

Conflicts of Interest Policy

This policy was approved by Trustees as follows –

Board/Committee: Audit & Risk Committee

Date: 31 August 2017

Frequency of review: Every 2 year(s)

Next review date: July 2019

ELT Owner: Director of Finance & Resources

Author: Governance Manager

Summary of changes at last review:

- Clarification regarding AAG conflicts of interest.
- Change from annual review of policy to every two years, in line with what is already stated and agreed in the Scheme of Delegation.
- Change to allow Declarations of Interests to be collected by means other than the form provided at appendix 2, if it meets statutory requirements and is approved by the Director of Finance & Resources.
- Addition of requirement for the trustee and ELT register of interests to be included for information alongside all formal Board and Committee papers.

Conflicts of Interest Policy

1. Introduction

- 1.1 E-ACT is a charitable company limited by guarantee and governed by its Articles of Association. The Trustees of E-ACT are both company Directors and charity trustees.
- 1.2 Trustees have a legal obligation to act in the best interests of E-ACT, to act in accordance with its governing document, and to avoid situations where there may be a potential conflict of interest. Staff have similar obligations.
- 1.3 This policy applies to E-ACT Trustees and E-ACT members of staff.

2. What is a conflict of interest?

- 2.1 A conflict of interest is a situation in which your personal interests conflict with the interests of E-ACT. A conflict of duty is where a conflict arises as a result of you owing duties to other organisations under company and/or charity law (for example, as a result of being a Trustee and/or trustee of another organisation).
- 2.2 A conflict of interest may arise as a result of circumstances affecting a person connected with you. "Connected persons" would include individuals who are family members and other bodies in which you or your family members have certain interests. These are fully explained in **Appendix 1**.
- 2.3 Trustees, as Directors of the company, are subject to a number of statutory duties which are set out in the Companies Act 2006. One of these statutory duties is to avoid actual and potential conflicts of interest. The duty to avoid conflicts also arises under charity law. Staff members have similar duties.
- 2.4 Importantly, as the duty extends to avoiding *potential* conflicts, conflicts should be declared in advance; you should not wait until a situation of conflict has actually arisen. As a result, Trustees and staff need to be conscious of conflicts at all times. You should consider whether there is anything, or any connection, which could potentially divert your mind from giving sole consideration to promoting the success of E-ACT.

3. What is a related party transaction?

- 3.1 ESFA's Academies Accounts Direction sets out that, for academy trusts, related parties include:
 - parties with control over, or controlled by, the entity (for example parent and subsidiary companies)
 - parties having significant influence over the entity
 - key management personnel of the entity, including any director, whether executive or otherwise
 - close family members of any of the above
 - others subject to control or significant influence by any individual referred to above

- 3.2 Such transactions are permitted under company law, charity law and under the Academies Financial Handbook, provided that open and transparent procurement procedures have been followed, and any potential conflicts of interest are adequately and appropriately managed.
- 3.3 Therefore, any related party transactions and potential conflicts between the interests of E-ACT and the interests of an individual must be:
- Identified
 - Declared
 - Managed in accordance with the Articles; and
 - Minuted

4. Managing potential conflicts of interest

- 4.1 E-ACT will manage potential conflicts of interests by ensuring that:
- There is systematic capturing of declarations of interests
 - Conflicted individuals/ organisations are removed from the decision making process. This will include, but is not limited to, the original decision to enter into a contract with the related party, periodic contract performance reviews and/or contract renegotiation/renewal.
 - Competitive procurement procedures are followed in line with E-ACT's procurement policy
 - Decision making is based on a value for money assessment.

5. Declaration of interests

- 5.1 Trustees, members of the Executive Leadership Team (ELT), Regional Directors and members of academy senior leadership teams¹ are required to declare their interests in connection with their role in E-ACT. A Declaration of Interests Form is attached at Appendix 2, listing the types of interest that should be declared. This form is in line with the Academies Financial Handbook, which requires trusts to maintain a register of interests which *'must capture relevant business and pecuniary interests of members and trustees of academies within a multi-academy trust and senior employees'*.
- 5.2 The register of interests for trustees and ELT should be included for information in all formal Board and Committee papers in order to ensure that members are aware of existing interests and potential conflicts at all meetings.
- 5.3 The Declaration of Interest form – or other such form that meets regulatory requirements and is approved by the Director of Finance and Resources² – should be completed:
- By all new Trustees, members of the Executive Leadership Team, Regional

¹ Ambassadorial Advisory Group members only have advisory powers in relation to E-ACT academies, and have no decision-making powers over academy finances or governance. Therefore, while E-ACT gathers annual conflicts of interest from ambassadors as a matter of good practice these are not required to be published on academy websites or the trust website.

² For example, electronic form for Trustees using the secure trustee portal.

- Directors and academy senior leadership teams, and taken into consideration prior to appointment;
- Annually by all existing trustees, ELT, Regional Directors and members of academy senior leadership teams;
 - When any existing Trustee or ELT or academy senior leadership team member becomes aware of a new interest
- 5.4 These details will be entered in the central register of interests. Trustees shall be made aware of any possible conflicts of interest involving the prospective Trustees or staff members.
- 5.5 Each agenda for Trustee meetings will include an item for declaration of interests and identification of any conflicts or potential conflicts of interest. Any new interests declared in this way will be entered in the register of interests.
- 5.6 If there is any uncertainty about whether an interest gives rise to a conflict, the other members have the right to determine by a majority decision (without the interested Trustee or staff member being present) whether a conflict exists in the circumstances. Any determination regarding the existence of a conflict will be made by a vote of unconflicted members based on an objective evaluation. In the event of a split vote, independent external moderation will be used where conflicts cannot be resolved.
- 5.7 Once it has been established that a situation exists in which the interests of a Trustee, ELT member, Regional Director, academy SLT member, or a person connected with them, might conflict with the interests of E-ACT, that situation must be managed by:
- (a) absenting him/herself from any discussions in relation to the matter;
 - (b) not taking part in any vote on the matter; and
 - (c) not being counted in the quorum in relation to that decision.
- 5.8 Minutes of the meetings of Trustees at which conflicts are an issue will record:
- the nature of the conflict and determinations regarding the conflict;
 - the relevant person's non-participation with respect to consideration of the matter;
 - any limitation on the person's ability to act with respect to such matter;
 - any alternatives that were discussed;
 - the names of persons present for discussion; and
 - the votes taken regarding the conflict.

6. Related Party Interest Disclosure requirements

- 6.1 Accounting standards require related party transactions to be disclosed in a reporting entity's financial statements so that users can gain a full understanding of the transactions which have taken place, and any factors that might have influenced them.
- 6.2 Where related party transactions have occurred, the Academies Accounts Direction stipulates that disclosure must be made and should include:
- the names of the related parties

- a description of the relationship between the parties
- a description of the transactions
- the amounts involved
- the amounts due to or from related parties at the balance sheet date, and any provisions for doubtful debts or amounts written off

6.3 The Department for Education also require related party transactions, as defined in the Academies Financial Handbook, to be at cost only, with no profit allowed. For the accounting period 2014/15, to reduce bureaucracy, a *de minimis* limit of £2,500 has been introduced, but transactions above that limit must still be 'at cost'.

6.4 Any connected party supplying goods or services to E-ACT **must** complete the statement of assurance as set out in Appendix C to confirm that the goods and services are being supplied 'at cost' only.

7. Additional considerations where interests arise from potential benefits to a trustee

7.1 As a charitable company, only the Members of the Company may authorise conflicts, but this is only permissible if there is an express provision in the E-ACT Articles. When authorising conflicts, Trustees must always consider their own statutory duties by, for example, considering whether authorising the conflict is in the best interests of the Trust.

8. Reporting and notification

8.1 The Governance Team shall keep a register of interests declared by Trustees, ELT, Regional Directors and academy senior leadership team members, and shall ensure that the register is updated at least annually. The Governance Team will annually issue the declaration of interest forms to all Trustees, ELT, Regional Directors and academy senior leadership team members and will collate a central register of interests. All Trustees, ELT, Regional Directors and academy senior leadership team members should notify the Governance Team of any in-year changes which need to be made to their entry in the register of interests **when those changes occur**.

8.2 The Audit & Risk Committee will review this register of interests annually, before issuing to the Board of Trustees for full oversight. The register will also be placed on E-ACT's website for full transparency.

8.3 Full registers will be kept, both of any conflicts declared and any conflicts actively managed within meetings, and/or benefits which the board has authorised, including the date such authority expires (if relevant) and any restrictions or limitations on the authority. This will include such benefits as payment for contract of services.

9. Accounting

9.1 All transactions with Trustees and persons connected with them shall be reported to the auditors and noted in E-ACT's annual accounts as related party transactions in accordance with the Statement of Recommended Practice on charity accounting.

10 Policy review

10.1 This policy shall be reviewed every two years by the Audit & Risk Committee.

APPENDIX 1: CONFLICTS AND THE COMPANIES ACT 2006

Conflicts and the Companies Act 2006

Companies Act Duties

1. Under the Companies Act 2006, the Directors have the following duties in respect of conflicts of interest. All staff have similar duties:
 - 1.1 to avoid situations in which they have, or can have, a direct or indirect interest that conflicts, or might conflict, with the interests of E-ACT (section 175).
 - 1.2 to declare an interest in proposed transactions or arrangements (section 177). There is also a separate requirement to disclose interests in an existing transaction or arrangement (section 182).
 - 1.3 not to accept benefits from third parties (section 176). This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
2. The duty to avoid conflicts of interest will not be infringed if:
 - 2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 2.2 provisions in the Articles for dealing with conflicts of interest have been complied with; or
 - 2.3 the other Directors have authorised the situation (in a permitted manner). In a charitable company, the Articles must give the Directors power to authorise conflicts.

Identifying connected persons

3. "Connected person" includes any person falling within one of the following categories:
 - 3.1 any spouse, civil partner, parent, child, step child, brother, sister, grandparent or grandchild of a Director;
 - 3.2 any other person in a relationship with a Director which may reasonably be regarded as equivalent to such a relationship; or
 - 3.3 any company or firm of which a Director is a paid director, partner, consultant or employee, or shareholder holding 1% or more of the issued capital.

APPENDIX 2: TRUSTEE/ EXECUTIVE LEADERSHIP TEAM/ ACADEMY SENIOR LEADERSHIP TEAM DECLARATION OF INTEREST FORM

E-ACT

Company No. 6526376

Declaration of Interests Form

I as Trustee/ Member of the Executive Leadership Team/ Regional Director/ Academy Senior Leadership Team of E-ACT, have set out below my interests in accordance with the academy's conflicts of interest policy.

Category	<i>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</i>
A. Current employment and any previous employment in which you continue to have a financial interest.	
B. Appointments (voluntary or otherwise) e.g. trusteeships, directorships, local authority memberships, tribunals etc. <i>Please note that this should include reference to Directorship of any of E-ACT's group companies (E-ACT FST)</i>	
C. Membership of any professional bodies, special interest groups or mutual support organisations.	
D. Companies in which you hold more than 1% of the share capital.	
E. Any contractual relationship with E-ACT, or an E-ACT academy (please circle as appropriate)	<ul style="list-style-type: none"> • YES

	<ul style="list-style-type: none"> • NO
F. If you have answered 'Yes' to section E, have you completed the required assurance statement and can you confirm that you provide goods/services to E-ACT 'at cost' only? Please circle as appropriate	<ul style="list-style-type: none"> • YES • NO
G. Any "connected persons" eg. A family member who is employed by E-ACT. If so please provide the relevant details.	
H. Any other conflicts that are not covered by the above.	

Please tick as appropriate

I do not have any conflicts of interest in relation to my role with E-ACT (nil return).	
I do have some potential conflicts of interest in relation to my role with E-ACT, and have set them out above.	

To the best of my knowledge, the above information is complete and correct. In declaring my interests, I will review and update my interests annually, or sooner if necessary if new interests arise, and will specifically notify any such interest at any meeting where a decision which affects my personal interests will be made, and I will absent myself entirely from any decision on the matter and not vote on it.

I give my consent for this information to be used for the purposes described in the conflicts of interest policy and for no other purpose.

Signed:

Position:

Date:

Appendix 3: Pro-forma statement of assurance

This form is for completion by an individual or organisation (the 'supplier'), defined in the [Academies Financial Handbook](#) (the 'handbook') as a 'connected party' to an academy trust. Individuals and organisations supplying goods or services to a connected trust must charge no more than cost (defined at the end of the form). This form will also help trusts comply with their funding agreement obligations.

Section 1: Supplier details

Name and address of supplier	
Company number (if applicable)	
Start date	
End date	
Estimate of commercial price, including profit	<i>A reasonable and fair estimate</i>
Connection with trust, e.g. trustee is also a director of the supplier of goods and services	<i>Explain the nature of the connection between the supplier and academy trust</i>
Value of goods or services to trust	<i>£ At cost without profit</i>
Does this value include direct costs and indirect costs only?	Yes / No
Nature of contract	<i>Such as building supplies or professional services</i>

Section 2: Details of contract

Explanation of how the supplier is charging the academy trust
<i>This should include a sufficiently detailed explanation setting out that the supplier understands its direct and indirect costs in such a way to demonstrate to the academy trust that it is supplying goods and services at cost, without any element of profit.</i>
<i>[Please extend the rows below if the contract is longer than three years]</i>

	Direct costs	Indirect costs	Total
Year 1	£	£	£
Year 2	£	£	£
Year 3	£	£	£
Total	£	£	£

Section 3: Supplier certification

Certification of supplier
<p>I certify, on behalf of [<i>name of supplier</i>] that:</p> <ul style="list-style-type: none"> the goods and services detailed in this form will be supplied to the academy trust on the basis of direct cost plus indirect costs, with no element of profit; we are supplying the goods and services on an open book basis and we will provide more information on request; and we will make an adjustment in the following year if we identify a miscalculation on our direct or indirect costs, and supplied goods or services which included an element of profit.

Name and position	<i>Should be sufficiently senior to sign this declaration</i>
Date	
Signature	

Section 4: Academy signoff

Certification of academy trust
<p>In signing this document I am satisfied that:</p> <ul style="list-style-type: none"> the goods and services being supplied comply with the requirements on trading with connected parties as set out in the handbook, and represent value for money; there is full compliance with the trust's scheme of delegation; open and fair procurement and compliance with the trust's procurement procedures have taken place; potential conflicts of interest within the academy trust have been robustly managed; the trust's register of interest captures relevant business and pecuniary interests as set out in the handbook, and will be updated to reflect this contract (if not already); the supplier understands that open book arrangements are in place and they will provide more information on request, if needed; and both the trust's accounting officer and chair of board of trustees have agreed to trade with this connected supplier, and that the measures and safeguards listed above are in place.

Director of Finance & Resources	
Date	
Signature	
Notes	

Direct costs means the costs of any materials and labour used directly in producing the goods or services.

Indirect costs means a proportionate and reasonable share of fixed and variable overheads.

At cost means without profit as it includes direct and indirect costs only.

Estimate of commercial price acknowledges that the value of such contracts varies depending on a number of factors and negotiations. The supplier should identify a reasonable and fair price, e.g. from previous similar contract.