

## Conflicts of Interest Policy

Purpose:	This policy explains how to recognise and manage perceived and real conflicts of interest.
Region:	UK-wide
Scope:	All staff and volunteers
Lead Officer:	Head of Governance
Responsible Director:	Chief Executive
Key Consultation:	Head of Finance
Approver	Board of Trustees
Committee review	None
Last Approval	2022
Approval Cycle	3 years
Next Approval	2025

### Introduction

#### 1. Purpose and scope

- 1.1. The purpose of this policy is to provide guidance on how to recognise and manage perceived and real conflicts of interest. Trustees have a legal obligation to act in the best interests of the charity, and in accordance with the MS Society's Articles of Association, to avoid situations where there may be a potential conflict of interest. Staff and volunteers have similar obligations.
- 1.2. Conflicts of interests may arise where an individual's personal or family interests and/or loyalties conflict with those of the charity. Such conflicts may create problems; they can:
  - inhibit free discussion
  - result in decisions or actions that are not in the interests of the charity
  - risk the impression that the MS Society has acted improperly
- 1.3. The aim of this policy is to protect both the organisation and the individuals involved from any appearance of impropriety.
- 1.4. This policy applies to everyone working at or with the MS Society. It applies to:
  - trustees and committee members, including councils
  - all staff, agency workers and volunteers
- 1.5. References to the MS Society includes our subsidiary companies.

1.6. The policy should be read in conjunction with the charity's Scheme of Delegation, Gifts and Hospitality Policy, Code of Conduct, Expenses Policy, Financial Crime Policy and Procurement Policy.

## 2. What is a conflict of interest

2.1. The Charity Commission defines a conflict of interest as "...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."

2.2. Conflicts of interest arise when the interests of an individual, or "connected persons" are incompatible or in competition with the interests of the charity. Such situations present a risk that the individual will make decisions based on these external influences, rather than the best interests of the charity.

2.3. Section 188 of the Charities Act 2011 defines a "connected" person and, for the purpose of this policy, the MS Society has extended this definition beyond trustees. The definition of a "connected" person is:

- a) a child, parent, grandchild, grandparent, brother or sister;
- b) spouse or civil partner, or of (a) above;
- c) business partner or (a) or (b);
- d) institution controlled i) the individual or (a), (b), or (c) above or ii) by two or more persons falling within i) when taken together;
- e) a body corporate which i) the individual or connected person in (a) to (c) has a substantial interest or, ii) two or more persons falling within i) when taken together have a substantial interest.

2.4. Examples of common types of conflict are:

- **direct financial interest** - when an individual obtains a direct financial benefit via:
  - the payment of a salary by the charity
  - the award of a contract to a company with which the individual is involved
  - the sale of assets at below market value to the individual
- **indirect financial interest** - this arises when a close relative of the individual benefits from the charity:
  - the awarding of an employment contract to a trustee's spouse; or
  - awarding a contract for services to an individual's business partner or relative's business partner

- **non-financial or personal conflicts** – these occur where an individual receives no financial benefit, but are influenced by external factors:
  - influencing decisions on service provision to their own advantage, perhaps because they use the charity's service themselves or care for someone who does
  - to gain some other intangible benefit or kudos
  - awarding contracts to friends
- **conflicts of loyalties** - individuals may have competing loyalties between the charity to which they owe a primary duty and some other person or entity.

2.5. Additionally, individuals may gain access to confidential or privileged information by virtue of their role. All information they acquire in their role should remain confidential and not be used to the advantage of themselves, an external individual, or entity. Trustees, staff and volunteers staff should adhere to the MS Society's Code of Conduct at all times (appendix 1).

2.6. Occasionally there may be cases where an apparent conflict is actually in the organisation's best interests. However, while the individual may well act with integrity, the mere appearance of a conflict can be damaging to both the charity and them, so conflicts need to be managed effectively.

2.7. A key means of preventing conflicts of interest from affecting decision-making or adversely affecting the charity's reputation, is to identify potential conflicts in advance. This gives people time to consider the implications and to respond appropriately.

### **3. Policy Statement**

3.1. Directors/trustees of charitable companies, or of a charity's subsidiary company, are subject to the provisions of the Companies Act 2006 in relation to conflicts of interest and how they are managed.

Specifically, directors/trustees have a duty to:

- exercise independent judgment
- avoid conflicts of interest
- not to accept benefits from third parties
- declare any interest in a proposed transaction or arrangement
- declare any interest in an existing transaction or arrangement

3.2. To avoid a breach of their duties, trustees/company directors must ensure they abide by this policy.

- 3.3. Additionally, the Charity Commission expects trustees to identify and address effectively any conflicts of interest that affect them or their charity. Further information on the Commission's guidance on conflicts of interest for trustees can be found at:

<https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29>

- 3.4. Trustees, generally, should not personally benefit from the charity (other than where explicitly authorised) and should not be influenced by their wider interests when making decisions affecting the charity.
- 3.5. Where a trustee may benefit from a decision, the board must ensure that this policy and charity law are adhered to and that an appropriate authority is in place before any decision conferring the benefit is made.
- 3.6. Similarly, staff and volunteers need to be mindful of potential conflicts of interest when they are taking decisions that are within their delegated powers. To avoid a breach, staff and volunteers must ensure that they abide by this policy. Staff and volunteers should not personally benefit from the charity (beyond their contract of employment or volunteer agreement, or as a beneficiary of the MS Society's services).
- 3.7. For staff and volunteers, conflicts of interest are particularly relevant when awarding contracts (paid or pro-bono) or selecting a supplier. It is a requirement under the Procurement Policy for conflicts of interest or connections with employees to be declared at the beginning of the supplier selection process.

#### **4. Responsibilities and reporting**

- 4.1. All staff and volunteers have a responsibility to ensure that they adhere to this policy, as well as the MS Society's Scheme of Delegation, Gifts and Hospitality Policy, Expenses Policy, Financial Crime Policy and Procurement Policy at all times. Failure to do so could lead to disciplinary action and in some circumstances may constitute gross misconduct, which would be dealt with in accordance with the organisation's disciplinary and Resolving Volunteer Issues policies.
- 4.2. Trustees, council chairs and members of Leadership Group (directors and heads) are also required to complete a register of interests on an

annual basis. They are also responsible for informing the governance team of any changes needed to their interests as they occur.

- 4.3. The updated Register of Interests will be reviewed by the board on an annual basis (March) and shared on the MS Society website (trustees only).

**Version control**

Date change made	Description of change made	Person responsible (job role)



## Code of Conduct

Here at the MS Society, we believe that everyone should conduct themselves respectfully, inclusively and professionally, treating people with dignity in all their interactions and respecting equality and diversity.

We have the following values and expect anyone working with or for us, which includes staff, volunteers and contractors, to uphold them and demonstrate the positive behaviours that bring them to life.

### We work together

We support each other so no one has to face MS alone. We work as a community, because together our voices are louder.

### We're expert

Our community are experts: people with MS, scientists, researchers, carers, health professionals and policy makers. Everything we do is underpinned by evidence and the experiences of people with MS.

### We're bold

We're not afraid to show the realities of life with MS, the highs and the lows. We campaign for what is right and fair. We are always open to new ideas. And one day we will stop MS.

### We're ambitious

Stopping MS is within our grasp. Stopping it from progressing. Stopping it from controlling lives. Together we're working to a future where everyone can live well with MS.

## We expect:

- That all those connected with or acting on behalf of us take personal responsibility for ensuring they adhere to this Code of Conduct.

- That all individuals involved with or working on behalf of people affected by MS should respect one another and work collaboratively to achieve our vision.
- Everyone to act as an ambassador for us, ensuring they are mindful of their actions and do not say or do anything which might bring us into disrepute.
- That everyone understands that harassment or bullying will not be tolerated in any form, and ensures their actions reflect that, including reporting or challenging any poor behaviours.
- Everyone to understand and abide by their legal obligations, with particular respect to, but not exclusively, protecting data and IT security, safeguarding, health and safety, equality, diversity and inclusion.
- No-one to use their position for personal gain or to pursue issues or policies which conflict with ours, and abide by our conflict of interest policy.
- Everyone to undertake any required training, guidance or support relating to their role(s).

Anyone requiring support or advice relating to this Code is encouraged to contact us through their usual point of contact.

## Managing Conflicts of Interests Procedure

### Register of interests

Potential and new trustees, committee members, subsidiary company directors and Leadership Group -level staff (Directors and Heads) will be informed that they are required to declare their interests and provided with a copy of the conflicts of interest policy and declarations of interest form (appendix A) as part of the appointment process/induction.

If the potential trustee or senior staff member is concerned about a possible conflict of interest, they should view the policy and then discuss the matter with the Chair of the Board, Chief Executive or Head of Governance before agreeing to take up the position.

When completing the form, the following areas should be considered for declaration:

- current employment, including directorships and trusteeships
- any previous employment in which the individual still has a financial, or other, interest any other appointments (voluntary or otherwise) e.g. trusteeships, directorships, local authority membership, tribunals
- professional and organisational membership
- membership of any special interest groups
- investments in unlisted companies, partnerships and other forms of business
- major shareholdings and beneficial interests
- family connections where relevant, such as the individual's spouse/partner working for a similar organisation or funder
- any contractual relationship between the individual or a connected person and the charity or its subsidiary.

The information provided will be added to the charity's Register of Interests, which is managed by the Governance and Executive Office team.

It is the responsibility of each individual to ensure that any material changes to their register are reported to the Governance and Executive Office team throughout the year to enable their entry to be kept accurate and up-to-date.

Trustees, council chairs and Leadership Group-level staff will be asked to review their entries in the Register of Interests on an annual basis at the start of each financial year.

The updated Register will be provided to the board of trustees at their March meeting each year for information. It will then be shared publicly on the MS Society website (trustees only).



## **Data protection**

The information provided on the register of interests will be processed in accordance with data protection legislation. Data will be processed only to ensure that trustees and senior staff act in the best interests of the charity. The information provided will not be used for any other purpose.

## **Managing identified conflicts**

When an individual has an interest in an item being considered or where a decision is being taken, it is their responsibility to declare this at the earliest opportunity (regardless of whether or not it is listed on their register of interests) to enable consideration of whether or not it represents a conflict.

Each board and committee meeting must include a request for any declarations of interests for the items on the agenda to be made at the start, to ensure that conflicts can be identified and appropriate action taken.

## **Provisions for authorising conflicts of interest**

Where a conflict arises and is correctly declared by the trustee/senior staff member, it is possible for the unconflicted trustees to authorise the conflict if it considered to be in the best interests of the charity. This is provided for in the MS Society's Articles of Association under section 7.4.

In the event of the board having to decide upon a question in which a trustee or member of staff has an interest, a quorum must be present for the discussion and decision, however interested parties will not be counted when deciding whether the meeting is quorate. Interested board members may not vote on matters affecting their own interests.

All decisions under a conflict of interest will be reported in the minutes of the meeting. The report will record:

- the nature and extent of the conflict
- an outline of the discussion
- the actions taken to manage the conflict.

When the interest relates to a decision which an individual would otherwise make themselves (e.g. the award of a contract) then the individual's line-manager or equivalent shall decide what is appropriate, in discussion with the Head of Finance and Head of Governance (for example this may include satisfying themselves that

the decision is appropriate, making the decision themselves or assigning the decision-making to another individual). A record of how the decision was taken should be kept, and, where the decision is authorising a conflict or perceived conflict it should be provided to Finance before a contract is agreed.

## **Authorisation of benefits to trustees**

Charity law states that trustees cannot receive any benefit from his or her charity without explicit authority being given in the governing document. The term trustee benefit includes 'any' payments or benefits to trustees or a connected person, apart from their reasonable out of pocket expenses.

Article 6 of the MS Society's Articles of Association specifies the situations where a trustee is entitled to receive a benefit (such as out of pocket expenses, or as a beneficiary of the charity). It also allows for other circumstances where the charity might pay a trustee or connected person for the supply of services. In these circumstances it is vital that the correct legal authority to make the payment is in place. In some circumstances, authorisation will need to be sought from the Charity Commission.

**Advice must be sought from the Head of Governance before any agreements where a trustee or "connected person" will receive any form of benefit from the charity (other than the reimbursement of expenses, in line with the Expenses Policy, or as a beneficiary of the charity) are put in place.**

Trustees acting outside the terms of their governing document, without permission from the courts or the Charity Commission, will be in breach of trust. A breach of trust will occur if a trustee knowingly accepts a benefit from the charity without proper authority.

Where a trustee benefits from a decision, this will be reported in the annual report and accounts in accordance with the current Charities SORP.

All payments or benefits in kind to trustees will be reported in the charity's accounts and annual report, with amounts for each trustee listed for the year in question.

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## Appendix A Declaration of Interests Form

### Declaration of Interests

As trustee/director/employee/volunteer I have set out below my interests.

<b>Category</b>	<b>Please give details of the interest and whether it applies to yourself or, where appropriate, a member of your immediate family or some other close personal connection</b>
Current employment and any previous employment in which you continue to have a financial interest	
Appointments (voluntary or otherwise) e.g. trusteeships, directorships, local authority membership, tribunals etc	
Membership of any professional bodies, special interest groups or mutual support organisations	
Investments in unlisted companies, partnerships and other forms of business, major shareholdings and beneficial interests	
Any contractual relationship with the charity or its subsidiaries	
Any other conflicts that are not covered by the above	

To the best of my knowledge, the above information is complete and correct. I undertake to update as necessary the information provided, and to review the accuracy of the

information on an annual basis. I give my consent for it to be used for the purposes described in the conflicts of interest policy and for no other purpose.

Signed \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_

Please return to the Head of Governance by emailing [governance@mssociety.org.uk](mailto:governance@mssociety.org.uk)