

Conflicts of Interest Legal Perspective



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Overview

– Conflicts of Interest –

- Meaning from legal perspective
- What happens in circumstances of conflict?
- Legal framework
- Trustees to act collectively as Trustee Group

Some key principles:

Recognise – Understand – Manage – Minute



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Definitions

Ordinary meaning

- conflict.....clash.....incompatibility.....struggle
- interest....not impartial....not disinterested...

Legal definition

- *“A real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties”*
- *“A company director has a duty to avoid placing himself in a position where his personal interests conflict with those of his principal, the company.”*
(ie in this case the director of a trustee company)



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Multiple roles & representative Trustees

“how many hats are you wearing?”

“which one do you wear into trustee meetings?”

“if you are wearing the non-trustee hat, where is the trustee?”



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Basic Rule of every trust

- Trustees carry out their trust according to the law and the terms of the trust & in the interests of the beneficiaries

Meaning

- general law of trusts (*precedent value of case law*)
 - terms of trust documents (*Deed & Rules*)
 - beneficiaries' interests
- = only proper considerations Trustees can bring to bear in carrying out the trust



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Recognise

conflict of interest may arise when a trustee

- has a decision to take and
- is obliged to act in the best interests of the scheme beneficiaries and
- has or may have a separate personal interest or a duty owed to a different person in relation to that decision

giving rise to conflict with his duty to scheme beneficiaries



Understand

- duties & powers & discretions & their exercise
 - (fraud on power)
- strict rule for Trustees is not to put themselves in a conflict of interest situation
- strict rule for Trustees is that they cannot act for 2 principals without their informed consent
-*then on to the exceptions*.....
- consequences for breach
 - decisions open to challenge
 - personal liability



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Exceptions & the reality

- ❖ permission under the trust deed (re membership/trusteeship/decisions)
- ❖ fully informed consent of beneficiaries/other party (eg re same adviser)
- ❖ use of confidentiality agreements (re sensitive information)
- ❖ delegation to sub-committee (if allowed by Trust Deed - not always the answer)
- ❖ Resignation (loss of talent – upsets process)
- ❖ Court approval (last resort?)



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Conflicts policy

Consider scheme specific situation

- ✓ identify conflict current/future
- ✓ declare interest on/during appointment
- ✓ minute/register
- ✓ adviser conflicts if circumstances demand
- ✓ in house service to Trustees – reporting lines
- ✓ multiple task adviser
- ✓ seek advice if necessary

- what does the Trust Deed & Rules provide
- knowing your duties & obligations
- standard of care
- prudent person rule
- recognising improper motives
- Trustees to act collectively as Trustee Group
- remember your “Trustee hat”

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