



# Ethical Business: Conflict of Interest Policy

(Policy for University Court and Court Committee members)

July 2014 (updated in August 2016)

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## HERIOT-WATT UNIVERSITY

### Ethical Business: Conflict of Interest Policy (Policy for University Court and Court Committee members)

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*“Standards of behaviour matter. They are particularly important where public money is being spent on public services or public functions. Citizens have a right to expect that holders of public office who take decisions which affect their lives should do so with impartiality, should be truthful about what they are doing and should use public money wisely. Society can expect better outcomes when decisions are made fairly and on merit and not influenced by personal or private interests. Organisations in every sector benefit from greater legitimacy when the public has confidence in their integrity. The UK economy benefits nationally and internationally from that confidence.”*

(‘Standards Matter: A review of best practice in promoting good behaviour in public life, Committee on Standards in Public Life’, 2013)

## 1. INTRODUCTION

In the conduct of its business as a place of learning, a public institution, and registered charity in Scotland, the University is committed to maintaining the highest of ethical standards, and recognises that, as a body in which public trust is placed, it must be seen at all times to be acting in accordance with good standards of governance.

With this aim, the University observes the Seven Principles of Public Life (the standards set by the Committee on Standards in Public Life, also known as the ‘Nolan Principles’). These form part of the Heriot-Watt Court Statement of Primary Responsibilities and are set out in the Scottish Code of Good Higher Education Governance as the principles that should guide Scottish universities in the conduct of their affairs. The seven Principles, which are defined in **Appendix 1**, are:

**Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty; and Leadership.**

## 2. POLICY AIMS AND PURPOSE

The aims of this **Ethical Business: Conflict of Interest Policy** are to ensure that the interests and general welfare of the University are promoted and protected and that any situation which could give rise to a conflict of interest is properly managed.

The University requires that its Court and Court Committee members and all staff of the University, and any others commissioned to act on behalf of the University, have a duty to avoid conflicts of interest which might be seen to compromise their ability properly to fulfil their obligations to the University.

The University seeks to ensure that its activities are undertaken in the best interests of students, staff and the University as a whole, and are not determined by considerations of personal gain.

These aims are reflected in the following Principles of Public Life in particular:

- **Selflessness** – *Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.*
- **Integrity** – *Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.*
- **Honesty** – *Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.*

**The purpose of this Policy is to heighten awareness about situations that may generate conflicts of interest, to make clear the kinds of situations that the University considers conflict of interest situations, and to explain the means by which potential and real conflicts of interest should be reported and managed.**

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### 3. SCOPE

**This Policy applies to all members of the governing body (the Court) and those serving on its committees. For the purposes of all guidance set out in this Conflict of Interest Policy and for simplicity of reading all such persons are described under the title of “governor” although in other contexts this terminology would normally only apply to members of the Court.**

A separate Conflict of Interest Policy exists for members of staff of the University. However, governors should note that the provisions of the Conflict of Interest Policy for staff will be considered to apply also to governors, where governors have been invited to participate in a relevant area of the University’s work. For example, on the basis of their experience, a governor might be invited to participate in a recruitment panel for a senior University appointment, or in an evaluation team for a contract tender. Governors in such situations have a duty to ensure that they are familiar with the relevant sections of the Conflict of Interest Policy for staff and any other relevant policies / financial regulations, and ensure that they can undertake the task with impartiality and freedom from conflict. The Policy is available at: [http://www1.hw.ac.uk/hr/p\\_index.php](http://www1.hw.ac.uk/hr/p_index.php)

Both the Conflict of Interest Policy for governors and the Conflict of Interest Policy for staff are applicable to staff members of the Court and its committees.

The scope of this Policy is relatively wide in its coverage of activities that may give rise to conflicts of interest and provides guidance on conflict scenarios and what governors must / must not do. It is not possible for policy guidance in the area of interests to be all inclusive, therefore individuals must apply reasonable judgement and **comply with the spirit and not just the narrow letter of the Policy**. If in doubt governors should seek the advice of the Secretary of the University.

Nothing in this Policy should be interpreted to detract from individuals’ statutory rights, in particular rights under the ‘Public Interest Disclosure Act 1998’, which are reflected in the University’s **Public Interest Disclosure (Whistleblowing) Policy**. This can be found at: <http://www1.hw.ac.uk/hr/htm/policies/PID%20Policy%20-%20Approved.pdf>

### 4. DEFINING CONFLICT OF INTEREST

Many differently worded definitions of conflict of interest are to be found. The following is clear and concise:

*“We can define a conflict of interest as a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as, say, a public official, an employee, or a professional.”<sup>1</sup>*

<sup>1</sup> (Source: Chris MacDonald, Michael McDonald, and Wayne Norman, “Charitable Conflicts of Interest”, Journal of Business Ethics 39:1-2, 67-74, August 2002. (p.68))

In order to judge whether a conflict of interest exists, it should be determined whether a private, personal or commercial interest is likely to interfere, or *appear* to interfere, with the impartial judgement of the individual in performing their duties. The objective test to apply is whether relevant others (e.g. colleagues, customers, members of the public, or potentially the press), in possession of the facts about the interest(s), might reasonably consider that the individual’s actions and decision-making could be affected.

Conflicts of interest will commonly arise in any large or complex institution such as a university. Most interests may be categorised broadly as **financial\* interests** or **non-financial interests** and each of these may involve a **direct** or an **indirect** interest. (\*a financial interest means anything which has a monetary value, e.g. direct monetary payments, equity interests, intellectual property rights etc.)

For the purposes of this Policy a **financial** conflict of interest is one in which there is, or appears to be, an opportunity for personal financial gain (**direct**) or the financial gain of a close relative or close friend or business associate (**indirect**), in particular where their finances are interdependent.

The level of financial interest should not be a determining factor in deciding whether a conflict should be disclosed. The University expects disclosure of any financial interest, however small.



A **non-financial interest** can take many forms and is generally one where there is, or appears to be, an opportunity for personal benefit, advantage or enhancement to prospects for the individual (**direct**), or similar gains to someone in their close family or a person with whom the individual has a close personal relationship (**indirect**).

**For the purposes of this Policy the following relationships to the individual should be considered as constituting a close family relationship:**

1. Spouse, and parents thereof;
2. Sons and daughters, and spouses thereof;
3. Parents, and spouses thereof;
4. Brothers and sisters, and spouses thereof;
5. Grandparents and grandchildren, and spouses thereof;
6. Domestic partner and parents thereof, including domestic partners of any individual in 2, 3, 4 and 5 of this definition; and
7. Any individual related by blood or affinity whose close association with the individual is the equivalent of a family relationship.

Other conflicts or potential conflicts that may arise may be described as **conflicts of loyalty**. The Charity Commission describes this as “a particular type of conflict of interest in which a trustee’s loyalty or duty to another person or organisation could prevent the trustee from making a decision only in the best interests of the charity.”

Situations that may give rise to governor conflicts of interest include, but are not limited to: external professional interests; business and commercial interests; and relationships within and outwith the University.

Other considerations include, for example, practices associated with giving or receiving of gifts and hospitality, use of university resources, handling of confidential information, and matters of loyalty and commitment.

## 5. UNIVERSITY MANAGEMENT OF CONFLICTS OF INTEREST

The University will treat as a conflict of interest situation any circumstances where a reasonable person might consider that the interests of the individual involved may interfere with the proper exercise of his or her judgement or decision-making on the University’s behalf. In so doing, the University will consider and act on any such situation identified, with the aim of ensuring that reasonable doubts arising as to the objectivity or loyalty of those acting in support of the University’s interests, responsibilities and general welfare are removed.

An actual, perceived or potential conflict of interest should not automatically imply any wrongdoing on the part of the individual; however, any private, personal, commercial or other interests which give rise to conflict of interest must be identified, appropriately reported and either eliminated or carefully managed.

**The approach of the University is therefore to:**

- **insist upon disclosure of all conflicts of interest;**
- **manage conflicts or potential conflicts where it is practicable to do so; and**
- **prohibit activities when necessary to protect individuals, the public interest or the interests or reputation of the University.**

## 6. CHARITY TRUSTEE RESPONSIBILITIES

The following sections of this Policy are relevant to members of the Court as the “Charity Trustees”. For the purposes of this Policy, the following should be considered to apply also to members of Court committees, i.e. all governors.

Governors owe a fiduciary duty to the University. This means that they owe it the highest loyalty,



acting in good faith and with proper purpose in serving its interests. Governors must not make any secret profit or gain at the University's expense, or allow their discretion to act in the best interests of the University to be fettered. Governors should not place themselves in a position where their interests conflict with those of the University and such a conflict is not appropriately addressed.

The Charities and Trustee Investment (Scotland) Act 2005 (the Act), provides the regulatory framework for Scottish charitable bodies. Section 66 of the Act sets out "general duty" requirements of Charity Trustees. Members of the Court are the "Charity Trustees" for the purposes of the Act.

The University expects all members of the Court to adhere to the provisions of the Act and extends those expectations to include co-opted independent lay members who are appointed to committees of the Court and who are not members of the Court, i.e. all governors.

## 6.1 General duty

Charity trustees are expected to put the interests of the charity before their own interests or those of any other person or organisation.

Governors must, in exercising their responsibilities towards the University, act in the interests of the University and put the interests of the University before their own interests or those of any other person or organisation). In so doing, they have an obligation to:

- a) seek, in good faith, to ensure that the University acts in a manner which is consistent with its purposes;
- b) act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person; and
- c) in circumstances capable of giving rise to a conflict of interest between the University and any person responsible for the appointment of them as a governor: (i) put the interests of the University before those of the other person, or (ii) where any other duty prevents the governor from doing so, disclose the conflicting interest to the University and refrain from participating in any deliberation or decision of other governors with respect to the matter in question.

The above statement of general duty reproduces the provisions of the Act. Any breach in the above, is treated in the Act as being "misconduct in the administration of the Charity". Trustees who fail to declare a conflict of interest essentially fail to comply with their trustee duties.

In further compliance with the Act, the University requires that governors take reasonable and practicable steps to ensure that a breach of any of the above, is corrected by the governor concerned and not repeated, and that any governor who has been in serious or persistent breach is removed from Court or Court committee membership. If a governor is aware of an undeclared conflict of interest affecting another governor they should notify the Chair.

## 7 CODE OF CONDUCT: GOVERNOR INTERESTS

For the purposes of this Policy, the University strongly encourages all governors to observe the guidance and principles of good conduct which is provided in the Scottish Government Model Code of Conduct for Members of the Devolved Public Bodies, provision for which is established in the Ethical Standards in Public Life etc Scotland Act 2000. The University Court does not come within the scope of the Model Code of Conduct; however, it recognises the good practice applicability of many of the provisions of the Model Code in relation to management of interests in and around the work of the Court and its committees, and has adopted and adapted some of these in its Conflict of Interest Policy. The Model Code highlights, amongst other things, the duties of governing body members not to use their position to promote private or external interests, or to secure privileges or exemptions for themselves or others, or to misuse the resources or information which are accessible to them in the course of their duties.

The **Model Code** can be found at: <http://www.scotland.gov.uk/Resource/0044/00442087.pdf>

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## 8 POTENTIAL CONFLICT OF INTEREST SITUATIONS: INTRODUCTION

The following sections of this Policy set out the key areas of interest that the University wishes to protect, and the necessary measures to manage actual and potential conflicts of interest. The examples given are not exhaustive and therefore good judgement should be applied.

## 9 GIFTS AND HOSPITALITY

### 9.1 Primary interests

- The University shall only give and accept gifts or hospitality for business purposes. Permissible hospitality and gifts will include, for example, ceremonial or promotional gifts, mementos or relatively low value gifts which are proportionate to circumstances and not of a scale or frequency that these might reasonably be judged inducements to undertake business or to influence business decisions. For the purposes of this Policy a low value gift should have a monetary value of not more than £50.00.
- All hospitality and accommodation provided by the University for governors to sustain them in the course of their work or in the course of travel related to University business is deemed to be for business purposes. The principles of good quality and value for money will apply to such provisions.

### 9.2 In support of the above:

- gifts may be freely received where these are low value gifts, as described above, where hospitality offered is associated with business duties, and is proportionate, i.e. could reasonably be regarded as appropriate, and where gifts are being received on behalf of the University. Gifts of money should never be accepted;
- acting in their capacity as governors, individuals must not ask for gifts or hospitality\*(\*of bodies external to the University) and will accept personal responsibility for all decisions connected with the offer or acceptance of gifts or hospitality offered. This includes decisions that should be taken for the purpose of avoiding risk of damage to the public perception of fair and transparent dealings;
- repeated gifts and hospitality\*(\*provided outside of the University) must not be accepted from the same source. Care must also be taken not to accept gifts or hospitality from any individual or organisation that might stand to gain from a decision of the University and which a bystander might reasonably consider could have a bearing on the judgement of the governor. Individuals should also consider whether any gifts received by another body in which they have an interest might also influence their judgement, e.g. gifts received by a cohabitee, a partnership the individual is a partner in, or a company in which the individual has a controlling interest;
- governors should make themselves familiar with the terms of The Bribery Act 2010 which provides for the offence of bribing another person and offence relating to being bribed. The University **Ethical Business: Bribery Prevention Policy** can be found at: <http://www1.hw.ac.uk/policy/ethical-business-bribery-prevention-policy.pdf>
- following the policy guidance provided, governors should record receipt of gifts in their annual Register of Interests submission to the Secretary of the University, via the Register of Interest Form which forms part of this Policy.

Further guidance on gifts and hospitality can be found in the **Ethical Business: Gifts and Hospitality Policy**. <https://www.sbe.hw.ac.uk/documents/ethical-business-gifts-hospitality-policy.pdf> )

This part of the Policy should be read in conjunction also with the University's **Financial Regulations** at: <http://www1.hw.ac.uk/reference/financial/regulations.pdf>

## 10 USE OF UNIVERSITY RESOURCES

### 10.1 Primary interests

- The University's resources are provided for the advancement of and to promote the University's

scholarship and educational aims. Resources in this context include facilities, equipment, utilities/other consumable supplies, services and staff and students of the University.

- The University aims to provide reasonable levels of resource (staff and non-staff), as and when these might be required to assist governors in carrying out duties associated with their University governance role. This applies especially to the body of independent lay governors.
- The University will have in place arrangements which ensure the timely reimbursement of all reasonable travel and other expenses incurred by governors in the course of their work for the University.

## 10.2 In support of the above:

- the University's resources must not be misused. In general, neither governors or staff members may use resources of the University for personal benefit or gain or, without an appropriate level of authorisation and agreement, or for the benefit or gain of an external individual, group, company or other organisation;
- the University's resources must not be used to support outside professional activities or for any other non-University purpose unless, by exception, it is agreed that potential benefits to the University might be accrued through deployment of the resources, for example, to promote beneficial relationships with other organisations;
- the express permission of the Vice-Principal (Dubai/Malaysia) or the relevant Head of School or Professional Service is required in all cases of proposed use of University resources in circumstances other than to facilitate the regular work of the University;
- reimbursement of travel and other expenses will be made only in accordance with the University **Travel and Expenses Policy** which can be found at: <http://intranet.hw.ac.uk/ps/gls/procurement/Travel%20Information/Travel%20Expenses%20Policy.pdf> Further information and guidance will be made available to governors via the Secretariat, e.g. on the availability of good quality local hotel accommodation which is priced within the range allowable in the Travel and Expenses Policy.
- arrangements for the reimbursement of expenses incurred by any governor in the course of their Court/Court committee related duties shall be authorised by the Secretary of the University.

This part of the Policy should be read in conjunction with the University's **Financial Regulations** at: <http://www1.hw.ac.uk/reference/financial/regulations.pdf>

## 11 CONFIDENTIAL INFORMATION

Governors of the University will frequently receive information of a confidential or private nature in the course of their work for the University which is not yet public, or which may not be intended to be made public. Confidential information can be taken to mean any information to which the common law duty of confidence applies. The duty of confidence arises when information has been received in such a way that the person receiving the information was aware, or should have been aware, that the information was being shared on the basis of confidentiality and/or that the information, from its character, was obviously confidential.

Circumstances that would make disclosure of confidential information lawful are: where the body to whom the information relates has consented; where disclosure is in the public interest; or where there is a legal obligation to divulge the information.

Governors should not use, exploit or disclose information of a confidential nature which they have received in the course of the work for the University, other than in the proper execution of their duties, through the appropriate channels and with appropriate levels of authorisation. This includes confidential information which relates to the University and its work, its staff or its students. It also includes confidential Third Party information and any information of a confidential or secret nature relating to any Third Party or its business. Governors should be aware that the Common Law duty not to disclose confidential information extends beyond the terms of their membership of the Court or Court committee, as the case may be.

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Governors should note that the advice set out in the Scottish Government 'Model Code of Conduct for Members of Devolved Public Bodies' includes: *"It is unacceptable to disclose any information to which you have privileged access, for example derived from a confidential document, either orally or in writing. In the case of other documents and information, you are requested to exercise your judgement as to what should or should not be made available to outside bodies or individuals. In any event, such information should never be used for the purpose of personal or financial gain, or used in such a way as to bring the public body into disrepute."*

The University recognises that instances may arise when it is in the University's interest for a governor to take soundings on a topic from an external body, e.g. to help inform decision-making or in developing a line of approach. Such support can be helpful, in particular where the individual's area of experience or affiliations are relevant to the matter in hand. In those circumstances; however, careful judgement and discretion must be applied in order to preserve the required degree of confidentiality. Guidance should be sought from the Secretary of the University.

Nothing in this Policy should be interpreted to detract from the University's obligations, in accordance with agreed procedures, to comply with the provisions of the **Freedom of Information (Scotland) Act 2002**. Information on how the University meets its Freedom of Information obligations can be found on its webpages at: <http://www1.hw.ac.uk/archive/foi.htm>

This part of the Policy should be read in conjunction with the University **Policy on Intellectual Property, Confidential Information and Commercialisation Policy**, other IP policy advice which can be found at: [http://www1.hw.ac.uk/hr/p\\_intellectual\\_property.php](http://www1.hw.ac.uk/hr/p_intellectual_property.php) and the University's **Information Security Policies** which can be found at: <http://www1.hw.ac.uk/archive/ism-policies.htm>

## 12 EXAMPLES OF GOVERNOR CONFLICTS OF INTEREST

### 12.1 What the University Statutes say (Statute 4: The Court)

The University's constitution requires that a person proposed for appointment as a member of the Court shall declare his or her interest according to the body with whom the appointment lies, where the individual, or the individual's partnership, firm or employer is in a contractual relationship with the University and/or any member of the Heriot-Watt Group for professional services or other services rendered, or to be rendered. In accordance with Office of the Scottish Charity Regulator guidance, this Policy extends to include circumstances in which the governor has *any connection* with the provider or potential provider of services to the University.

A governor, having such an interest, must declare that interest annually, via the Register of Interest Form and at any meeting at which it is discussed, and must withdraw from discussion and decision-making on the matter in question.

### 12.2 Examples of areas which should be considered to constitute conflicts of interest are described below:

#### Direct financial gain:

this may include, for example, the award of a contract to another organisation in which the governor has an interest and from which the governor stands to gain financially;

this may include, for example, the employment of a governor in a separate post within the University, even if the governor has resigned in order to take up the employment.

#### Indirect financial gain:

this may include, for example, employment or commissioning of services by the University of a spouse or partner of a governor where their finances are interdependent.

#### Non financial gain:

this could occur, for example, when a governor is a user of any service or facility provided by the

University where decision-making about that service or facility might be to the benefit of the governor as a user.

**Conflict of loyalty:**

this could occur, for example, where:

- a relative or close friend of a governor is employed by the University and working in an area that may be affected by a decision of the Court;
- a governor is appointed by a body which represents a different set of interests to those of the University and circumstances bring these two sets of interests into conflict;
- a governor succumbs to lobbying, whether from inside or outside of the University. It is important that all governors are fair, transparent and exercise independent judgement to act in the best interests of the University as a whole. Whilst governors are encouraged to engage with the University's internal stakeholders, they should guard against the influence of those who might seek, for example, to lobby on a particular cause in order to gain preferential or higher priority attention. Governors should be neither too remote from or too close to the University's staff. Equally, governors should avoid external lobbying activity, whether this involves the external body's direct lobbying to influence the governor's decision-making or in seeking advice from the governor on how to influence the governing body;
- a governor has been appointed to another body which has a particular relationship with the University, e.g. a landlord: tenant relationship where there will be conflicting interests around the terms of the agreement in place, future rent levels for instance.

**12.3 Serving on the Board of a body associated with the University**

A University governor may be appointed, or nominated by the University, as a member serving on the board of a body which has some affiliation to the University, for example, a wholly owned subsidiary. In such a case the individual has a legal duty, in fulfilling their responsibilities as a board director to that other body, to act in its interests and to be fully aware of their duties and responsibilities as a director, as set out in Companies Act legislation.

It is possible that conflicts of interest might arise between that body and the University. It is the responsibility of any governor in this position to be alert to the dangers of potential or actual conflicts and to take advice from the the Secretary of the University and /or the Chair of Court about their responsibilities to the University and to the other body. This will include the question of declaration of interests.

Due to the clear potential for conflict of interest in such cross-Board representations, such arrangements must be kept under continual monitoring and review by the Chair of the Court or Court Committee and the individual governor concerned. Where any concerns arise, advice should be sought from the Secretary of the University.

Governors should be vigilant also of any position that they may adopt in an advisory capacity to a board associated with the University and should take the necessary steps to ensure against the risk of being defined as a shadow director.

**12.4 Irreconcilable conflicts**

Instances may arise where a conflict of interest is not reconcilable. Examples would include:

- where an individual is a current member of staff or a governor in another Scottish university or other organisation with which the University could be deemed to be in competition. Such a situation would be considered incompatible with a governing body appointment in the University;
- where a governor holds an executive or non-executive position within a body which is engaged in a legal dispute with the University;
- commission to an external examiner position. A serving governor cannot serve as an external examiner for any programme of the University.



## 12.5 Conflict of commitment

The University expects that its governors will be able to make the necessary commitment of time and involvement to fulfil their governance responsibilities, thereby applying their knowledge and experience to the role to their fullest extent. As a main principle, 'The Scottish Code of Good Higher Education Governance' requires that members of the governing body "shall attend its meetings regularly and actively participate in its proceedings."

To assist governors in their diary planning, meeting dates of the Court and its Committees shall normally be set and agreed with the relevant memberships two years in advance. Opportunities shall also be provided to facilitate members' participation in meetings via telephone conferencing or Skype in exceptional instances where a member's circumstances mean that attendance in person will be difficult to arrange. Governors are expected to attend most of their meetings in the year in person.

It is expected that governors will recognise that where they have been unable, or know that they shall be unable, to attend several meetings in any one annual session of meetings (whether in person or facilitated via audio/audio-visual means), and certainly where they know that they will be absent for a third meeting in succession, that they are possibly in a conflict of commitment situation. In such situations, the governor should, in advance, advise the Chair of the Court or, in the case of co-opted independent lay members of a Court Committee, the Chair of the Committee, so that the circumstances surrounding the anticipated continued absences may be properly understood and a resolution identified.

The following documents, issued by the Secretary of the University, shall each set out the estimated required time commitment associated with governor roles: role descriptions/further particulars; election guidance; and letters of appointment. Additionally, rules on the conduct of Court business, as determined by the Court, shall include advice on rules and procedures to be followed in relation to the required level of participation at meetings.

## 12.6 Conflicts that may arise for staff and student governors

Staff and student governors are full members of the Court with the same rights, responsibilities and public accountability as appointed independent members.

Being an impartial governor, establishing policy at a strategic level and also being a member of staff involved in the day-to-day operation of the University, or in a position in the Student Union is a difficult balance to achieve. Therefore such members must be especially careful to guard against potential conflicts that may arise in their dual role. For example, neither staff or student members should seek to have issues addressed at the level of the Court or one of its committees where the appropriate route for resolution is through the executive management structure.

As governors, students and staff members must not lobby, either on their own or others' behalf or act as an adviser to others on how to influence the governing body, or purport to 'represent' the interests of any particular constituency. An important distinction is that staff and student governors are representative of the constituencies from which they are drawn, but do not represent these constituencies. All governors have an over-riding corporate responsibility and primary loyalty to the corporate role of the Court and share fully a governor's duty of objectivity, acting in the interests of the University as a whole and its long term welfare. To this end neither staff or student members can be mandated (except if acting under approved arrangements as a proxy for another member of the Court), neither should the role of a staff governor be defined or limited by any line management responsibilities to the senior executive.

It is the duty of staff and student governors to declare an interest as and when discussion and decision-making might stray into an area in which the member has an interest, for example, where the decision will impact on a School or Professional Service to which a staff governors belongs, or the employees in that area. Whether or not the member is then asked to withdraw from the meeting room, or simply not participate in the deliberations, they will be bound by the same rules of confidentiality which apply to all members of the Court.



## 12.7 Audit services

In accordance with the University's constitution, no member of the Court or any member of the organisation to which he/she belongs may hold office as the University's External Auditor. For the purposes of this Policy this restriction extends to all governors.

The Court is responsible for ensuring the objectivity and independence of the appointed External Auditor. Therefore, any appointment of an External Auditor to provide non-audit services during the period of their appointment as External Auditor shall be reported to the Court.

Membership of the Audit and Risk Committee shall comprise only independent lay members and shall exclude the Chairs of the Court and the Finance Committee.

## 13 GOVERNOR REGISTER OF INTERESTS

### 13.1 Registering interests

The University observes the good practice for registration of governing body members' interests as set out in The Scottish Government 'Model Code of Conduct for Members of Devolved Public Bodies'.

The Register of Interest Form for Heriot-Watt University governors reflects the guidance provided in the Model Code. This is shown in **Appendix 2**.

### 13.2 Interests to be included in the Register

Governors have registerable interests in the following categories which are set out in the Register of Interests Form. This is not an exhaustive list and provision is included in the Form for declaration of any other relevant interests.

#### 1. Remuneration

Where remuneration is received by virtue of being: employed; self-employed; the holder of an office; a director of an undertaking; a partner in a firm; or undertaking a trade, profession or vocation or any other work. Where an allowance received in relation to membership of any organisation this is also registerable.

#### 2. Related undertakings

Directorships which are themselves not remunerated but where the company (or other undertaking) in question is a subsidiary of, or a parent of, a company (or other undertaking) in which the governor holds a remunerated directorship.

#### 3. Non remunerated directorships

Where the directorship may be significant to, of relevance to, or bear upon, the work and operation of the University.

#### 4. Contracts

Where the governor, or a firm in which the governor is a partner, or an undertaking in which the governor is a director or in which the governor holds shares of a value as set out in 6, below, has made a contract with the University, (i) under which goods or services are to be provided, or works are to be executed; and (ii) which has not been fully discharged.

#### 5. Houses, land and buildings

Where there is ownership or any other right or interest in houses, land and buildings, which may be significant to, of relevance to, or bear upon, the work and operation of the University.

#### 6. Interest in shares and securities

Where the governor is aware they have an interest in shares comprised in the share capital of a company or other body which may be significant to, of relevance to, or bear upon, the work and operation of the University, and the nominal value of the shares is: (i) greater than 1% of the issued share capital of the company or other body; or (ii) greater than £25,000. For the avoidance of doubt, where such shares are under discretionary management by a third party,

there is no requirement to include these in the Register.

**7. Gifts and hospitality**

Where gifts or hospitality have been received within the past year of Court / Court Committee membership, **unless** these are isolated gifts of a trivial nature and of no higher value than £50.00; hospitality has been associated with governor duties and would reasonably be regarded as appropriate; or the gift was received on behalf of the University.

**8. Non-financial interests**

Where there is a non-financial interest which may be significant to, of relevance to, or bear upon the work and operation of the University. This would include, for example, memberships or holding of office in other public bodies, clubs, societies, voluntary and other organisations.

**14 MAKING A DECLARATION**

**14.1 When to make a declaration**

Declaration of interests in the proceedings of the work of the Court and its committees, together with the policy on registration of interests, ensures transparency where conflicting interests might influence, or be thought to influence individuals' actions.

Interests that require declaration may be **financial** or **non-financial** and these may or may not fall into the category of registerable interests. Most interests requiring declaration will be personal interests, but governors may also have to consider whether the **interests of other persons** might require them to make a declaration.

When judging whether an interest requires to be declared, a governor should ask themselves whether they consider that the interest might influence, or be thought to influence their actions and decision-making. They should also apply an **objective test** and consider whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it would be likely to prejudice discussion and decision-making in their role as a member of a public body. If a governor is unsure whether a conflict of interest exists they should seek advice from the Chair of Court and/or the Secretary of the University. If doubt remains it is advisable to err on the side of caution.

The following section describes interests that require to be declared. In each case there is no need to declare where the governor believes that the interest is sufficiently remote and insignificant to fail the objective test:

- **Financial interests.**

Financial interests, which may include registerable interests, must be declared\*.

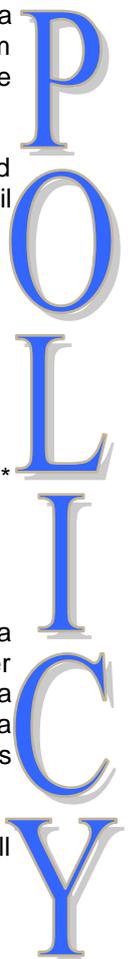
- **Non-financial interests**

Non-Financial interests which are registerable interests must be declared\* and also declared\* where the interest might fall within the terms of the objective test.

- **Financial interests of other persons**

Financial interests of other persons must be declared\* where the other person is: (i) a spouse, a civil partner or a co-habitee; (ii) a close relative, close friend or close associate; (iii) an employer or a partner in a firm; (iv) a body (or subsidiary or parent of a body) of which the governor is a remunerated member or director; (v) a person from whom the governor has received a registerable gift or registerable hospitality; or (vi) a person from whom the governor has received registerable expenses.

\* It will be normal practice in the cases of declaration marked with an asterisk that the governor will be requested by the Chair to withdraw from the meeting room (see also section 14.2 below).



- **Non-financial interests of other persons**

Non-financial interests of other persons must be declared where the other person is: (i) a spouse, a civil partner or a co-habitee; (ii) a close relative, close friend or close associate; (iii) an employer or a partner in a firm; (iv) a body (or subsidiary or parent of a body) of which you are a remunerated member or director; or (v) a person from whom you have received a registerable gift or registerable hospitality. In the case of a declaration being made in this category, it would only be advisable for the governor to withdraw from the meeting if the interest is clear and substantial.

## 14.2 Arrangements for making a declaration at a meeting

A governor who has an interest to declare should make the declaration as soon as practicable at a meeting where the interest arises. The correct form should be to state "I declare an interest" and then go on to provide sufficient information such that others present at the meeting will understand the nature of the interest. It will not normally be necessary to provide detailed information about the interest declared.

A standard agenda item should appear at the beginning of each meeting of the Court or one of its committees inviting declarations of interest by the Chair.

Should the Chair omit to make such an invitation, the responsibility nevertheless remains with individual governors to declare an interest when it is appropriate to do so.

Declarations and the actions taken at the meeting in relation to declarations will be recorded in the minutes of the meeting.

It will be normal practice for a governor who has a financial interest or a non-financial interest deemed prejudicial to be asked by the Chair on behalf of the Court or the committee to withdraw completely from the meeting during discussion/decision making on the matter in question. Certainly, the individual concerned must not participate in the discussion, vote or be counted in the quorum for that item of business. There may be certain instances where a individual has a non-financial interest which is not considered through the objective test to be prejudicial. In such cases the individual should declare the interest and may be permitted to participate in discussion and contribute to decisionmaking. Where there is any doubt in the mind of the individual they should make a declaration and withdraw.

## 15 ROLES AND RESPONSIBILITIES

It is the responsibility of the **University Court** to approve this Policy and any subsequent revisions to it, and to satisfy itself that the Policy is effective.

It is the responsibility of the **Chair of Court** and **Chairs of Court committees** to implement the practice of inviting declaration of interests at each meeting of the Court or Court committee and to manage any declared interests in accordance with the Conflict of Interest Policy.

It is the responsibility of **individual governors** to ensure that they comply with the Policy, both in letter and in spirit.

**Individual governors** have a duty to report, not only any conflict of interest or potential conflict of interest that may arise relating to them, but to report on any conflicts disclosed to them or which have become known to them relating to other governors which they have reason to suspect are not being addressed in accordance with this Policy. If necessary, the provisions of the University **Public Interest Disclosure (Whistleblowing) Policy** may be called on (for staff and Court members). This can be found at: <http://www1.hw.ac.uk/hr/html/policies/PID%20Policy%20-%20Approved.pdf>

It is the responsibility of the **Audit and Risk Committee** of the Court to satisfy itself that the Register of Interests is appropriately maintained and the relevant controls and assurances are in place to support effective management of actual and potential conflicts of interest.

It is the responsibility of the **Secretary of the University** to secure the operation of the Policy across

across the membership of the Court and its Committees and maintain the Register of Interests of governors, facilitating public access to the Register.

Responsibility for the management of conflicts of interest relating to governors lies with the **Secretary of the University**.

## **16 POLICY IMPLEMENTATION**

It is the duty of all governors to make timely disclosure of any actual or perceived conflict of interest to the Secretary of the University. Where there is doubt then advice and guidance can be sought from the Chair and/or the Secretary of the University. Staff member governors should make the disclosure to the Secretary of the University in relation to conflicts or potential conflicts relating to their governor role.

### **16.1 Register of Interests and Register of Interest Form**

The Register of Interests of University governors shall be maintained by the Secretary of the University in accordance with the supporting Procedures set out at the end of this Policy.

All governors shall be asked by the Secretary of the University within the first month of joining membership of the Court or one of its Committees to complete a Register of Interest Form. These must be completed and returned in accordance with the Procedures set out at the end of this Policy.

### **16.2 Publication of the Register of Interests**

The Register of governors' interests forms part of the University's Freedom of Information (Scotland) Act (FOISA) Publication scheme.

The Register shall be published on the University's webpages in accordance with the principle of ease of public access to the information under Freedom of Information and with guidance set out in the Scottish Code of Good Higher Education Governance. In consultation with the FOI and Data Protection Officer, appropriate considerations shall be given to determine whether any of the information held on either Register is exempt from the public right of access under the FOISA, for example, where releasing the information would breach any Data Protection Principles.

## **17 BREACH OF DUTY TO DECLARE AN INTEREST**

Failure of a governor to disclose an actual or perceived conflict of interest may, depending on the seriousness of the case, lead to removal from membership of the Court and/or a Committee of the Court as relevant.

## **18 MONITORING AND EVALUATION**

A rolling programme of review will be maintained by the Secretary of the University to ensure that up-to-date submissions have been made by governors to the Register of Interests which form a part of this Conflict of Interest Policy.

The effectiveness of the Policy may be evaluated through inclusion in the internal audit programme of review.

Governors will be invited on an annual basis to make suggestions or recommendations for revision on any aspect of the Policy in the light of their experience, changing circumstances or emerging risks.

The Policy will be reviewed in full every five years, or earlier as necessary, e.g. in accordance with any changing or new legislation.

## 19 RELATED POLICIES AND FURTHER REFERENCE

### Charter and Statutes /Policies / Regulations:

#### University Charter and Statutes

<http://www1.hw.ac.uk/ordinances/charter-and-statutes.htm>

#### Public Interest Disclosure (Whistleblowing) Policy

<http://www1.hw.ac.uk/hr/html/policies/PID%20Policy%20-%20Approved.pdf>

#### Ethical Business: Bribery Prevention Policy

<http://www.hw.ac.uk/documents/ethical-business-bribery-prevention-policy.pdf>

#### Gifts and Hospitality Policy

#### Travel and Expenses Policy

<http://intranet.hw.ac.uk/ps/gls/procurement/Travel%20Information/Travel%20Expenses%20Policy.pdf>

#### University Financial Regulations

<http://www1.hw.ac.uk/reference/financial/regulations.pdf>

#### Fraud Prevention and Response Plan

<http://www1.hw.ac.uk/reference/finance/fraud-prevention-plan.pdf>

### Further reference:

#### Scottish Code of Good Higher Education Governance

<http://www.scottishuniversitygovernance.ac.uk/wp-content/uploads/2013/07/Scottish-Code-of-Good-HE-Governance.pdf>

#### Charities and Trustee Investment (Scotland) Act 2005

<http://www.legislation.gov.uk/asp/2005/10/contents>

#### Ethical Standards in Public Life etc (Scotland) Act 2000

<http://www.legislation.gov.uk/asp/2000/7/contents>

#### Model Code of Conduct for Members of Devolved Public Bodies

<http://www.scotland.gov.uk/Publications/2014/02/4841>

#### Freedom of Information (Scotland) Act 2002

<http://www.legislation.gov.uk/asp/2002/13/contents>

#### Committee on Standards in Public Life

<http://www.public-standards.gov.uk/>

#### The Bribery Act 2010

<http://www.legislation.gov.uk/ukpga/2010/23/contents>

#### The UK Corporate Governance Code (Financial Reporting Council)

<https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.pdf>

#### Companies Act 2006

<http://www.legislation.gov.uk/ukpga/2006/46/contents>

## 20 FURTHER HELP AND ADVICE

Further help and advice on interpretation or implementation of this Policy may be sought from the Secretary of the University or the Director of Governance & Legal Services.

The Chair of Court should also be advised on any conflict of interest situation that might arise.

## 21 POLICY VERSION AND HISTORY

Version No	Date of Approval	Approving Authority	Brief Description of Amendment
V.1 Oct 14	13.10.2014	The Court	New policy in 2014.
V1.2 Aug 16	7.10.2016	The Court	Definition of close family members and minor amendments

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# Procedures

## Ethical Business: Conflict of Interest Policy (Policy for University governors)

**The following procedures relate to implementation of the Ethical Business: Conflict of Interest Policy:**

### **1 COLLECTION OF INFORMATION FOR THE GOVERNOR REGISTER OF INTERESTS**

As soon as practicable, following that start of a governor's term of office, the Secretary of the University shall invite the new member to complete and return a Register of Interest Form. The completed form should be returned within one month of the date of request.

The Secretary of the University shall issue governors annually a copy of their previously submitted Register of Interest Form with an invitation to review their Register entry and provide any appropriate updates. The completed form should be returned within one month of the date of request.

It is the responsibility of governors whose circumstances change in such a way as to require a change or an addition to their entry in the Register of Interests to make arrangements to report the change in circumstances within one month of the change.

Staff members of Court must ensure that they submit Register of Interest information annually in accordance with both the Register of Interest Policy for governors and the Register of Interest Policy for staff. Each Policy has a different form.