

## CONFLICTS OF INTEREST POLICY

### GiveWell UK

Registered charity number 1196392

GiveWell UK is a charitable incorporated organisation registered in England and Wales (the **Charity**). At the time of adoption of this policy, the Charity's sole member is The Clear Fund, a corporation formed under Section 402 of the Not-for-Profit Corporation Law of the state of New York, USA, with registered office at 1999 Harrison Street, Suite 1200, Oakland, CA 94612, and which is a tax exempt entity under s501(c)(3) of the Internal Revenue Code of the United States (the **Member**).

It is important to the trustees of the Charity (the **Trustees**) that the Charity's independence is recognised and maintained. With particular reference to the Charity Commission's guidance on [conflicts of interest](#), [corporate foundations](#) and [charities connected to non-charities](#), the Trustees are mindful of their legal and regulatory duties including to:

- (a) exercise independent judgement in the interests of the Charity;
- (b) manage conflicts of interest:
  - i. both in general; and
  - ii. specifically with regard to assessing and taking action to mitigate potential risks concerning conflicts of interest arising from the relationship between the Charity and the Member.

All existing and new Trustees shall receive a copy of this policy, shall be deemed to have accepted it and shall be required to take account of it in respect of all of their activities as Trustees of the Charity.

### 1. Introduction

- 1.1 The purpose of this document is to give guidance on legal and good practice requirements in relation to conflicts of interest and to set out the policy of the Charity as to conflicts of interest.
- 1.2 Each Trustee owes a duty of loyalty to the Charity and **must always act in good faith in the Charity's interests**. Failure to do so may constitute a breach of duty which may result in personal liability for the Trustee.
- 1.3 Trustees must act in accordance with the Charity's constitution (the **Constitution**), this policy and all relevant legal duties. Trustees must properly disclose interests and manage situations where there may be a conflict of interest.
- 1.4 Trustees should also give consideration to situations which may result in perceived conflicts of interest and the most appropriate way to manage such situations (though these will not necessarily be treated in the same manner as actual conflicts of interest).

### 2. Definitions:

For the purposes of this policy, the following terms shall have the following meanings:

**"Board"** means the board of trustees of the Charity.

**"Member Connected Trustee"** means a Trustee who has, or in relation to whom any Connected Person has, any material direct or indirect interest, whether a personal financial interest or a duty of loyalty or otherwise, in the Member including:

- as an employee, office holder or agent; or

- as a legal member or shareholder holding more than 1% of the voting rights or issued share capital, as the case may be.

“**Connected Person**” is as defined in clause 36 of the Constitution.

“**Independent Trustee**” means a Trustee who is not a Member Connected Trustee.

“**Register**” means the register of conflicts of interests declared by Trustees.

### 3. What is a conflict of interest?

- 3.1 A conflict of interest will arise if a Trustee has any direct or indirect interest in a matter (whether personal, by virtue of a duty of loyalty to another organisation or otherwise) and that interest conflicts, or could conflict, with the interests of the Charity. A conflict of interest includes a conflict of loyalty; that is, a conflict between any duty a Trustee owes to the Charity and any duty he or she owes to another person or organisation.
- 3.2 Conflicts of interest are not just about personal benefits or benefits received by people or organisations connected with a Trustee. Certainly, the conferring of such benefits will often give rise to conflicts which need to be authorised and managed. However, a conflict (or the potential for conflict) can arise simply because a Trustee has interests in or duties of loyalty owed to other organisations whose interests might conflict with those of the Charity.
- 3.3 A conflict of interest does not include a perceived conflict of interest, whereby a third party might perceive a Trustee to be conflicted as a result of circumstances which do not amount to a conflict of interest or conflict of loyalty on the basis described at paragraphs 3.1 and 3.2 above. However, such circumstances may nonetheless require management as a reputational issue (rather than a conflicts issue) as discussed further in paragraph 6 below.
- 3.4 Where a conflict of interest arises for a Trustee as a result of circumstances affecting a person connected with a Trustee, it is the Trustee who must comply with this policy – not the Connected Person (unless the Connected Person is also a Trustee).
- 3.5 The following table presents a non-exhaustive list of situations where concerns about conflicts of interest may arise:

Situation	Examples
Where the Trustee has a direct financial interest	<p>Examples might include:</p> <ul style="list-style-type: none"> <li>• If the Charity wanted new office premises, a Trustee had some suitable premises to rent and that Trustee would expect to be paid for renting them to the Charity.</li> <li>• If the Charity is deciding whether to contract with a third party and a Trustee has received gifts or payment from that third party.</li> <li>• Where the Charity is considering awarding a contract to, or investing into, a third party and a Trustee owns a significant stake in that third party business.</li> </ul>
Where the Trustee has an indirect financial interest	<p>This type of conflict arises in any situation where a matter to be discussed by the Trustees could lead to indirect financial benefit to a Trustee, e.g. payment to a person with whom a Trustee shares finances or to a company or partnership in which the Trustee has a financial interest.</p> <p>For example, if the Charity is advertising a job and a Trustee’s spouse or partner is considering applying.</p>

Where the Trustee has a conflicting legal duty	<p>Where a Trustee has a legal duty to a third party which conflicts with the Trustee's duties to the Charity.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• Where a Trustee of the Charity is also a Director of the Member and decisions are to be taken that concern the allocation of funding or the sharing of resources between the Charity and the Member. Also, any decision about the impact the Member's activities may have on the reputation of the Charity.</li> <li>• If a Trustee of the Charity, or an employer of the Trustee, provides professional services, such as legal or accounting services, and they, or their employer is instructed by the Member, in which case that Trustee may also be viewed to have conflicting loyalties in a given situation.</li> </ul>
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#### 4. What is not a conflict of interest?

4.1 The following table presents non-exhaustive examples of situations which would not amount to a conflict of interest (but may result in a perceived conflict of interest – see paragraph 6 below):

Where a Trustee is subject to competing loyalties that do not arise from any legal duty	Where a Trustee feels that they have a conflicting loyalty or moral obligation, not arising out of a legal duty, this is not technically a conflict of interest but it may nonetheless be appropriate to treat it in a similar manner to a conflict of interest, such as where the situation could pose a risk to the reputation of the Charity. In order to address this risk, the Charity may need to consider taking the kind of action it would take to address a conflict of interest.
Strongly held views or opinions	<p>Where a Trustee has strongly held views or opinions on a matter to be discussed, this is not a conflict of interest.</p> <p>In such a situation the Trustee must ensure any strongly held views or opinions do not interfere with the Trustee's duty to make a decision that is in the best interests of the Charity. Otherwise, the Trustee would be in breach of this duty.</p> <p>In addition, the Trustee's strongly held views may give rise to a <i>perceived</i> conflict of interest which needs to be managed as a reputational, not a conflicts, issue.</p>

#### 5. How conflicts of interest must be managed

5.1 The Trustees are obliged to act in the best interests of the Charity and not for their own private interest or gain. However, there may be situations, for example when a Trustee is connected to the Member, where a Trustee's own interests and the interests of the Charity arise simultaneously or appear to clash. The issue is not the integrity of the Trustee concerned, but the management of any perceived conflict of loyalty, or the potential to profit from a person's position as a Trustee.

5.2 The duty of loyalty owed by the Trustees to the Charity requires that each Trustee be aware of the potential for conflicts of interest and act openly in dealing with such situations. Trustees must act in accordance with the Charity's Constitution, this policy and all relevant legal duties.

5.3 The Charity's Constitution includes, at clause 16, a procedure for managing Trustee conflicts of interest. **The procedure set out in clause 16 is summarised in Schedule 1.** The law relating to conflicts of interest for charities can be complex. However, identification and

management of conflicts of interest is not complex and Trustees who comply with this policy should not breach their legal duties.

## **6. Perceived conflicts of interest**

Where there may be a perceived conflict of interest (as described in paragraph 3.3 above) in relation to a Trustee's participation in a decision-making process, the Charity might need to work to safeguard its reputation in order to protect the external perception of its independence, even where there is no actual threat to its independence. Reputational management may involve the Charity taking steps in order to address the perceived conflict of interest. Ultimately, the individual Trustee or the Board may decide the best course is to take the same steps as would be required to be taken if there was an actual conflict of interest, but the reasons for doing so should be carefully minuted, making clear that the situation does not constitute an actual conflict of interest.

## **7. Relationship between the Charity and the Member**

7.1 It is recognised by the Trustees that the Charity will, at least initially, be funded by donations made by the Member, and will receive resources in kind to allow the Charity to carry out its work. As a result, there will often be a coincidence (not a conflict) of interests between the Charity and the Member. This is recognised in the overlapping Board composition of the Charity, as it will often be advantageous for the Charity to benefit from the experience of Trustees who are also employees or officers of the Member. However, in taking any decisions that concern the Charity, Trustees should be particularly mindful of the need to manage any actual or potential conflict of interest in accordance with this policy and mitigate reputational risk which might arise from any perceived conflict of interest (as discussed at paragraph 6 above). The principal method of managing this requirement will be by having a sufficient number of Independent Trustees on the Board of the Charity to form a quorum and take decisions without the Member Connected Trustees, where the need arises. The quorum is two, unless there is a decision about which all but one Trustee is conflicted and unable to vote, in which case the quorum is one for that decision only.

7.2 It will always be for the Board to determine on the facts presented whether there is a conflict and how to manage that conflict. If a conflict arises because of the relationship between a Trustee and the Member (subject to paragraph 7.3 below) that Trustee should not vote and cannot be counted in the quorum, although they may contribute to discussions as the other Trustees see fit. The Constitution, at clause 16.5, recognises specific situations where a Member Connected Trustee will be deemed to be conflicted and so should follow this process. Those are where the relevant decision:

7.2.1 relates to an agreement between the Charity and the Member;

7.2.2 relates to the nature of the Charity's relationship with the Member; or

7.2.3 is likely to materially and directly affect the financial interests of the Member.

7.3 However, the Constitution allows for a Member Connected Trustee to vote on decisions to make grants to the Member, provided that those grants are only used by the Member to make onward distribution to other organisations to use for exclusively charitable purposes.

7.4 Given the potential for reputational risk posed by any perceived conflict of interest in respect of decisions where there is a conflict with the Member, the Independent Trustees should consider whether any further steps are required in order to manage that risk. For example, the Independent Trustees may wish to obtain independent advice from a third party in respect of such decision.

## **8. Policy Review**

This policy shall be reviewed regularly as and when the Trustees determine.

Adopted by the Trustees on this 8th day of February, 2022

Last updated: 8 February, 2022

## Schedule 1

### Conflicts of interest management process

#### 1. Declaring interests

- 1.1 A Charity Trustee must declare the nature and extent of:
  - 1.1.1 any direct or indirect material interest which he or she has in a proposed transaction or arrangement with the Charity; and
  - 1.1.2 any direct or indirect interest or any duty which he or she has which conflicts or may conflict with the interests of the Charity or his or her duties to the Charity.
- 1.2 There is no legal definition of what is an “interest”. It is a question of common sense. If in doubt, Trustees should err on the side of caution and the Board can then consider whether the matter may amount to an interest or duty.
- 1.3 **A Trustee Declaration of Interests Form is attached at Schedule 2.** This should be completed:
  - 1.3.1 by all new Trustees; and
  - 1.3.2 when any existing Trustee becomes aware of a new interest.
- 1.4 Trustees should err on the side of caution when completing their Declaration of Interests form, listing all interests which may give rise to a conflict of interests.
- 1.5 In accordance with clause 16.6 of the Constitution, a Register of Trustees’ Interests (**Register**) will be maintained by the Trustees. If more efficient, the Register can be formed of a collection of Trustee Declarations.

#### 2. Identifying conflicts of interest

- 2.1 Each agenda for Trustee meetings (or for a Trustee decision to be made outside a meeting) will include an item for declaration of interests and identification of any actual or potential conflicts of interest.
- 2.2 Prior to, or at the beginning of any Trustee decision making process (or committee meeting), Trustees must declare any interest in relation to matters on the agenda and whether or not they think this may give rise to a conflict of interest. Trustees not attending the meeting or taking part in the decision making process should declare any interest in advance to the Chair.
- 2.3 The declaration can be by oral notification to the Chair or by using the form attached at **Schedule 2**. Any new interests declared in this way will be entered in the Register.
- 2.4 If a Trustee’s interest or duty cannot reasonably be regarded as likely to give rise to a conflict of interest or a conflict of duties with or in respect of the Charity, he or she is entitled to participate in the decision-making process, to be counted in the quorum and to vote in relation to the matter. This is where there is a coincidence of interest, as opposed to a conflict.
- 2.5 Any uncertainty about whether a Trustee’s interest or duty does in fact give rise to or can reasonably be regarded as giving rise to a conflict shall be determined (without the interested Trustee being present) by a majority decision of the other Trustees taking part in the decision-making process. The interested Trustee cannot vote or be counted in the quorum in relation to the decision about whether their interest does or does not give rise to a conflict.
- 2.6 Where a Trustee is a Member Connected Trustee, decisions relating to an agreement between the Charity and the Member, the nature of the Charity’s relationship with the Member, or if the decision is likely to materially and directly affect the financial interests of the Member, there is likely to be a conflict of interest or a conflict of duties in which case paragraph 3 below must be

complied with. However for any decision where it is proposed that the Charity is to make a grant to the Member, the Constitution permits Member Connected Trustees to vote on the decision provided that those grants are only used by the Member to make onward distribution to other organisations to use for exclusively charitable purposes.

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

3.1 Under 16.4 of the Constitution, if a Trustee has a conflict of interest they are permitted to take part in the decision-making process only to the extent that the other Trustees consider is necessary to inform the debate. They must:

3.1.1 not be counted in the quorum for that part of the meeting; and

3.1.2 withdraw during the vote and have no vote on the matter.

### **4. Situations where all the Trustees have a conflict of interest**

4.1 There may be situations where all the Trustees have an interest and arguably a conflict of interest. The Constitution states that where all of the Trustees have the same interest in:

4.1.1 the approval of trustee expenses policies;

4.1.2 payment of premiums for trustee indemnity insurance; and/or

4.1.3 receipt by a Trustee in their capacity as a beneficiary of the Charity of benefits which are available generally to all beneficiaries,

there is a presumption that the Trustee's interest is not reasonably likely to give rise to a conflict (provided all of the Charity Trustees have the same interest). However, notwithstanding this presumption, any such interest must still be declared by each Trustee and given due consideration by the Trustees.

4.2 In any situations where the full board is conflicted, the Trustees should seek legal advice. Options include seeking an order from the Charity Commission (under Section 105 of the Charities Act 2011) sanctioning the proposed action.

### **5. Record keeping**

5.1 All discussions and decisions about a conflict of interest must be recorded and reported in the minutes of the meeting. The report should record:

5.1.1 any relevant interests of the Trustees;

5.1.2 any conflicts of interest, including any decisions made as to whether a Trustee did or did not have a conflict of interest;

5.1.3 the actions taken to manage the conflict in accordance with the Constitution;

5.1.4 the names of persons present for discussion; and

5.1.5 any other relevant information.

### **6. Declaration of interests by prospective Trustees**

6.1 Prospective Trustees should be asked to consider where there are any potential conflicts of interest before they are appointed. As prospective Trustees will not always be privy to sufficient information about the Charity's affairs to assess all of their potential conflicts of interest, they will be asked to complete a declaration of interests form or provide another form of indication of current interests following their appointment.

6.2 The Trustees and the Member shall be made aware of any interests (and potential conflicts of interest) declared by prospective Trustees in order for the Trustees and the Member to be aware of any potential conflicts of interest a prospective Trustee may have, in order that this can be taken into account in any decision as to whether or not to make the appointment.

**7. Situations of conflict where resignation should be considered**

Trustees should consider resigning if the extent and nature of any conflicts of interest they have result regularly in their being unable to contribute to Trustee decision making.