

1. Introduction

In accordance with commitments made in the Other Foundation's code of values and practice, governance policy, grant making policy, financial management policy, and human resources management policy, this policy statement outlines the Foundation's understanding and approach to handling situations where competing interests might affect decisions made by any person representing the Foundation (i.e. conflicts of interest), and gives guidance about how all trustees, personnel, and associates of the Foundation must interpret and handle potential conflicts of interest. It also determines how the Foundation will manage conflicts of interest as they might arise.

As a community foundation that necessarily maintains close relations with individual lesbian, gay, bisexual, transgender, and intersex (LGBTI) activists and LGBTI and ally groups, and that intentionally recruits trustees, personnel, and consultants (e.g. grant making peer reviewers) who have close connections to LGBTI activism in southern Africa if not being LGBTI activists themselves, the Foundation recognizes and accepts that conflicts of interest are unavoidable in implementing its mission and are bound to arise frequently.

However, given the Foundation's equivalent commitment to managing its affairs in a responsible, fair, transparent, and accountable manner, it is necessary to ensure that when conflicts of interest arise, they are managed in a way that does not unfairly benefit the trustees, personnel, or close associates of the Foundation or their family or friends – and that this is demonstrated in a transparent and accountable manner.

Good practice requires that trustees, personnel, and associates such as grant making peer reviewers make fair and objective decisions in the Foundation's best interests and in the best interests of the LGBTI groups that it exists to support in general. This requires especially all trustees and personnel to avoid situations that may result in actual, perceived or potential conflicts of interest.

This policy applies to all trustees, personnel, and contractors acting on behalf of the Foundation, and is a condition of employment or a service contract.

Conflicts of interest extend to trustees' and employees' close family members and friends.

Although some conflict of interest situations may be complex, this policy statement provides broadly applicable guidelines for the behaviours and actions that are expected from all trustees, personnel, and contracted associates, as well as the rules that will inform the management and treatment of conflicts of interests.

2. What is a conflict of interest?

A conflict of interest occurs when there is the following:

- 2.1. Any conflict between the Foundation's interest and the direct or indirect private interests of trustees or personnel (or close family members and friends) which could improperly influence the objective and effective performance of their duties and responsibilities.

- 2.2. The Foundation's and private interests are mixed which affects the objectivity and discretion of a trustee or employee in performing their duties or making decisions in the best interest of the Foundation or, unknowingly, the fairness and integrity of the Foundation's decisions in general.
- 2.3. Business judgement, discretion and decision-making are influenced by and based on private interests or personal gain or interest, or the interests of an organisation in which a trustee, employee, or contracted associate has an interest.
- 2.4. A trustee, employee or associate (such as a grant making peer reviewer or contractor representing the Foundation) is a direct party to a dispute with a potential grant recipient or potential supplier of the Foundation.
- 2.5. The perception that, as a result of trustees, personnel, or contracted associates being seen to be too close to particular groups or individuals who are potential beneficiaries of the Foundation, independent and fair judgment cannot be exercised by the person, thereby affecting trust and confidence in the Foundation's decision making processes.

3. Who is considered as close family?

The Foundation recognizes close family to be people who are once and twice removed from the trustee, personnel, or contracted associate. Once removed family members include a life partner, spouse, former spouse or life partner, children, parents, sisters and brothers. Twice removed family members include grandparents, aunts, uncles, cousins, in-law family members and ex-in-law family members (or family members of a life partner or former life partner).

4. Different types of conflicts of interests

The foundation recognizes various types of conflicts of interest:

- 4.1. A **direct** conflict of interests – where a person is influenced by their private interests for personal benefit when doing a job.
- 4.2. An **indirect** conflict of interests – where a person is influenced by their private interests in another organisation; or the interests of their close family or friend; or an organization in which their close family member or friend is involved, when doing a job; or where a decision of the Foundation is unknowingly influenced as a result of confidential information about the affairs of the Foundation that has not been publicly declared being shared with potential grantees, contractors, or other associates of the Foundation by trustees, personnel, or associates of the Foundation (who have privileged access to such information) as a result of their closeness to the potential grantee, contractor, or other associate.
- 4.3. A **perceived** conflict of interest – where a person appears to be influenced by their private interests when performing a job.
- 4.4. A **potential** conflict of interest – where a person may be influenced in the future by their private interests when performing a job.

Conflicts of interest are not limited to direct financial interests and benefits. It includes being influenced in decision making in the Foundation by affiliations with beneficiaries such as by one's involvement in other organisations for the benefit of that organisation; accepting business courtesies that influence one's judgment; having private business interest in entities that might do business with the Foundation; and inappropriately advising organizations or individuals about how to benefit from the Foundation as a result of private affiliations with beneficiaries.

5. Examples of conflicts of interest

Conflicts of interests may arise from a person's interests or activities. They may arise from positive or negative relationships; transactions or interactions relating to the selection of grantees, consultants,

advisors, contractors, or vendors; investing and borrowing funds; or an interest in an organization unrelated to the Foundation. It also arises where there are current or future compensation arrangements including employment contracts directly affecting trustees, personnel, or contracted associates of the Foundation.

5.1. Outside **interests** deemed to create an immediate or potential conflict of interest:

- 5.1.1. A contract or transaction between the Foundation and a trustee, employee or a close family member or friend.
- 5.1.2. A contract or transaction between the Foundation and an entity which a trustee, employee, contracted associate or close family member or friend has a material financial interest or of which such person is a director, officer, agent, partner, associate, trustee, personal representative, receiver, guardian, custodian, member or other legal representative.
- 5.1.3. A trustee or employee having an interest in an organisation (including a business), even though that organisation is unrelated to the business of the Foundation and such business does not necessarily transact with the Foundation.
- 5.1.4. Undue privilege or advantage derived by a trustee, employee, contracted associate or close family members or friends as a result of being party to valuable information, receiving or giving gifts or entertainment that might place the trustee or employee under an obligation to reciprocate, or being offered business or other opportunities.

5.2. Outside **activities** deemed to create an immediate or potential conflict of interest:

- 5.2.1. A trustee or employee competing with the Foundation for donor funding, the rendering of services or for any other contract or transaction with a third party.
- 5.2.2. A trustee or employee having a material financial interest in or serving as a director, officer, agent, partner, associate, trustee, personal representative, receiver, guardian, custodian, member or other legal representative of, or consultant to an entity or individual that competes with the Foundation for the provision of services or for any other contract or transaction with a third party.

6. Declaration of relevant interests and activities

Where such or related circumstances as outlined in section 5 of this policy statement occur in relation to any grant making, procurement, recruitment, investment, or other beneficiating decision being made by the Foundation, any trustee, employee, or contracted associate (including grant making peer reviewers and consultants) must declare the interest or activity before any discussion related to making a decision occurs.

In declaring the interest or activity, the person making the declaration must declare all information that is material to the potential conflict of interest.

Declarations must be made in writing using the Foundation's prescribed formats for the declaration of interests for all formal decision making meetings where conflicts of interest might arise, such as meetings where grant allocations are being decided upon or where procurement of suppliers is being decided. The declaration must be signed by the person making the declaration. Any interests determined by the competent authority to represent a conflict of interests must be recorded in the minutes of such decision-making meetings.

Outside of such formal decision making meetings, individual trustees or personnel may declare interests in writing by email to the person who is authorized to decide about whether an interest represents a conflict of interest or not.

If a trustee, staff person, or associate has any doubt about whether an interest or activity might present a conflict of interests or not and whether they should declare it or not, the interest or activity must nonetheless be declared.

7. Who decides whether a conflict of interests exists?

It is not up to the trustee, employee, or contracted associate (including grant making peer reviewers) to themselves determine whether their interest or activity represents a conflict of interests or not. The obligation of the person who has an interest or is involved in an activity contemplated in section 5 above is to declare the interest or activity as described in section 6 above. Decisions about whether the declared interest or activity represents a conflict of interest will be made as follows:

- 7.1. In the case of a grant making peer reviewer declaring an interest, the executive officer for programme functions will determine whether the interest represents a conflict of interests.
- 7.2. In the case of personnel or contracted associates declaring an interest, the chief executive officer will determine whether the interest represents a conflict of interests.
- 7.3. In the case of the chief executive officer declaring an interest, the chairperson or co-chairperson of the board of trustees will determine whether the interest represents a conflict of interests.
- 7.4. In the case of a trustee who is not the chairperson or chief executive officer declaring an interest, the chairperson or co-chairperson will determine whether the interest represents a conflict of interests.
- 7.5. In the case of the chairperson or co-chairperson declaring an interest, the chief executive officer will determine whether the interest represents a conflict of interest.

8. Procedure in case of a conflict of interests being deemed to exist

A person who has been determined by the competent authority to have a conflict of interests will recuse themselves and will not participate in nor be permitted to hear the discussion on the matter being decided upon except to disclose material facts relating to their interest or activity and respond to questions about it.

The person will:

- 8.1. Not present any opinion or recommendation at any stage during the review and assessment of any proposal, application, or other representation made to the Foundation by the organisation or individual in relation to whom they have been deemed to have a conflict of interest;
- 8.2. Not be counted in determining the presence of a quorum for purposes of a vote;
- 8.3. Not be present in the meeting room when the matter is discussed and a vote is taken or a decision made through any other form; and
- 8.4. Not vote on the transaction.

The person's ineligibility to vote will be reflected in the minutes of the meeting.

This includes the situation where a trustee stands for election as an officer or for re-election as a member of the board of trustees. Trustees standing for election may not vote.

Where decisions are being made by trustees, personnel, or contracted associates (other than grant making peer reviewers) about a set of transactions taken together (such as a batch of recommended grants being considered and decided upon altogether), the person deemed to have a conflict of interests in relation to any one of the transactions being considered will recuse themselves and will not participate in nor be permitted to hear the discussion on the entire batch of transactions being decided

upon except to disclose material facts relating to their interest or activity and respond to questions about it.

However, since peer review of grant applications necessarily involves more complex conflicts of interest considerations, less stringent recusal practices will be applied to grant making peer reviewers when considering batches of proposals. Peer reviewers must recuse themselves from discussions and decision making about specific grant proposals in relation to which they have been determined to have a conflict of interests by the competent authority, but they need not recuse themselves from the entire discussion about a full batch of grant proposals. They must, nonetheless, declare all material interests and activities as prescribed in section 6 above.

A person who is deemed by the competent authority to have a conflict of interests in relation to a transaction being decided upon should not discuss, whether formally or informally, the details of the discussion that went into whatever decision is eventually reached about the transaction or set of transactions, with anyone who was part of the decision making except to disclose material facts relating to their interest or activity and respond to questions about it.

Similarly, trustees, personnel, and contracted associates should not discuss the business of the Foundation with potential grantees or suppliers with whom they have been deemed to have a conflict of interests, other than in very general terms. Instead, the designated representative of the Foundation (such as a programme or grants officer) who does not have any conflict of interests should engage with the potential supplier or grantee on behalf of the Foundation about the details of the Foundation's business.

9. Ringfencing against direct financial benefit

In the case where a trustee or employee declares a direct interest related to being a compensated employee, director, agent, consultant, advisor, or other representative of an organisation that has applied for a grant from the Foundation, that is deemed to represent a conflict of interests and a grant is nonetheless approved for the organisation by the Foundation, a special condition will be written into the grant agreement with the organisation that prohibits funds from the grant being used to compensate the trustee or employee in any way whatsoever.

10. Gifts, gratuities and entertainment

The Foundation's gifts policy is outlined in its financial management policy statement. This policy statement provides more detail about the nature of gifts that can and cannot be accepted.

The giving or receipt of common courtesies, occasional meals or reasonable entertainment appropriate to a business relationship and associated with discussions related to the business of the Foundation are regarded as consistent with sound business practice and are deemed to not automatically present a conflict of interest. Unusual items, however, must be reviewed and approved in advance and gifts received must be declared in accordance with the Foundation's gifts policy as outlined in the Foundation's financial management policy statement.

10.1. Acceptable entertainment generally fall into the following categories:

10.1.1. Occasional meals of reasonable expense with a partner of the Foundation.

10.1.2. Ordinary sports, theatre and other cultural events of a nominal value.

10.2. An offer, gift, entertainment or anything of value may not be accepted or given in relation to the business of the Foundation if it is:

10.2.1. Illegal or would result in a violation of law.

- 10.2.2. Cash or a cash equivalents such as gift certificates, loans, shares or share options.
- 10.2.3. A *quid pro quo* or part of an agreement requiring anything in return for a gift.
- 10.2.4. Sexual interaction or conduct that in any other way violates the Foundation's sexual harassment policy or commitment to respect and integrity.
- 10.2.5. In violation of the Foundation's code of values and conduct or the standards of the recipient's organization.

11. Sanctions for breach of policy

If any trustee, employee, or contracted associate does not declare a material interest that affects the integrity of the Foundation's decision making processes or in any other way is found to be in breach of this policy, they will be subject to disciplinary action according to the Foundation's documented disciplinary procedures outlined in the Foundation's human resources management policy. Breaches of this policy will be regarded as category C or D transgressions (depending on the nature of the transgression), which means that they are regarded as being so serious that the Foundation will take the strongest and quickest possible action which could result in the termination of the transgressor's association with or employment in the Foundation.

12. Cooling off period

All trustees or employees of the Foundation will be subject to a 12 month cooling off period after they or any of their close family officially terminate their involvement as an employee, director, agent, advisor, consultant, member or other close associate of an organisation that is a grant recipient of the Foundation, during which they will be deemed to still have a conflict of interest in decision making by the Foundation in relation to that organisation. During the cooling off period, the provisions of section 8 of this policy will apply.

All trustees or employees of the Foundation will be subject to a 12 month cooling off period after officially leaving the Foundation, during which time they or any organization in which they or any close family member have a direct interest will be allowed to apply to the Foundation for a grant.

13. Voluntary disclosure, safe distancing, and positive engagement

The Foundation recognizes that every possible conflict of interest scenario cannot be envisioned and detailed in a policy statement. It therefore relies on the integrity of all its trustees, personnel, and contracted associates to voluntarily disclose interests and activities that might be potential conflicts of interest with the work that they do in the Foundation, and to be open to constructive engagement about how to responsibly handle perceived conflicts of interest.

The foundation also recognizes that in real life situations, conflicts of interests might arise from time to time outside of formal decision making processes of the Foundation. It therefore encourages all trustees, personnel, and contracted associates to voluntarily disclose interests as they arise from time to time. It also encourages all trustees, personnel, and associates of the Foundation to proactively raise any potential conflicts of interests by anyone in the Foundation that they might be aware of, in accordance with the Foundation's whistleblower policy.

Nonetheless, to avoid real and perceived conflicts of interest, all trustees and personnel are strongly encouraged to refrain from maintaining or accepting any official, advisory, or membership role in any organisation that is a grantee or potential grantee or contractor or potential contractor of the Foundation. Maintaining such a safe distance from conflicts of interest in this way will enable the Foundation to operate with optimal integrity. Trustees and personnel are, however, encouraged to maintain strong, healthy, and engaged relations with, and an active presence to, a diverse range of LGBTI and ally activists and organizations across the southern Africa region in other ways that do not present conflicts of interest.

14. Acceptance of this policy

Every trustee and all personnel will be required to read this policy and acknowledge that they have read and understood its contents and agree to be bound by it. Conflict of interest provisions that correspond with this policy statement will be included in agreements with all contracted associates.