

CONFLICTS OF INTEREST POLICY FOR COLLEGE GOVERNORS

Who this policy applies to

This policy applies to all governors (“the Governors”) of Bishop Burton College (“the College”).

1 Why we have a policy

- 1.1 Governors, as charity trustees, have the legal obligation to act in the best interest of the College and in accordance with the College’s Instrument and Articles of Government. The general duties on charity trustees include a requirement for trustees to avoid putting themselves in situations where there may be a conflict of interest between a Governor’s interests and his or her duty as a charity trustee to act in the best interests of the College.
- 1.2 In addition, in fulfilling a voluntary role, charity trustees are under a duty not to make a personal profit from his or her position in acting as a trustee.
- 1.3 Conflicts of interest may arise where an individual’s personal or family interests and/or loyalties conflict with those of the College. Such conflicts could potentially:
 - 1.3.1 inhibit free discussion;
 - 1.3.2 result in decisions or actions that are not in the interest of the College;
 - 1.3.3 risk the College’s reputation if it is perceived that the Governors acted improperly;
 - 1.3.4 leave decisions made by the Governors open to challenge; and
 - 1.3.5 place a Governor in a position where he or she may potentially be in breach of trust. In a worst-case scenario this could lead to a Governor being held personally liable for any loss caused to the College as a result of his or her breach.
- 1.4 The aim of this policy is to protect both the College and the Governors from any appearance of impropriety.

2 Common types of conflict of interest

Conflicts of interest typically fall into four main types:

- 2.1 **Direct financial interests** – where a Governor obtains a direct financial interest, for example:
 - 2.1.1 with the exception of the Principal/CEO and Staff Governors, the payment of a salary to a Governor by the College;

- 2.1.2 the award by contract to a company with which a Governor owns or is employed by (note that the Charities Act 2011 provides a statutory framework for the provision of services by a charity trustee to a charity which must be considered if such a situation arises);
- 2.1.3 the sale of property at below market value to a Governor
- 2.2 **Indirect financial interest** – where a person connected to a Governor (e.g. a relative of a Governor, see definition of “connected person” in Appendix 1) benefits from the College, for example:
 - 2.2.1 the award of an employment contract to a family member of a Governor which is made after a Governor is appointed to Corporation;
 - 2.2.2 the award of a grant to a dependent/child.
- 2.3 **Non-financial or personal conflicts** – when Governors receive no financial benefit, but are influenced by external factors, for example:
 - 2.3.1 influencing decisions in relation to its service provision to their own advantage;
 - 2.3.2 to gain some other intangible benefit, for example in boosting a Governor’s personal status;
 - 2.3.3 awarding contracts to friends who are not strictly “Connected Persons”.
- 2.4 **Conflict of loyalty** – Governors may have competing loyalties between the College, to which they owe a primary duty when acting as a Governor, and some other person or organisation, for example:
 - 2.4.1 a Governor might be a trustee of another charitable organisation which is involved in an arrangement with the College;
 - 2.4.2 a Governor is a trustee of two charitable/educational organisations competing for the same contract;
- 2.5 It is essential that all Governors are fully aware of their duties and responsibilities and that when acting as a Governor they must act in the best interests of the College alone.

3 Management of conflicts

- 3.1 Governors are required to declare any interest they have in the business of a meeting.
- 3.2 A Governor is not required to declare an interest in a matter in the following circumstances:
 - 3.2.1 if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 3.2.2 if, or to the extent that, the non-conflicted Governors are already aware, or ought to be aware, of the interest.

- 3.3 In all other circumstances, if a Governor believes that they have a conflict of interest or that a conflict of interest is reasonably likely to arise, then he or she must:
- 3.3.1 declare the interest, before the meeting, at the outset of the meeting or at the earliest opportunity when the Governor is aware that a conflict, or potential conflict, has arisen;
 - 3.3.2 if asked to do so by the Chair, withdraw from the meeting whilst the non-conflicted Governors decide how the conflict should be managed; and
 - 3.3.3 withdraw from part of the meeting where the conflict issue is discussed and not vote or count towards the quorum in making a decision relating to the conflict.
- 3.4 A Governor may be expressly invited by the non-conflicted Governors to remain at the part of the meeting to which he or she is conflicted to provide information. The Governor will not be counted in the quorum for that part of the meeting and must withdraw from the meeting during any vote on the conflicted item.
- 3.5 If a Governor fails to declare an interest that is known to the Clerk and/or the Chair, the Clerk or the Chair will declare that interest. If other Governors are aware of a potential conflict, he or she will bring this to the attention of the Chair;
- 3.6 In the event that the Governors have to decide upon a question in which a Governor or Governors has a conflict, decisions will be made by a vote requiring a simple majority. A quorum must be present for the discussion and the decision; interested parties will not be counted when deciding whether the meeting is quorate. Interested Governors may not vote on matters affecting their own interests.

4 Authorising conflicts of interest

4.1 Direct and indirect conflicts of interest

Conflicts of Interest may be authorised by any of the following:

- 4.1.1 a provision of the College's Instrument and Articles of Government;
- 4.1.2 the Charity Commission;
- 4.1.3 the court; and
- 4.1.4 a specific statutory provision (e.g. section 185 Charities Act 2011 permitting the provision of services and goods by a trustee to a charity, see section 9).

Conflicts of loyalty

- 4.2 The Charity Commission guidance on conflicts of interest (CC29) provides that a conflict may be authorised where there is no personal direct or indirect benefit to a Governor (i.e. in conflict of loyalty situations). In conflicts of loyalty situations, the College Commission advises that where it is in the best interests of the College to authorise a conflict and where the conflict in question poses a low risk to the College, a Governor may be authorised by the non-conflicted Governors to take part in discussions relating to the conflict and

participate in the decision making process. If the Governors decide to authorise a conflict they must have regard to the College Commission's latest guidance.

5 Recording conflicts of interest

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

5.1.1 the nature and extent of the conflict;

5.1.2 which Governor or Governors were affected;

5.1.3 whether any conflicts of interest were declared in advance or during the course of the meeting;

5.1.4 whether anyone withdrew from the discussion; and

5.1.5 the actions taken by the Governors to manage the conflict and details of how the governors took the decision in the best interests of the College.

6 Register of Governors' interests

6.1 In order to help Governors identify potential conflicts of interest, the Clerk will maintain a register of interests that will be updated at least annually.

7 Data protection

7.1 The information provided in the Register of Interests will be processed in accordance with data protection principles as set out in the Data Protection Act 1998 and the General Data Protection Regulation 2018 (as amended). Data will be processed only to ensure that Governors act in the best interests of the College. The information provided will not be used for any other purpose.

8 Payments and benefits to Governors and Connected Persons

8.1 The Instrument and Articles provide that Governors are entitled to claim for travel expenses and expenses for agreed training courses and telephone costs. Expenses forms are available from the Clerk and should be returned either to the Clerk or the Deputy Clerk for processing. The Clerk will review all expenses claims.

8.2 The Instrument and Articles of Government are silent as to other benefits permitted to Governors but the following benefits are provided to charity trustees by statute:

8.2.1 benefit from trustee indemnity insurance cover purchased at the College's expense in accordance with the provisions of section 189 Charities Act 2011 (as amended)

8.2.2 Section 188 of the Charities Act 2011 provides that a charity trustee also receive payments for the provision of services and/or goods to a College if the following conditions are met:

8.2.2.1 the services and/or goods are actually required by the College;

8.2.2.2 the amount or maximum amount of a payment for the services and/or goods:

- (a) is set out in an agreement in writing between the College and the Governor or connected persons supplying the services and/or goods ("the Supplier") under which the Supplier is to supply the services or goods in question to the College; and
- (b) it does not exceed what is reasonable in the circumstances for the supply of goods or services in question;

8.2.2.3 the number of Governors who are interested in any such contract or contracting any financial year of the College is in the minority;

8.2.2.4 before entering into such contract the Governors have decided that they are satisfied that it will be in the best interests of the College for the services and/or goods to be provided by the relevant person (as opposed to being provided by someone who is not a Governor or a connected person) to, or on behalf of, the College for the amount or maximum amount of benefit or payment;

8.2.2.5 in making the decision to enter into such a contract, the Supplier must:

- (a) be absent for the part of the meeting at which there is a discussion of the proposal to enter into a contract or arrangement with regard to the supply of goods or services to the College by them; and
- (b) not vote on any such matter and is not counted when calculating whether a quorum of governors is present in the meeting;

8.2.2.6 the Governor in question will not be involved in the managing or monitoring of any arrangement with the College. Monitoring of such arrangements will include provisions of an independent challenge of bills and invoices, and termination of the contract if their relationship is unsatisfactory.

9 Maintaining independence

9.1 Governors are under a legal duty to act independently and exclusively in the best interests of the College.

10 Gifts and hospitality

10.1 In order to protect Governors against accusation that gifts or hospitality offered to Governors have influenced decisions taken by Governors in administering the College's affairs, the following policy should be followed:

10.1.1 all gifts to and hospitality for Governors should be declared and recorded in the Governors' Register of Interests. The information recorded should include the gift/hospitality's actual or estimated value, the date on which it was received, who it was given by and the reason for the gift/hospitality;

- 10.1.2 Governors should never solicit gifts and hospitality;
- 10.1.3 the Governors may decide that gifts under a certain monetary value can be accepted providing that the gift or hospitality is not given or accepted with an expectation that there is any obligation owed as a result of the gift. Usually, but not always, the gift will not be specific to the College, for instance an accountant or lawyer may take a Governor to a dinner along with the governors of other charities;
- 10.1.4 where a gift or hospitality is received or offered which exceeds the value set by the Governors from time to time, the hospitality should be either:
 - 10.1.4.1 declined or the gift be returned to sender;
 - 10.1.4.2 the market price should be paid;
 - 10.1.4.3 or the gift should be donated to the corporate assets of the College or to another charitable organisation as appropriate; and the outcome should be recorded in the Register of Interests maintained by the Clerk.
- 10.1.5 gifts and hospitality intended to influence the decision of Governors should NEVER be accepted.

Updated: September 2022
November 2020

By: Clerk to the Corporation

APPENDIX 1

Definition of “Connected Person”

“**connected person**” means:

- (a) a child, parent, grandchild, grandparent, brother or sister of the Governor;
- (b) the spouse or civil partner of the Governor or of any person falling within sub-clause (a) above;
- (c) a person carrying on business in partnership with the Governor or with any person falling within sub clause (a) or (b) above;
- (d) an institution which is controlled –
 - (i) by the Governor or any connected person falling within sub-clause (a), (b), or (c) above; or
 - (ii) by two or more persons falling within sub-clause (d)(i), when taken together
- (e) a body corporate in which –
 - (i) the Governor or any connected person falling within sub-clauses (a) to (c) has a substantial interest; or
 - (ii) two or more persons falling within sub-clause (e)(i) who, when taken together, have a substantial interest.

Section 118 of the Charities Act 2011 applies for the purposes of interpreting the terms used in this constitution.