

# BRENTWOOD ACADEMIES TRUST

## CONFLICTS OF INTEREST POLICY



**Status: Approved**

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## **1. Introduction**

1.1. This Policy sets out the Framework for ensuring that the decisions and decision-making processes at the Brentwood Academies Trust are, and are seen to be, free from personal bias and do not unfairly favour any individual or company connected to the Trust.

1.2. Members, Trustees, Governors and every employee of the Trust have an obligation to act in the best interests of the Trust and in accordance with its Articles of Association in order to avoid situations where there may be a conflict of interest.

1.3. Situations may arise where family or personal interests or loyalties conflict with those of the Trust. They may create problems as they can inhibit free discussions, result in decisions or actions that are not in the interests of the Trust and risk the impression that the Trust has acted improperly.

1.4. The aim of this Policy is to ensure that:

- i. Every Member, Trustee, Governor and Employee understands what constitutes a conflict of interest and that each has a responsibility to identify and declare any conflicts that might arise.
- ii. Those involved identify, prevent and record every potential conflict of interest, to ensure that the conflict does not affect the decision-making of the Trust.

## **2. Definition**

2.1. For the purpose of this document:

- i. Members, Trustees and Governors are referred to as Trustees;
- ii. Employees refers to all staff, including casual staff, on site at any one of the schools within the Brentwood Academies Trust.
- iii. The Brentwood Academies Trust is referred to as The Trust;
- iv. Students refers to all students being educated or on site at any one of the schools within the Brentwood Academies Trust.

## **3. Legal Framework**

3.1. This Policy takes its legal framework from the following legislation and statutory guidance:

- i. Companies Act 2006;
- ii. Conflicts of Interest: A Guide for Charity Trustees (CC29);
- iii. The ESFA Academies Financial Handbook;
- iv. The Articles of Association of the Brentwood Academies Trust.

## **4. Guidance to Trustees and Staff**

The charity commission expects individual trustees, trustee bodies and every employee to be able to identify any conflicts of interest at an early stage. The law says that every individual must avoid putting themselves in a position where their duty to act only in the best interests of the charity could conflict with any personal interest. Practically, this means that:

- individual members, trustees, governors and employees who fail to identify and declare any conflicts of interest will fail to comply with their personal legal responsibility to avoid conflicts of interest and act only in the best interests of the academy
- the Board of Trustees and trustee bodies must ensure that any conflicts of interest do not prevent them from making a decision only in the best interests of the charity

The early identification of conflicts of interest is key to ensuring that trustees act only in the best interests of the charity and involves an awareness that:

- A conflict of interest exists where there is the possibility that a person's personal or wider interests could influence decision making.
- Even the perception that there is a conflict of interest can damage the academy. 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 and being prepared to explain how they have made their decisions only in the best interests of the academy.
- Conflicts of interest may relate to a trustee's or employee'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 or agreement between the academy and a connected person or a benefit or a potential benefit to a connected person.
- The Charity Commission encourages trustees to make the operation of the charity as transparent as possible and therefore this policy is available on the Trust website, together with details of interests declared.
- The Board of Trustees will consider conflicts of interest as a pre-appointment issue. Prospective trustees will be asked about potential conflicts of interest, and these will be declared to other trustees prior to appointment. Where prospective trustees are likely to be subject to serious or frequent conflicts of interest, the trustees will seriously consider whether that trustee should be appointed

## 5. What is a Conflict of Interest

5.1. The Trust adopts the definition of the Charity Commission that states that a Conflict of Interest is any situation where a Trustee or Employee's personal interests or loyalties could, or could be seen to, prevent the Trustee or Employee from making a decision in the best interests of the Trust.

5.2. Conflicts of interest usually arise in the following situations:

- i. **Benefits to Trustees and Employees** - There is a potential financial or measurable benefit directly to a trustee or employee, or indirectly through a connected person; or there is a personal gain including benefits or terms that are preferential to those that would be offered to an individual or organisation with no connection to the Trust. Examples of benefits are where the trustees or employees decide to:
  - sell, loan or lease Trust assets to a trustee or employee;
  - acquire, borrow or lease assets from a trustee for the Trust;
  - pay a trustee for carrying out their trustee role;
  - pay a trustee for carrying out a separate paid post within the Trust, 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 or employee, for providing a service to the Trust. This covers anything that would be regarded as a service and includes legal, accountancy or consultancy services through to painting or decorating the trust's premises, or any other maintenance work;
  - employ a trustee's or employee's spouse or other close relative at the Trust;
  - make a grant to a trustee, or a person who is a close relative of a trustee;
  - allow a trustee or employee to influence service provision to their exclusive advantage;
  - allow a trustee/employee or their relative special privileges; and
  - make exceptions to normal policy for trustee/employee or their families

- ii. **Conflict of Loyalty for Trustees and Employees** - Conflicts of interest may arise because, although the affected trustee or employee does not stand to gain any benefit, the trustee or employees decision-making at the Trust could be influenced by his or her other interests.

5.3. A trustee's or employee's duty to the Trust may compete with a duty or legal obligation they owe to another organisation or person. Conflicts of interest might be due to loyalties that trustees owe or may feel towards family, friends or other people or organisations who are part of the trustees or employees network. A conflict of loyalty could also arise where the religious, political or personal views could interfere with the ability of the trustee or employee to decide the issue only in the best interests of the Trust. For example, a trustee's or employee's duty to the Trust could conflict with his or her loyalty to:

- another organisation, such as their employer;
- another charity or trust of which they are a trustee/director;
- a religious or political group;
- a member of their family; or
- another connected person or organisation e.g. trade union or charity.

5.4. The test is always to examine motivation and identify whether there is a conflict of interest where the trustee's or employee's other interest could, or could be seen to, interfere with the trustee's or employee's ability to decide the issue only in the best interests of the Trust.

## **6. Identifying the Conflict of Interest**

6.1. Trustees and Employees are expected to identify any conflicts of interest at an early stage.

6.2. A standard agenda item must be included at the beginning of each Board of Trustee and Trustee Bodies Meetings to enable the declaration of any actual or potential conflicts of interest.

- i. If a trustee is uncertain whether or not he or she is conflicted, he or she should err on the side of openness, declaring the issue and discussing it with the other trustees.
- ii. If a trustee is aware of an undeclared conflict of interest affecting another trustee, they should notify the other trustees or the Chair.

6.3. If a conflict of interest is identified outside of a meeting, the Trustee or Employee must complete a Business Interest Form and submit it to the relevant Clerk of the Board of Trustees or Local Governing Body.

6.4. On an annual basis, or when a Trustee or Employee joins the Trust, a Business Interest Form must be completed to enable the Register of Interest to be kept up to date. The return should record:

- i. All business interests of any significance
- ii. Offices or posts held within other organisations
- iii. Interests of close relatives where there may be a possibility that the Trust has dealings with that person/organisation.

6.5. Any staff member and others who make financial decisions or are involved in financial or purchasing decisions on a regular basis must ensure any conflict is immediately identified and declared.

6.6. If any employee perceives there may be potential conflict of interest in making a decision but is uncertain as to the correct course of action he/she should initially speak to the Head of Finance (Brentwood Academies Trust).

## **7. Dealing with the Conflict of Interest**

7.1. Trustees must consider conflict of interest so that any potential effect on decision-making is eliminated.

7.2. Where available, must follow legal or governing document requirements on how to manage a conflict of interest. However, in serious cases, it can be decided that removing the conflict of interest itself as the most effective way of preventing it from affecting the decision-making by:

- i. Not pursuing a course of action
- ii. Proceeding with the issue in a different way so that a conflict of interest does not arise or even;
- iii. Not appointing a particular trustee or employee or securing a trustee resignation.

7.3. Examples of Important legal or governing document requirements are:

- i. Academies Financial Handbook, Section 3.10 Transactions with Related Parties which deals with goods or services provided by or to individuals or organisations related to the academy trust
- ii. Academies Financial handbook 3.10.12 defines the 'at cost' principle.
- iii. The Trust's Articles of Association, Articles 97-98 and Articles 6.6-6.8, cover Conflict of Interest.
- iv. Charities Commission CC29 Conflicts of Interest: A Guide for Charity Trustees

7.4. Serious conflicts of interest include, but are not limited to, those which:

- i. Are so acute and extensive that the Trustee is unable to make their decisions in the best interest of the Trust, or could be seen to be unable to do so.
- ii. Are present in significant or high risk decisions of the Trustees.
- iii. Mean that effective decision-making is regularly undermined or cannot be managed in accordance with the required or best practice approach.
- iv. Are associated with inappropriate Trustee benefit.

7.5. **Benefits to Trustees/Employees** - Where there is a proposed financial transaction between a Trustee/Employee and the Trust, or any transaction or arrangement:

- i. The benefit must be authorised in advance by the whole of the Trustee Board at BAT level or the whole of the LGB at school level. If the person affected is the Chair of the Local Governing Body then the benefit must be authorised by the Trustee Board.
- ii. The trustee or employee with the conflict of interest must withdraw from the decision making process
  - The Trustees expects the affected Trustee or employee to be absent from any part of any meeting where the issue is discussed or decided.
  - The affected Trustee should not vote or be counted in deciding whether a meeting is quorate

7.6. **Conflicts of Loyalty** - Where there is a conflict of loyalty and the affected Trustee does not stand to gain any benefit and there are no specific governing document or legal provisions about how the conflict of loyalty should be resolved, the affected Trustee should declare the interest. The remainder of the Trustees must then decide what level of

participation, if any, is acceptable on the part of the conflicted Trustee. The options might include, but are not limited to, deciding whether the conflicted Trustee:

- i. Having registered and fully declared the interest, can otherwise participate in the decision.
- ii. Can stay in the meetings during the discussion and when the decision is discussed and agreed, but not participate.
- iii. Should withdraw from the decision-making process in the way described above. The Trustees can, before their discussion, ask a trustee who is withdrawing to provide any information necessary to help make a decision.
- iv. If a conflict of interest is raised outside of a meeting and there is no meeting planned within the time frame of the conflict needing to be reviewed, the Chair of the Trust plus one other Trustee or Chair of Governors, plus one Governor, can be contacted to consider the conflict of interest and determine the resolution. If the person affected is the Chair of Governors then the Chair of the Trustees plus one other Trustee must consider the conflict of interest and determine the resolution. Where the Chair of the Trust is affected then a Member and one other Trustee must consider the conflict of interest and determine the resolution. The resolutions must be recorded on the Conflict of Interest Log.

7.7. In deciding which course of action to take regarding a Conflict of Interest, Trustees:

- i. Must always make their decisions only in the best interest of the Trust
- ii. Should always protect the Trust's reputation and be aware of the impression that their actions and decisions may have on those outside the Trust.
- iii. Should always be able to demonstrate that they have made decisions in the best interest of the Trust and independently of any competing interest.
- iv. Should require the withdrawal of the affected Trustee from any decisions where the Trustee's other interest is relevant to a high risk or controversial Trustee decision or could, or be seen to, significantly affect the Trustee's decision-making at the Trust.
- v. Can allow the Trustee to participate where the existence of the other interest poses a low risk to the decision-making in the Trust's interest, or is likely to only have an insignificant bearing on their approach to an issue.
- vi. Should be aware that the presence of a conflicted Trustee can affect trust, could inhibit free discussion, and might influence decision-making in some way

## **8. Recording the Conflict of Interest**

8.1. The Trust must keep a Register of Interests for the Board of Trustees, Employees and for each Local Governing Body, which must be published on the Brentwood Academies Trust website. This Register of Interest must be kept up to date through regular review.

8.2. The Academies Financial Handbook 2015, Section 3.10.8 - 3.10.11 covers what must be captured in the Register of Interest and what must be published on the website and is extracted below:

- i. The academy trust's register of interests **must** capture relevant business and pecuniary interests of members, trustees, local governors of academies within a multi-academy trust and employees, including:
  - directorships, partnerships and employments with businesses
  - trusteeships and governorships at other educational institutions and charities
  - for each interest: the name of the business; the nature of the business; the nature of the interest; and the date the interest began
- i. The register **must** identify any relevant material interests arising from close family relationships between the academy trust's members, trustees or local governors. It

**must** also identify relevant material interests arising from close family relationships between those individuals and employees.

- ii. Trusts should consider carefully whether to include the interests of other individuals in the register of interests. This may include other employees of the trust and close family members of individuals already on the register. If in doubt the presumption should be towards including an interest in the register.
- iii. Trusts **must** publish on their websites relevant business and pecuniary interests of members, trustees and local governors. Trusts have discretion over the publication of interests of other individuals including child, parent, spouse and civil partner.

8.3. Any conflicts of interest will be documented, usually in the minutes of the meetings. Where there is a conflict of interest, the trustees will ensure that the written record of the decision shows:

- i. The nature of the conflict
- ii. Which trustees were affected
- iii. Whether any conflicts of interest were declared in advance
- iv. An outline of the discussion
- v. Whether anyone withdrew from the discussion

8.4. The minutes of the Local Governing Body meetings will be monitored by the Board of Trustees and those of the Board of Trustees by the Members to ensure that actions forming part of the resolution are appropriate, are following legal requirements and have been implemented correctly.

## **9. Disclosure in the Annual Financial Statements**

Details of any payments and other benefits to any trustees or connected persons, including family members and businesses, will be identified to the auditors and recorded in the annual financial statements.

## **10. Confidentiality**

10.1. Trustees or Employees cannot use information obtained from the Trust for their own benefit or that of another organisation if it has been obtained in confidence or has special value such as commercial sensitivity.

## **11. Monitoring and Enforcement**

11.1. The Board of Trustees will undertake continuous monitoring of its activities, those of the Local Governing Bodies and Employees to ensure that any conflicts of interest are identified and mitigated as soon as possible.

11.2. Each individual's legal duty is to act in only the best interests of the charity means in practice that:

- i. Trustees who fail to declare an interest and are found to be in conflict with the best interests of the Trust will be expected to explain to the Members their reasons for their omission.
- ii. Local Governors who fail to declare an interest and are found to be in conflict with the best interests of the Trust will be expected, in the first instance, to explain to the Board of Trustees their reasons for their omission.
- iii. Employees who fail to declare an interest and are found to be in conflict with the best interests of the Trust will be expected, in the first instance, to explain to the Headteacher and Local Governing Body their reasons for their omission.

11.3. Members reserve the right to terminate the membership of the relevant Trustee, if found to have knowingly and deliberately failed to declare an interest and has brought the Trust into disrepute.

11.4. It will be treated as a serious disciplinary matter if an Employee is found to have knowingly and deliberately failed to declare an interest and brought the Trust into disrepute.

## **12. Policy Circulation**

12.1. This Policy will be published on the Trust's website and included in the Trust's Policy Monitoring Schedule

12.2. This Policy will be circulated to every Member, Trustee, Governor and Employee by sending an email to the link on the Trust's website on an annual basis and when each new Member, Trustee, Governor and Employee joins the Trust.

12.3. The Trustees, in consultation with the Local Governing Bodies, are responsible for overseeing, reviewing and organising the revision of the Conflict of Interest Policy.

## **Adoption of the Policy**

This Policy has been adopted by the Trustees of the Brentwood Academies Trust.