# **Conflicts of Interests Guidance for University-appointed Directors of Subsidiary Companies and Joint Ventures**

***Guidance on the differing responsibilities and duties of trustees, employees and company directors in the context of the University.***

## Why is this important

The University of Oxford (the “University”) has formed a number of wholly-owned subsidiaries and has also engaged with partner organisation on joint ventures[[1]](#footnote-1). Employees of the University with appropriate knowledge, skills and expertise may be appointed as directors of one or more of these entities. They should be mindful of the conflicts that may arise between their different roles and interests across the organisation as a whole since situations can inevitably arise where the same person will be a decision maker or advisor both for the University and one of its entities. Examples of this might include contractual discussions, investment requests, resourcing arrangements or reporting and information sharing. The legal framework in which companies operate is different to the legal framework governing the University.

## Roles and Responsibilities

**Trustee:** Trustees of charities have a legal obligation[[2]](#footnote-2) to

1. act in the best interests of the charity they serve,
2. act in accordance with the charity’s governing document
3. avoid situations where there may be a conflict of interest.

The trustees of the University are the members of Council. Many senior officers and academics in the University are also trustees of their Colleges.

In addition, as the University receives public funding there is a public interest and the Nolan principles of public life apply. Members of Council and other senior officers making decision on behalf of the University should demonstrate:

1. selflessness
2. integrity
3. objectivity
4. accountability
5. openness
6. honesty
7. Leadership

**Employee/Officer:** Employees including senior officers of the University don’t have the same legal obligations as trustees but are still required to act in the best interests of the University, particularly where they take on roles in the governance of the organisation e.g. membership of Committees or Divisional boards which make decisions under delegation from Council or shape policy on behalf of the University.

**Director of a company**: Directors of a charity’s subsidiary companies and joint ventures are subject to the provisions of the Companies Act 2006 under which they have a legal duty to avoid conflicts of interest. The seven duties of directors under the Companies Act are to:

1. Act within powers, in accordance with the company’s constitution.
2. Promote the success of the company.
3. Exercise independent judgement.
4. Exercise reasonable care, skill and diligence.
5. Avoid conflicts of interest.
6. Not accept benefits from third parties.
7. Declare interests in proposed or existing transactions or arrangements with the company.

Tensions can come to the fore in relation to the duty to exercise independent judgment. In the case of wholly-owned subsidiaries, the University might make a case for the directors to act in a certain way, but they must always exercise their own judgement.

By the nature of these various roles, each has an in-built ‘interest’, a fiduciary duty or responsibility to the body concerned. A ‘conflict of interest’ arises where these roles and duties coincide.

## Recognising potential conflicts

Examples of areas where conflicts can arise between different roles in the wider University:

• **No scrutiny of own decisions/performance:** holding a role which involves potential oversight and scrutiny of the company/joint venture, while also holding a position with the company/joint venture. For example, a company/joint venture board member who also holds a position on the University’s Audit & Scrutiny Committee or the Subsidiaries Oversight Committee would clearly be conflicted.

• **University decision affecting the company:** a company/joint venture board member being a member of a decision-making Committee in the University where decisions are made that might affect the company/joint venture.

• **Access & use of information;** **opportunity:** the exploitation by a board member of any asset, information or opportunity related to the company/joint venture; it could be a breach of a director’s duty to the company either to disclose confidential company information to the University, even if it were relevant to something under discussion, or to disclose confidential University information to the company.

There are of course other potential conflicts of interest which apply in any role such as:

• **Personal/private interests:** holding a position as a company board member while having private financial or non-financial interests which may conflict or may be perceived to conflict with the role. For example, a company board member, or member of their family, having an interest in a supplier or competitor to the company

**• Gifts & hospitality:** board members receiving benefit (such as gifts and hospitality) from third parties (such as potential suppliers to the company)

## Making Declarations

A conflict, or perception of a conflict, arises from the situation in which a decision is made. In matters of reporting, contractual discussion, investment requests or resourcing agreements, there is the potential for the same person to be a decision maker or advisor both for the University and the company. There will be an actual conflict of interests whenever that scenario occurs in practice.

Company directors have a duty in law to avoid a situation where they have, or may have, an interest that conflicts with the interest of the company. Company law and articles of association do allow provisions for directors and shareholders to authorise a conflict in some circumstances. However, as set out above University officers and employees also have an obligation to act both in the interest of the University and, in matters relating to public funding, the public interest.

This will on occasion create an inescapable conflict of interest between someone’s role in the University and as a company director. In practice, once a person is appointed as director of a company/joint venture, their prime duty is to the company and their involvement in decision-making or voting on the company board must reflect that.

In each company/joint venture, **directors have a duty to declare interests**; how interests are then addressed within a company will depend on the articles of association.

In the University an annual declaration of interests is required of Council members, senior officers, members of key committees and directors of subsidiary companies, and individuals also have a **responsibility under the COI policy to recognise situations where conflicts might arise**, declare their interests and agree appropriate strategies to avoid or manage the conflict. This will normally involve them ceasing to be involved in the matter from the University side, and ceasing to act as a decision maker for the University.

## Key considerations

* Be clear which ‘hat’ you are wearing at any point in time (e.g. University employee, company director) and act accordingly to avoid and/or declare and manage conflicts
* Use all opportunities to think about, identify and act to resolve any conflicts of interest.
* Register standing interests on appointment to a board and then update through the annual declaration of interests’ process
* Take advantage of the ‘Declaration of Interests’ item on each University committee or company board meeting agenda to think through what the business on that agenda means for any interests you may have.
* Think about the sources of information – particularly confidential information – that you can access or may receive as part of your roles; and the extent to which this is appropriate or requires mindfulness of your fiduciary duties. The same applies to thinking through the implications when as a manager in the university you oversee staff who may be working on projects which impact your company role.

# Process

1. **Appointment approval:** University employees wishing to take up a position as director of a subsidiary or joint venture must complete an outside appointments approval request (OA1) and submit to their Head of Department. This should include consideration of potential conflicts of interest. Appointments as a director of a subsidiary company have to be approved by the General Purpose Committee of Council via submission by the Company Secretary of Subsidiary Companies to Council Secretariat.

**2. Declaration of Standing Interests:** complete the declaration of interests form and submit to the Company Secretary before appointment. These declarations are shared with the Secretary to the COI Committee in the University as part of the annual declarations of interest process.

**3. Potential conflicts:** where an individual considers a potential conflict exists between their ‘University’ and their ‘company’ role, they could confidentially discuss with the Director of Assurance (or their Deputy) to determine whether a conflict exists on the University side and with the Company Secretary on the company side.

**4. Declaring the interest:** the person should follow the University’s and the company’s normal procedures for declaring and registering an interest; it’s important to take full note of the content of agendas and whether the business to be transacted raises any potential conflicts; there will be a point on each agenda where interests should be declared.

**5. Stand down from discussion**: having declared a conflict of interest, there should be no taking part in a decision about the issue; it will be up to the Chair of each committee or board to determine how/whether the individual will be asked to contribute relevant information and whether they will physically need to leave the meeting for certain discussions or simply take no part (see appendix 1 for further information on actions)

**6. Annual update of registers of interest:** the annual reminder to update declarations of interests should encourage continued thinking about potential or emerging interests.

**Actions to be taken in respect of conflict of interests for a university staff member who is also a director of a subsidiary or joint venture**

The University recognises the value of appointing its staff to act as company directors of subsidiary companies and joint ventures, but remains mindful of the need to identify and manage actual and perceived conflicts of interest.

While the appropriate response will be determined on a case by case basis, we expect:

• Staff to read the Conflicts of Interests Guidance for University-appointed Directors of Subsidiary Companies and Joint Ventures

• Staff to proactively declare relevant interests, as set out in the guidance, at the point they are involved in decision-making as a member of a board, or a member or attendee of a committee;

• Chairs of boards and committees, or other senior leaders to whom a declaration of a potential conflict of interests has been made, to take appropriate action, which may include:

* deciding that no action is warranted;
* restricting an individual’s involvement in discussions and excluding them from decision making;
* removing an individual from the whole decision-making process;
* removing an individual’s responsibility for an entire area of work;
* removing an individual from their role altogether if the conflict is so significant that they are unable to operate effectively in the role.

• An audit trail of the actions taken to be kept.

The above general responses, along with relevant industry/professional guidance, should complement the exercise of good judgement.

1. For a full list of all current subsidiaries and joint ventures see note 18 of the [financial statements](https://www.ox.ac.uk/about/organisation/finance-and-funding) (<https://www.ox.ac.uk/about/organisation/finance-and-funding>) [↑](#footnote-ref-1)
2. See guidance from the Charity Commission <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3> [↑](#footnote-ref-2)