

CONFLICT OF INTEREST POLICY FOR HEART OF THE SW LEP CIC BOARD AND ALL GROUPS OR COMMITTEES OPERATING UNDER THE DELEGATED AUTHORITY OF THE BOARD

Purpose

The purpose of this document is to set out where conflicts of interest may arise and how they are to be managed with protection of the LEP CIC in mind.

It is applicable to all who participate in LEP activities, whether this is at Board level, or any of the committees which have delegated authority to act, or when representing the LEP in any capacity.

In particular, Directors of the LEP CIC have legal responsibilities under the Companies Act 2006 pertaining to how the LEP CIC operates, and in particular with regards to Conflicts of Interest. For example, the law says that amongst other things the Directors must:

1. try to make the company a success, using their skills, experience and judgment
2. follow the company's rules, shown in its articles of association
3. make decisions for the benefit of the company, not themselves
4. tell other members of the company if they might personally benefit from a transaction the company makes

A full account can be found at:

<https://www.gov.uk/running-a-limited-company/directors-responsibilities>

The policy and procedures described here provide additional detail to Clauses 18 through to 20 of the Articles of Association for the LEP CIC Directors on what it to be done around actual and potential Conflicts of Interest.

This policy also applies to the members of the following groups which all advise the LEP Board and/or operate under some level of delegated authority on behalf of the Board:

- Finance & Resources Committee
- Strategic Investment Panel
- Business Leadership Group
- People Leadership Group
- Place Leadership Group

Definitions

“Interested Person”

Any LEP CIC Board Director, Board member, principal officer, or member of a committee with board delegated powers, who has a direct or indirect conflict of interest, as defined below, is an interested person.

“Conflict of Interest”

Conflicts of interest cover circumstances where an individual is in a position to act on behalf of the LEP and in so doing gains any advantage (financial or otherwise) for themselves, or other organisations or individuals they have an association with, that would not otherwise be possible. The issue is that the individual may be viewed as acting with their own and not the LEPs interests in mind whilst supposedly representing the best interests of the LEP and it is such circumstances that need to be managed.

Some examples of potential conflicts of interest [with possible mitigations]:

- a. An Interested Person as defined above participates in the commissioning process for the purchase of a service for the LEP but has a financial interest in one of the organisations (this includes Local Authorities) that is a candidate for funding (see later for a definition of “Financial Interest”).
[It is best that Interested Persons not attend that part of a meetings where the purchase is under consideration and not take a role in authorising such a purchase.]
- b. An Interested Person participates in the commissioning process for the purchase of a service for the LEP but has a non-financial interest in one of the organisations (this includes Local Authorities) that is a candidate for funding e.g. is a member of the Council or Board of that organisation but receives no remuneration or other financial compensation for that role.
[As above, safest approach is to exclude such individuals from the process, and if it comes to light during the process, re-start it without that individual’s participation is best if possible.]
- c. An Interested Person is in a meeting where the views of both the LEP CIC and another organisation with which the Interested Person has some association could be given and may be different.
[It is best if the Interested Person makes the LEP aware in advance of such meetings where they think confusion around representation may occur and the LEP can then provide a briefing for the Interested Person to follow if that is appropriate. All Interested Persons should be clear in meetings in what capacity they are speaking and follow the LEP brief if available.]

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- d. An Interested Person is corresponding with a LEP stakeholder where the views of either the LEP CIC or another organisation with which the Interested Person has some association could be given and may be different.
[It is best in all forms of communication where such circumstances arise for the Interested Person to be clear who they are representing e.g. if corresponding by letter or e-mail make sure the appropriate letterhead or electronic signature is used and emphasise in the text of the correspondence which organisation's interests are being represented.]
- e. An Interested Person is in a position where they can participate in a decision in which their own reputational, political or other non-financial standing would be enhanced as an outcome but where a decision would not be in the best interests of the LEP CIC.
[The Interested Person should declare in which way they may benefit from the decision and it is best if they are excluded from the decision making process.]
- f. An Interested Person is in a position to determine a policy or strategy for the LEP CIC in such a way that will give another organisation that person is also associated with an unfair advantage over its competitors.
[The Interested Person should not have sole responsibility for sign off of such matters.]

“Financial Interest”

A person has a financial interest if the person has, directly or indirectly, through business, investment or family –

- Any land or property or an ownership or investment interest in any entity with which the LEP CIC has a transaction or arrangement, or
- a compensation arrangement with an organisation or with any entity or individual with which the LEP CIC has a transaction or arrangement, or
- a potential ownership or investment interest in, or compensation arrangement, or land or property with, any entity or individual with which the LEP CIC is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favours that are substantial in nature.

A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the appropriate board or committee decides that a conflict of interest exists.

Procedures

1. Duty to Disclose

In connection with any actual or possible conflicts of interest, an interested person must disclose the existence of his or her interest.

In situations involving LEP CIC Boards, and LEP CIC committees with delegated powers, that are considering a proposed transaction or arrangement, and where a conflict may arise, the interested person must be given the opportunity to disclose all material facts to the other attendees.

(In cases where an interested person is in a meeting which is not an LEP CIC Board or committee meeting, and where the views of both the LEP CIC and another organisation with which the interested person has some association could be given, the interested person must be clear as to who they are representing when they contribute to discussions and decisions in the meeting.)

2. Determining Whether a Conflict of Interest Exists

After disclosure of a potential conflict of interest and all material facts to an LEP CIC Board or committee, and after any discussion with the interested person, at the discretion of the chairperson of the meeting and the other attendees, the interested person may be asked to leave the meeting while the determination of a conflict of interest is discussed and decided upon by the remaining board or committee members.

3. Procedures for Addressing a Conflict of Interest

- a. An interested person may make a presentation at the board or committee meeting, but after such presentation, he/she may be required to leave the meeting during the discussion of, and the decision on, the transaction or arrangement that result in the conflict of interest.
- b. If it is decided that there is a conflict of interest that could damage the performance of the LEP CIC the simplest and safest option is for the interested person to be excluded from participating in the transaction or arrangement if it is possible to proceed without their involvement.
- c. Another option is for the interested person to be replaced by a suitably qualified or experienced person where after due diligence has been exercised it can be shown that no conflict of interest would arise
- d. Alternatively, the interested person can be retained and allowed to participate in the transaction or arrangement even though there is a potential conflict of interest, provided the committee or board is able to put in place a remedy to protect the LEP CIC.
- e. Another option is for the chairperson of the board or the committee to appoint a disinterested person or committee to investigate alternatives to

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the proposed transaction or arrangement and halt proceedings until this third party reports back.

4. Violations of the Conflicts of Interest Policy

- a. If the board or committee has reasonable cause to believe that someone has failed to disclose actual or possible conflicts of interest whilst acting on behalf of the LEP CIC, it shall inform that person of the basis for such belief and afford them an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the response of that individual and making such further investigation as may be warranted in the circumstances, the board or committee determines that the person has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action allowed it by the Articles of Association for the LEP CIC.

5. Records of Proceedings

The minutes of the board and all committees with board-delegated powers shall contain:

- a. the names of persons who disclosed or otherwise were found to have an actual or possible conflict of interest, the nature of the conflict of interest, any action taken to determine whether a conflict of interest was present, and the board's or committee's decision as to whether a conflict of interest in fact existed.
- b. the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

6. Compensation

- a. A person who receives compensation, directly or indirectly, from the LEP CIC for services is precluded from voting on matters pertaining to their compensation.
- b. A member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the LEP CIC for services is precluded from voting on matters pertaining to their compensation.

7. Annual Statements

Each board member, principal officer and member of a committee with board delegated powers shall annually sign a statement which affirms that such person:

- a. has received a copy of the conflicts of interest policy,
- b. has read and understands the policy,

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- c. has agreed to comply with the policy,
- d. has completed the disclosure of Interest form

8. Periodic Reviews

To ensure that the LEP CIC operates in a manner consistent with its purposes and that it does not engage in activities that could jeopardize its status a periodic review of LEP CIC governance may be conducted. The periodic reviews may include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable and are the results of arm's-length bargaining.
- b. Whether financial transactions, contracts for services, and other arrangements with individuals and organisations conform to written policies, are properly recorded, reflect reasonable payments for goods and services, do not result in inurement or impermissible private benefit.
- c. In conducting the periodic reviews the LEP CIC may, but need not, use outside advisors. If outside experts are used their use shall not relieve the LEP CIC board of Directors of its responsibility for ensuring that periodic reviews are conducted where appropriate.

Summary

A Conflict of Interest occurs when your private interests interfere, or appear to interfere, with the best interests of the LEP CIC.

A Conflict of Interest may also arise when your personal interests adversely impact your judgement.

Conflicts of interest can cause serious problems for you and damage the reputation of the LEP CIC.

You should avoid actual conflicts of interest as well as the appearance of them. You should disclose actual or potential conflicts of interest where they may occur.

You should be clear at all times who you are representing in meetings and any forms of written or electronic communication with others, and disclose other relevant affiliations that could represent a conflict where required.

You should make decisions on behalf the LEP CIC rather than your own personal interests or the interests of your family or friends.

(Author – Paul Taylor, LEP Strategy & Operations Manager March 2015. Updated Chris Garcia November 2017)