e.g. where a trustee has links with one of the charity's funders.

## **Background**

5. Trustees have a legal obligation to act in the best interests of the Charity at all times and in accordance with its memorandum and articles of association, its policies and the laws that apply to it. They are expected to act impartially and objectively, and to take steps to avoid conflicts of interest or duty.
6. Conflicts inhibit free discussion, may result in decisions that are not in the best interests of the Charity and risk giving the impression that the Trustees have acted improperly.
7. Conflicts can come in all shapes and sizes. The Trustees should be alive to this, and each Trustee has a responsibility to identify where there may be a conflict in relation to themselves or a person connected to them.

## **Legal context**

8. There are some fundamental legal issues Trustees should ensure they understand. These are summarised below.

## **Trustee benefits**

9. Trustees cannot receive any personal benefit from the Charity unless they have express legal authority to do so. "Benefit" includes any property, goods or services which may have a monetary value, as well as money. This will include payments to a Trustee for providing goods or services to the Charity on normal commercial terms. A Trustee who may derive any personal benefit of this kind from a transaction with the Charity will have a conflict between their duty to the Charity and their own personal interest in the benefit. It is the potential benefit (rather than any actual benefit) which gives rise to this conflict of interest.

## **General trustee benefits**

10. Trustees are expressly authorised to receive reasonable expenses properly incurred by the trustee in acting as a trustee and paid or reimbursed by the Charity.
11. Trustees should not participate in any decisions that would provide them with additional benefits and/or expenses related to their role as a trustee.
12. Trustees may also receive the following "general" benefits (i.e. benefits that are available to all Trustees):
  - Indemnity insurance paid for by the Charity

### **Specific trustee benefits**

13. Where a conflict is authorised, the Trustee will not be in breach of his or her duty to avoid it, but the conflict must be managed (see paragraph 5 below).

### **Conflicts of duty**

14. A Trustee who owes a duty to another person who is involved in a transaction with the Charity will have a conflict between their duty to the Charity and their duty to the other person (which may be because they are a Trustee, Director, shareholder, member officer or employee of that other person). Notwithstanding that the Trustee has no personal interest in the transaction, and cannot benefit from it personally, he or she will have a conflict of duty.

### **Duty to avoid conflicts**

15. Every Trustee owes a duty to avoid any conflict of interest or duty. The duty is not simply to mitigate any conflicts that arise, but to avoid them altogether. In this context the duty does not simply relate to actual conflicts of interest or duty, but rather a Trustee must avoid a situation where he has, or can have, a direct or indirect interest or duty that conflicts, or possibly may conflict, with the Charity's interests.

### **Connected persons**

16. A Trustee can be put in a position of conflict where the Charity enters into a transaction or arrangement with a member of their family or a business in which they are a shareholder or partner or anyone else who is "connected" to them. Any benefit to the connected person is a benefit to the Trustee. There is a definition of "connected" persons in the declarations of interest form attached to this policy / For this purpose a "connected" person is:
  - any Trustee's spouse, civil partner, parent, child, brother, sister, grandparent or grandchild (or any spouse or civil partner of any of these people);
  - any other person in a relationship with a Trustee which may reasonably be regarded as equivalent to that of a spouse or civil partner; or
  - any company, LLP or partnership of which a Trustee is a paid director, member, partner or employee or a holder of more than 2% of the share capital or capital.

### **Declaration of interests**

17. On their appointment, and at least once each year, Trustees must declare their interests and any gifts or hospitality above a minor level accepted in connection with their role as a Trustee on the declaration of interests form attached to this policy.

18. This 'minor level' can include anything normally claimable under the general expenses policy (e.g. a cup of coffee or a sandwich). If any Trustee wishes to receive advice on this, they should contact the Company Secretary (Executive Director).
19. This will also be applicable to senior salaried staff.
20. Trustees and senior salaried staff should declare the following on the declaration of interests form, including business and personal interests of connected persons (see point 16):
  - Any post held in the ordinary course of employment or practice
  - Membership of any professional body
  - Any shareholding of more than 2% in any unlisted company (whether public or private)
  - Any trusteeship or membership of any other charity (including any overseas charity)
  - Any office held in any body, society, association or other institution in the public, private or voluntary sector, including posts such as president, chair, trustee, chief executive, treasurer and secretary
  - Consultancies, directorships or advisory positions
  - Membership of a political party or pressure group with an interest in the activities of the charity
  - Gifts or hospitality accepted.
21. The Company Secretary (Executive Director) will use the information provided by Trustees to maintain a register of interests for all Trustees. The register will be accessible to all Trustees and will also be published for all BERA members on the BERA website. The register may be checked by BERA's external auditors and, should any issues arise, will be subject to Charity Commission regulations and referred to the relevant authorities.
22. Trustees should amend their declarations of interest as soon as possible following any change in their circumstances and will, in any event, be invited to update their entries during each academic year.
23. In addition to completing and updating the declaration of interests, every Trustee must declare to the other Trustees and the Company Secretary (Executive Director) the nature and extent of any direct or indirect interest he or she may have in any existing transaction or arrangement with the Charity or any transaction or arrangement proposed with the Charity of which the Trustee is aware.
24. A Trustee's declaration must be made to the other Trustees and the Company Secretary:
  - At a Trustees' meeting at which the transaction or arrangement is to be discussed; or
  - By written notice sent by post or email to the other Trustees and the Company Secretary using the form of notice attached to this policy.
25. The Trustee must give notice to the other Trustees and the Company Secretary before any proposed transaction or arrangement is entered into or, in any other case, as soon as reasonably practicable. The declaration of any interest will be an agenda item for every board and committee meeting.
26. Where a Trustee has an interest, whether as a shareholder, member, director, employee or otherwise in another entity or person (including any subsidiary company of the Charity), he or she may give the other Trustees and the Company Secretary a notice stating the nature

and extent of the interest in question. This will constitute a declaration of interest in any transaction or arrangement with that entity or person. Trustees should use the form of notice attached to this policy.

27. If Trustees are unsure of what to declare, or whether/when their declaration needs to be updated, they should contact the Company Secretary for guidance.
28. If a trustee fails to complete their declaration of interests by the date specified by the Company Secretary, then they shall be unable to take part in any Trustee business until such time as their declaration of interests is received.

### **Managing conflicts**

29. This policy is not intended to inhibit the normal course of Trustee business. While recognising that identifying and managing conflicts is very important, the Trustees wish to deal with them in a way which recognises the materiality of the risk that a particular conflict may pose to the best interests of the Charity. The key points are set out below.

### **Declarations**

30. Every Trustee must declare their interests using the declaration of interests form and by making appropriate declarations at Trustees' meetings or in writing to the other Trustees and the Company Secretary using the notice attached to this policy. If a Trustee fails to declare an interest which is known to the Chair of the meeting or the Company Secretary then the Chair or the Company Secretary will declare that interest.

### **General trustee benefits**

31. Any Trustee who has a conflict of interest which arises exclusively out of any of the general trustee benefits described, in points 10, 11 and 12 above, may vote, and count in the quorum on any vote, in relation to that benefit. Because these are benefits generally available to all Trustees, each of them should be able to vote on them.

### **Specific trustee benefits (and other conflicts of interest)**

32. A Trustee who has any other conflict of interest in relation to a particular transaction or arrangement (including any of the specific trustee benefits referred to in paragraph 3.4) must not vote, or count in the quorum on any vote, in relation to any Trustees' decision on such transaction or arrangement. The Trustee in question should not be present during any debate or vote on such transaction or arrangement by the Trustees, unless expressly invited to remain in order to provide information.

### **Conflicts of duty**

33. Where a Trustee has a conflict of duty in relation to a particular transaction or arrangement and in which the Trustee has no personal interest, the Trustees can authorise it, so that the Trustee in question is not in breach of their duty to avoid it. But the Trustees must decide what action should be taken to manage the conflict appropriately. In making that decision the Trustees must act in what they consider to be the best interests of the Charity and should consider whether the nature and extent of the Trustee's interest and whether it is reasonably likely to give rise to a conflict.
34. Depending on their assessment of the position, the Trustees may decide that:
  - The Trustee should cease to act in relation to the transaction or arrangement and not vote on it (or count in the quorum in relation to any such vote);

- The interest should be kept under review, with the Trustee continuing to act in relation to the transaction or arrangement in which the interest arises (including voting on it, and counting in the quorum) in the meantime;
- The conflict is so serious that it can only effectively be prevented by removal, which here is likely to mean the resignation of the trustee. This is only likely to be the case if the conflict of interest is likely to recur frequently or otherwise poses high risks to effective decision making;
- The interest is low risk, and the affected trustee can participate in the decision

35. Where a Trustee with a conflict of duty ceases to act in relation to a particular transaction or arrangement, he or she should ordinarily absent themselves from any discussion or vote by the Trustees on the transaction or arrangement, unless expressly invited to remain to provide information.

36. In deciding which course of action to take, trustees:

- must always make their decisions only in the best interests of the Charity
- should always protect the Charity's reputation and be aware of the impression that their actions and decisions may have on those outside the charity
- should always be able to demonstrate that they have made decisions in the best interests of the Charity and independently of any competing interest

#### **Decision making**

37. A Trustee with an actual or potential conflict of interest or duty should not take part in any discussion or decision by the other Trustees about how best to manage that conflict (and should not vote or count in the quorum).

#### **Minutes**

38. The minutes of the Trustees' meeting will record the nature and extent of the conflict and summarise the discussion and the actions taken to manage the conflict, with relevant conflicts declared at the start of the meeting.

#### **Data protection**

39. The information provided will be processed in accordance with data protection principles as set out in the Data Protection Act 1998. Data will be processed only to ensure that Trustees act in the best interests of the Charity and that, except as required by law (including in respect of law enforcement or regulatory investigations and for the purposes of tenders put forward by the Charity), no other use will be made of the information provided.

40. The information provided will not be used for any purpose other than those set out in the declarations or notices themselves.

#### **Review**

41. The Trustees will review this policy at a regular point in the cycle of Council meetings.

42. Failure to adhere to this policy could result in disciplinary action, as set out in the BERA Code of Conduct. Breaches may also be reported to the Charity Commission.