

**HAVANT & SOUTH DOWNS COLLEGE CORPORATION:
DISCLOSURE AND MANAGEMENT OF CONFLICTS OF INTEREST/DUTY**

1. Fundamental Principles

- 1.1 This Policy is based on the fundamental principle, enshrined in the College's Instrument & Articles of Government and relevant Charity law, that Governors, who are the equivalent of Charity Trustees, must make their decisions only in the best interests of the College. Accordingly, this means that they must consider the issue of the conflict of interest/duty so that any potential effect on decision making is eliminated. How they do this will depend on the circumstances, as outlined below.
- 1.2 It is a basic principle of charity law that Charity Trustees, such as Corporation members, should not profit from their position, although they are entitled to be reimbursed for expenses actually and reasonably incurred in undertaking the business of the charity. The arrangements for such reimbursement are enshrined in the College's Financial Regulations with which all Governors and co-options must comply. In addition, clause 11 of the Corporation's Instrument of Government allows the Corporation to insure them against liabilities arising from their office.
- 1.3 The Charities Act 2011 provides a detailed process whereby, exceptionally, Charity Trustees or persons connected to them, may be allowed to receive payment from the funds of the charity for goods or services provided by them to the charity under a contract for services. This procedure must be followed if a member or a co-option wishes to receive such a payment and the Board's approved protocol is detailed in the Appendix.
- 1.4 Charity Trustees are not allowed to receive remuneration simply for undertaking their duties as a Trustee without the consent of the Charity Commission. This is only granted in exceptional circumstances. Similarly, Charity Trustees are not allowed to be employed by the charity under a contract of service save where allowed by the charity's governing document (as is the case with the Principal and staff governors), or by law, or with the consent of the Charity Commission, which is only granted in exceptional circumstances.

2. Application of this Policy

- 2.1 This Policy applies to:
- All members of the Corporation;
 - Corporation committee members who are not members of the Corporation (co-options);
 - Senior staff attending Corporation and/or corporation committee meetings; and
 - Any persons connected to them.
- 2.2 The Charities Act 2011 defines a "connected person" which, in broad terms, means family, relatives or business partners of a trustee, as well as businesses in which a trustee has an interest through ownership or influence. The term includes a trustee's spouse or unmarried or civil partner, children, siblings, grandchildren and grandparents, as well as businesses where a trustee or family member holds at least one-fifth of the shareholding or voting rights. If in doubt about whether a person or business is a connected person, advice should be sought from the Clerk.

3. Purposes of the policy

- 1.1 It is the policy of Havant & South Downs College Corporation ("the Corporation") that all Governors, co-options and senior staff will keep to the absolute minimum all unavoidable conflicts of interest between the interests of the Corporation and the personal, professional and business interests of the member, co-option, or senior staff member concerned, and of any persons connected with them. This includes avoiding as far as possible perceptions of conflicts of interest, as well as potential and actual conflicts of interest.
- 1.2 The purposes of this policy are:

- To ensure that members comply with their legal duties, including in particular those under the Corporation's Instrument and Articles of Government, and their duty to act only in the best interests of the Corporation;
- To protect the integrity of the Corporation's decision-making process;
- To enable all outside parties dealing with the Corporation to have confidence in the Corporation's integrity; and
- To protect the integrity and reputations of the Corporation's members, committee members and senior staff and the reputation of the College.

4. Disclosure of interests

- 2.1 In accordance with the Instrument of Government, all members of the Corporation, co-options, and senior staff will be required to make a full written disclosure of any business or personal relationships held, financial or property interests held, or gifts or hospitality received, that could potentially result in a conflict of interests/duty. Any question about whether a member has an interest which should be disclosed should be referred in the first instance to the Clerk for a determination.
- 2.2 Written disclosures will be kept on a Register maintained by the Clerk to the Corporation and all members, committee members and senior staff are required to update their disclosure as and when their circumstances change. All disclosures will be reviewed on an annual basis at the beginning of each fiscal year. The register will be accessible by any person wishing to inspect it, in accordance with the Corporation's Instrument of Government.
- 2.3 The information provided in disclosures will be processed in accordance with the data protection principles set out in the Data Protection Act 1998. Data will be processed only to ensure that members [and committee members] act in the best interests of the Corporation. The information provided will not be used for any other purpose.

5. Organisation of meetings where a member has disclosed an interest

- 3.1 Where a member has previously disclosed an interest and the Chair, on advice from the Clerk, is satisfied that the interest is relevant to an item on the agenda for a meeting of the Corporation or of a corporation committee, the Chair will decide if the member, co-option, senior staff member concerned will receive the papers in respect of that item. If it is agreed that the individual may receive the papers, they will be sent for information only and the individual will not be permitted to comment on them.
- 3.2 Where the Corporation is seeking to take a decision by written resolution, as permitted in the Instrument of Government, any member who has disclosed an interest considered by the Chair, on the advice of the Clerk, to be relevant to the matter to be decided, will not be sent the proposed resolution and will not be allowed to vote on it.
- 3.3 In the course of meetings of the Corporation or of a corporation committee and all other relevant Corporation activities, all members, co-options and senior staff will be required to disclose any interests they have in a transaction or decision where they, their family, their employer or their close business or other associates will or may receive a benefit or gain or they have any other interest, such as membership of another College Board. If there is a failure to declare an interest that is known to the Chair and/or the Clerk the Chair of Corporation (or other such person) or the Clerk will declare that interest. After disclosure of any such interest, the individual concerned may be required by a majority vote of members not subject to such a conflicting interest to leave the room, unless expressly invited to remain, possibly in order to provide information on the matter in hand, whilst the matter is discussed. The individual will not be counted in the quorum for that part of the meeting and will not be permitted to vote on the question. In the case of all other activities, the individual concerned will not be permitted to participate in the consideration or discussion of the matter other than to disclose his or her conflict of interest.

- 3.4 All decisions of the Corporation or committee made following the declaration of a conflict of interest will be reported in the minutes of the meeting. The report will record:
- The nature and extent of the conflict;
 - An outline of the discussion;
 - The actions taken to manage the conflict.
- 3.5 Where a member, co-option or senior staff member benefits from any such decision, this will (if the Corporation's auditors advise this to be necessary) be reported in the annual report and accounts in accordance with relevant accounting requirements.
- 4. Failure to disclose a relevant interest**
- 4.1 The decision of the Chair as to whether a member has failed to disclose a relevant interest shall be final. Failure to disclose a conflicting interest may lead to a member or co-option being in breach of the Corporation's Code of Conduct as well as of this policy. It may also result in the member or co-option being subject to legal action and personal liability for breach of trust. Such breaches may lead to the Corporation considering the possibility of suspending or terminating the member's or co-option's membership of the Corporation [or committee respectively]. Such breaches by a senior member of staff may lead to disciplinary action being taken under the College's staff disciplinary procedures. The Corporation's Standing Orders details the procedure to be used where it is proposed that a member be suspended or have their membership terminated.
- 4.2 Failure by a member to disclose a conflicting interest may also be reported to the Secretary of State as principal charity law regulator. In the case of a serious breach of charitable duties by a Governor, the Secretary of State may refer the matter to the Charity Commission, which has the power under the Charities Act 2011 to remove a charity trustee and/or disqualify a person from acting as a Charity Trustee.

HAVANT & SOUTH DOWNS COLLEGE

Protocol for Dealing with the Award of Contracts in which Governors may hold an Interest

1. Context

- i) The Charity Commission has provided specific guidance on this issue which is available via this link <https://www.gov.uk/government/publications/trustee-expenses-and-payments-cc11>. In the context of this guidance, a Governor is deemed to be a Trustee.
- ii) The College's Instrument and Articles of Government do not expressly forbid any such payments but do require all Governors to declare fully their interests in accordance with this Policy on Disclosure and Management of Conflicts of Interests/Duty.
- iii) The expectation is that this is **an irregular occurrence** which must be properly managed when it arises.
- iv) There is a requirement that, in order for a contract to be awarded to a Board member or to a company/organisation in which a Board member has an interest, there must be a clear and agreed advantage to the College, financial or otherwise.

2. Definitions

- i) **Conflict of interest** - This term is used to mean any situation in which a Trustee's (Governor's) personal financial interests may (or may appear to) influence or affect the decisions made by a Trustee (Governor) for their Board. Conflicts of interest also apply to persons connected with the Governor, as defined below.
- ii) **Connected person** - In the context of Trustee (Governor) payment, this is defined by section 188 of the Charities Act and broadly means family, relatives or business partners of a trustee. It also covers businesses in which a Trustee (Governor) has an interest through ownership or influence. The term includes a trustee's spouse or unmarried or civil partner, children, siblings, grandchildren and grandparents, as well as businesses where a trustee or family member holds **at least one-fifth** of the shareholding or voting rights. If in doubt about whether a person or business is a connected person, please seek advice from the Clerk in the first instance.

3. Duties of the Board

On any occasion, the Board will:

- i) Manage the conflict of interest by making sure that the affected Governor(s) takes no part in any meeting or discussion affecting their own payment or potential payment.
- ii) Decide it is satisfied that paying that Governor for those services would be in the interests of the College, and the level of payment is reasonable.
- iii) Produce a written agreement, including specifying the exact (or maximum) amount to be paid.
- iv) Make sure that less than half of the governing body are (or are connected with people) receiving payments or benefits of any kind from the charity.

4. Procedure

The following procedure will be used:

1. If, at any time, there is the possibility that a Governor(s) could be involved in a contract in which he/she has an interest, the Clerk will be informed immediately.
2. The Clerk will ensure that the interest has been properly declared and will convene a small group of up to 4 Governors who have no personal interest in the contract. This group will normally comprise the Chair and/or Vice-Chair, the Principal, the Chair of the Audit Committee and 1 other Governor, unless any one of these is the Governor in question, when an alternative member of the Board will be involved instead.
3. This group will consider a written justification for the involvement of the organisation in which the Governor(s) has an interest and will take into account:
 - a. The specific reasons for inclusion of that organisation, particularly in relation to cost, value for money and specific skills; and the exceptional reasons why the organisation should be considered as a chosen supplier of goods or services.
 - b. How the potential conflict of interest will be effectively managed;
 - c. The basis of the likely contract.
4. The group will reach a judgement on whether the arrangements to contract may proceed. If it is agreed that there is a strong enough argument to include the organisation, the following scenarios apply:
 - a. The value of the contract is not subject to full competitive tendering, in which case, the group will recommend that the contract be awarded to the organisation and the Board will be asked to approve that recommendation. The Governor concerned may take no part in that approval process. The Group will always ensure in this case that the contract represents best value for money and that all College protocols have been followed.
 - b. The value of the contract is subject to full competitive tendering, in which case the organisation will be included on the list of organisations invited to tender. The inclusion of the organisation on any tender list **does not** indicate that the contract will be awarded to that organisation.
5. In a case where there is full competitive tendering, the tender must comply with the requirements of the tendering procedure as well as demonstrate clearly how the award of the contract would benefit the College. The Tender Panel will also include an independent member the Board who has not hitherto been involved in the process. If the Tender Panel agree that the contract should be awarded to the organisation in which the Governor(s) has an interest, then that decision must be formally approved by the full Board, irrespective of the value of the contract.
6. As far as possible, the Governor(s) holding an interest should be excluded from any tendering process. However, it is recognised that, particularly where the contract may be for specialist services only provided by that Governor, this may not be possible, so each case will be judged on its merits. However, in any case, no Governor holding an interest may take part in any decision about the awarding of the contract and will have no right of appeal if the Board decides that a contract will not be awarded, at any stage in this process.
7. When a contract is awarded, there will be a formal written agreement which will specify the exact or maximum amount of the contract. The format of the agreement may take a variety of forms, but will be approved by the Panel recommending the contract.
8. When a contract has been awarded, the Governor holding an interest is expected to demonstrate the highest level of professionalism in respect of that contract and to ensure that the services provided by the organisation/company with which they are associated are delivered to a high standard, in the best interests of the College. It may be necessary for specific arrangements to be put in place to monitor the contract and, where required, these will be agreed as part of the formal agreement for the work.