

APPENDIX 4 – CONFLICT OF INTEREST AND OF LOYALTY MEMORANDUM

FOR COMMENT AND FURTHER DISCUSSION BY THE BOARD

General

South African Trust laws demand the highest possible ethical standards from trustees and regard the avoidance of any conflict of interest in a trustee's activities as particularly important.

A conflict of interest, or of loyalty, is any situation in which a Trustee's personal interests, or those of his or her immediate family, and those of the Trust arise simultaneously or appear to clash.

Even the appearance of a conflict of interest or of loyalty can be potentially damaging to the Trust's good reputation, or its interests, or both, and consequently any conflict needs to be avoided and if identified, managed carefully.

The need to avoid and declare any conflict does not only apply to Trustees. It applies also to any Trust office staff, or Honorary Trustee, who is able to influence procurement or Trust expenditure, or who, by virtue of affiliation with other philanthropic fundraising bodies, may provoke a conflict of loyalty. This statement, therefore, is applicable to the above categories of persons, but the term 'Trustee' is used collectively for all these categories throughout this document.

Commonly accepted principles state that Trustees should:

- ❖ Avoid any risk of conflict,
- ❖ Should declare any private interests relating to their duties as Trustees
- ❖ Should take steps to resolve any conflicts in a way that protects the Trust's interest.
- ❖ Not receive any benefit from the Trust in return for any service they provide on behalf of the Trust unless they have the authority of the Board to do so.

The word 'benefit' includes financial gain, the receipt of any property, goods or services which have monetary value, the use of confidential Trust information, or any intellectual property of the Trust, to benefit a similar or competitive organisation.

The word 'benefit' does **not** include legitimate compensation for expenses in respect of travel, accommodation or any other costs incurred on authorised Trust business, or salaries or benefits paid to trust office staff.

Conflicts of interest may arise from:

Direct financial gain or material benefit to a Trustee, such as:

- Unauthorised payment to a Trustee or a member of their immediate family, for services provided to the Trust;
- Awarding of a contract to an organisation in which a Trustee, or a member of the immediate family of a Trustee, has an interest and from which a Trustee, or a member of the immediate family of a Trustee, will receive financial benefit;
- The acceptance of unauthorised material benefit, such as gifts or services, in exchange for services provided to the Trust.

Indirect financial gain

This would occur, for example, in situations such as:

- The employment by the Trust of a spouse or partner of a Trustee, where their finances are interdependent;
- The use by Trustees of Trust office staff or equipment to effect personal business;
- Securing discounts on work done for a Trustee in his or her personal capacity by a firm who is the recipient of a Trust contract

It is the onus of each Trustee who has a conflict of interest to declare this in the Trust's Declaration of Interests statement, in order to ensure transparency and avoid any accusations of impropriety.

Conflict of loyalty

Conflict of loyalty would occur in situations where:

- A Trustee is appointed to a post on the staff establishment of one of the Trust's funders;
- Where a family member of a Trustee is employed by the Trust office without prior Board approval for such appointment, or where the Board is deliberately kept unaware of the relationship;
- Where a Trustee takes up a position with another philanthropic fundraising organisation and it is shown that the Trust's interests maybe put at risk, or adversely affected thereby, or the Trust's confidential information compromised.

When Trustees are dealing with the business of the Trust their overriding duty is to act in the best interests of the Trust. As described above, there may be situations in which a Trustees' loyalty to the Trust conflicts with his or her loyalty to another competitive philanthropic fundraising organisation of which he or she is a member, or is a Trustee, or where a member of his or her family is a member or a Trustee, or holds an administrative position with the Red Cross Children's Hospital or with Provincial or National Government. Such conflicts of loyalty will not necessarily disqualify anyone

from being a Children's Hospital Trustee unless clear conflict of loyalty is shown to exist. However, a Trustee may not be the chairperson of another Trust that has philanthropic objectives serviced through fundraising.

It is the onus of each Trustee to declare in the Trust's Interests and Loyalty Declaration, the absence or presence of any conflict, or any activity open to interpretation as a conflict.

Responsibilities of Trustees

- A Trustee must avoid any situation where personal interests conflict with his or her duty;
- The Trust expects Trustees to identify the potential of a conflict of interest or loyalty before it arises and to report it to the Board;
- Where a conflict already exists, it must be declared or immediately brought to the attention of the Board by the Trustee.
- It is the responsibility of Trustees to understand the nature of conflicts of interest and of loyalty;
- It is the responsibility of Trustees to complete and sign a Conflict of Interest or Loyalty declaration each year.

Guidelines for Trustees in respect of possible conflicts

- In a matter that could be interpreted as a conflict of interest or loyalty, but where there is no material benefit to a Trustee, or no risk to the Trust in matters of loyalty, the matter must **still be declared** or reported to the Board so that the Board is aware of it and can properly managed it;
- If a Trustee is in any doubt about any situation being a conflict, or having the potential to be a conflict, they must take professional advice or seek advice from of the Board;

Guidelines for the Board in respect of managing conflict of interest or loyalty

The Board must

- Encourage Trustees to make the operation of the Trust as transparent as possible;
- Make it policy that its *Conflicts of Interest and Loyalty Memorandum* is read and understood by all Trustees;
- Ensure that every Trustee and, if applicable, members of the Trust office staff, or Honorary Trustee, annually signs the Trust's *Conflict of Interests and Loyalty Declaration*;
- Ensure that every Trustee and, where applicable, member of the Trust office staff, or Honorary Trustee, record on the Trust's Conflict Declaration any conflict;
- Provide a Trustee, or member of staff, with the opportunity to address the Board in defense of his or her position if he or she so wishes;
- Record all details of discussions and decisions made;
- Encourage each Trustee or member of staff at the beginning of a meeting to declare any private interest which he or she has in any item to be discussed;

- Ensure that prospective new Trustees consider the Trust's Conflict of Interest and Loyalty Statement and identify and record possible conflicts of interest before they are appointed;
- Investigate all cases where a Trustee appears to have placed his or her personal interests ahead of those of the Trust in order to derive benefit at the Trust's expense, or where by virtue of a conflict of loyalty, a Trustee appears to have compromised the interests of the Trust or the confidentiality of its information.

Board management of conflict of interest or loyalty

- Where a conflict of **interest** has been reported to the Board, the Board must establish if the person involved received material or financial benefit from the conflict and then consider authorising, conditionally authorising, disallowing or taking any other appropriate action;
- Where a conflict of **loyalty** has been reported to the Board, it must establish if the Trust's interests will be negatively affected by it, or whether the interests of another organisation will benefit from it at the expense of the Trust and then consider authorising, conditionally authorising or disallowing the conflict to continue or taking any other appropriate action;
- Where the Trust finds, or is alerted to an unauthorised benefit, or a damaging conflict of loyalty, the action taken will depend on the **extent** of the benefit or damage and the impact which it has had, or may have, on the Trust. The Board must also take into account other factors, such as why the Trustee did not seek prior authority or declare the conflict.
- The final decision taken by the Board in any matter of conflict will thus depend on the **circumstances** of the conflict and its impact on the Trust. The final decision taken on any matter is at the discretion of the Board and may include:
 - ❖ Full authorisation to continue;
 - ❖ Qualified approval to continue;
 - ❖ Disallowance of a member to take part in discussions and decision-making in meetings on a particular subject relevant to the conflict;
 - ❖ Ordering the Trustee to cease involvement in a particular conflict;
 - ❖ Reprimanding the Trustee;
 - ❖ Dismissing the Trustee;
 - ❖ Referring the matter for legal advice;
 - ❖ Referring the matter to the SAPS for further investigation.
- If authority for a conflict is granted, the Board must ensure that that authority is used appropriately and that the necessary arrangements are in place to manage the conflict of interest;

Thus, the Board may

- Give formal sanction, or qualified approval, to a conflict of interest or loyalty once it has satisfied itself of the benign nature of a particular conflict.
- Order the removal of the Trustee or member of staff concerned from any relevant decision making process;
- Issue formal censure, or dismiss a Trustee;
- Refer the matter to its legal advisors or to the SAPS.

In order for the Trust to consider authorising any benefit that is a conflict of interest, or to sanction any situation of conflict of loyalty, Trustees will need to show why it is in the Trust's best interests to authorise the benefit and resulting conflict of interest, or why a conflict of loyalty will not risk the interests of the Trust.
