

EDINBURGH, LOTHIANS and BORDERS BRANCH

(a charity registered in Scotland No: SC009110)



BRANCH CONFLICTS OF INTEREST POLICY

BRANCH DOCUMENTATION

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1. INTRODUCTION

The following is an extract from Office of the Scottish Charity Regulator (OSCR) Guidance. “The vast majority of charity trustees are trying their best to do a good job. Where people raise concerns with us about charities, it's usually caused by a lack of awareness and support or a failure in decision making, rather than intentional misconduct”.

This document is intended to inform and guide charity trustees of the Edinburgh Lothians and Borders Branch of the RAF Association in relation to ‘conflict of interest’.

2. POLICY STATEMENT

All Committee Members & Charity Trustees of the Edinburgh, Lothians and Borders Branch of the RAF Association; must put the interests of the Branch (and thus the Association) before their own interests or those of any other person or organisation. Where they cannot do that, there may be a conflict of interest.

A conflict of interest exists when the duty to act in the interests of the charity conflicts with personal or business interest in relation to that matter.

3. POLICY

All references to “charity trustee” within this document refer to “Committee Members/Trustees” of the Edinburgh, Lothians and Borders Branch of the RAF Association.

It's vital that charity trustees understand what the Branch and the RAF Association were set up to do, how they are trying to achieve their aims and who it is trying to help i.e. Members and Beneficiaries of the RAF Family.

This information can be found within the RAF Association Governance Documents (Royal Charter and Rules/By-laws) and other related Policies and Procedures. The Association's Governance Documents detail the Association's purposes, and the rules for how it should operate. Charity Trustees are required to follow these rules; as well as the charity law governing the Branch's registration as a Charity in Scotland.

For ease of reference, a list of relevant documents can be found on the Edinburgh, Lothians and Borders Branch Website (Governance):
www.edinburghrafa.org.uk

A copy of “Section 66, 69 & 70” of the Charities and Trustee Investment (Scotland) Act 2005 is attached to this Policy as Annex A and B.

A charity trustee must always put the interests of the Association and the Edinburgh, Lothians and Borders Branch first. Charity trustees should be aware of any matters that affect the organisation where they may have a personal interest, and identify any conflicts of interest so that they can prevent them from affecting any decisions they make.

4. PROCEDURE

The following procedure will apply to all Edinburgh, Lothians and Borders Branch Committee/Trustees; and reflects Rule 40 within the RAF Association Governance documents in relation to situations arising from a conflict of interest within the Association's Central Council (Board of Trustees):

- Whenever a charity trustee finds themselves in a situation that is reasonably likely to give rise to a conflict of interest with or in respect of the Association, they must declare their interest to the Branch Committee/Trustees.

- If any question arises as to whether a charity trustee has a conflict of interest with or in respect of the Association, the question shall be decided by a majority decision of the other members of the Branch Committee/Trustees.
- Whenever a charity trustee has a conflict of interest either in relation to a matter to be discussed at a meeting or a decision taken by other means the charity trustee must:
 - a) Remain only for such part of the meeting as in the view of the other members of the Branch Committee/Trustees is necessary to inform the debate;
 - b) Not be counted in the quorum for that part of the meeting; and
 - c) Withdraw during the vote and have no vote on the matter.

NOTE:

Nothing in the above procedure precludes a charity trustee declaring a conflict of interest prior to or during any relevant decision making process.

5. RECORDING

It is important (for all concerned) that a written record is kept of a particular “conflict” situation and what the charity did about it, see Annex C, including:

Recording who the conflict affected.

Recording when the conflict was identified and declared.

Recording what was discussed and decided.

Recording who withdrew from the decisions and how the remaining charity trustees made a decision in the best interests of the charity.

Maintain the charity's “Register of Interests”.

NOTE:

Each instance of Conflict should be taken as a “learning opportunity” i.e. to make improvements to the charity's policy and procedures and where necessary seek professional advice.

6. REGISTER OF INTEREST

A record of the personal, business and financial interests of a charity trustee “that may” potentially lead to a conflict of interest.

As part of the charity's initial trustee induction; a charity trustee will make a “Declaration” as laid out in Annex.D attached to this policy.

In addition to the above Declaration; a charity trustee will declare any known, potential and/or perceived conflicts of interest – see attached Register of relevant Interests Proforma at Annex.E to this policy. NOTE: Individual proformas will form the Register of Interests.

These declarations will be made available by the Branch Secretary; and will be kept securely on file by the Branch Secretary, protected in accordance with the RAF Association and Edinburgh, Lothians and Borders Branch Data Protection Policies and procedures.

The above declarations will be reviewed annually by all the charity trustees, immediately after the Branch Annual General Meeting.

7. LEGAL FRAMEWORK

Governing Documents – The Royal Charter, Rules and Byelaws of the Royal Air Forces Association | Approved by HM The Queen on 16 November 2016 and associated Rules & By-laws.

Charity trustee general duties - Section 66 of the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”).

Disqualification from being a charity trustee and waivers – Sections 69 & 70 of the 2005 Act.

8. LEGAL POSITION

All charity trustees have legal duties and responsibilities under the 2005 Act. A duty is something that must be done, and all the duties must be met. These duties are separated out into general duties, that set out a broad framework that all charity trustees must work within, and specific duties detailed in the 2005 Act.

The general and specific duties apply equally to all charity trustees and to all charities registered in Scotland.

All of the charity's trustees should work together to make sure that these duties are met.

9. RECORD OF ONGOING REVUES

(recorded as Annex's to this document).

Bob Bertram MBE

Branch Chairman/Trustee

28 July 2018

Charities and Trustee Investment (Scotland) Act 2005,

PART 1

CHARITIES

CHAPTER 9

CHARITY TRUSTEES

General duties

Section 66

Charity trustees: general duties

(1) A charity trustee must, in exercising functions in that capacity, act in the interests of the charity and must, in particular—

- (a) seek, in good faith, to ensure that the charity 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 charity and any person responsible for the appointment of the charity trustee—
 - (i) put the interests of the charity before those of the other person, or
 - (ii) where any other duty prevents the charity trustee from doing so, disclose the conflicting interest to the charity and refrain from participating in any deliberation or decision of the other charity trustees with respect to the matter in question.

(2) The charity trustees of a charity must ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of this Act.

(3) Subsections (1) and (2) are without prejudice to any other duty imposed by enactment or otherwise on a charity trustee in relation to the exercise of functions in that capacity.

(4) Any breach of the duty under subsection (1) or (2) is to be treated as being misconduct in the administration of the charity.

(5) All charity trustees must take such steps as are reasonably practicable for the purposes of ensuring—

- (a) that any breach of a duty under subsection (1) or (2) is corrected by the trustee concerned and not repeated, and
- (b) that any trustee who has been in serious or persistent breach of either or both of those duties is removed as a trustee.

Charities and Trustee Investment (Scotland) Act 2005,

PART 1

CHARITIES

CHAPTER 9

CHARITY TRUSTEES

General duties

Section 69

Disqualification from being charity trustee

(1) The persons specified in subsection (2) are disqualified from being charity trustees.

(2) Those persons are any person who—

(a) has been convicted of—

(i) an offence involving dishonesty,

(ii) an offence under this Act,

(b) is an undischarged bankrupt,

(c) has been removed, under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40) or section 34 of this Act, from being concerned in the management or control of any body,

(d) has been removed from the office of charity trustee or trustee for a charity by an order made—

(i) by the Charity Commissioners for England and Wales under section 18(2)(i) of the Charities Act 1993 (c.10), section 20(1A)(i) of the Charities Act 1960 (c.58) or section 20(1) of that Act (as in force before the commencement of section 8 of the Charities Act 1992 (c.41)), or

(ii) by Her Majesty's High Court of Justice in England, on the grounds of any misconduct in the administration of the charity for which the person was responsible or to which the person was privy, or which the person's conduct contributed to or facilitated,

(e) is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c.46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150).

(3) A person referred to in subsection (2)(a) is not disqualified under subsection (1) if the conviction is spent by virtue of the Rehabilitation of Offenders Act 1974 (c.53).

(4) OSCR may, on the application of a person disqualified under subsection (1), waive the disqualification either generally or in relation to a particular charity or type of charity. 42 Charities and Trustee Investment (Scotland) Act 2005 (asp 10) Part 1—Charities Chapter 10—Decisions: notices, reviews and appeals

(5) OSCR must notify a waiver under subsection (4) to the person concerned.

(6) OSCR must not grant a waiver under subsection (4) if to do so would prejudice the operation of the Company Directors Disqualification Act 1986 (c.46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150).

Charities and Trustee Investment (Scotland) Act 2005,

PART 1

CHARITIES

CHAPTER 9

CHARITY TRUSTEES

General duties

Section 70

Disqualification: supplementary

(1) A person who acts as a charity trustee while disqualified by virtue of section 69 is guilty of an offence and liable—

(a) on summary conviction, to imprisonment for a period not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both,

(b) on conviction on indictment, to imprisonment for a period not exceeding 2 years or a fine or both. (2) Any acts done as a charity trustee by a person disqualified by virtue of section 69 from being a charity trustee are not invalid by reason only of the disqualification.

(3) In section 69(2)(b), “undischarged bankrupt” means a person—

(a) whose estate has been sequestrated, who has been adjudged bankrupt or who has granted a trust deed for or entered into an arrangement with creditors, and

(b) who has not been discharged under or by virtue of—

(i) section 54 or 75(4) of the Bankruptcy (Scotland) Act 1985 (c.66),

(ii) an order under paragraph 11 of Schedule 4 to that Act,

(iii) section 279 or 280 of the Insolvency Act 1986 (c.45), or

(iv) any other enactment or rule of law subsisting at the time of the person’s discharge.

Annex C

Template to record Conflict of Interest Issues

Meeting	Date of Meeting	Chairperson (name)	Secretariat (name)	Name of person declaring interest	Agenda Item	Details of interest declared	Action taken

DECLARATION BY CHARITY TRUSTEE/CORPORATE TRUSTEE

If the organisation has a corporate trustee (another organisation which acts as trustee, such as a company) its directors should complete this declaration.

In this form we ask you for some personal information. This information may be used by OSCR for the following purposes:

- to identify charity trustees;
- to carry out checks on information provided to ensure that you are not disqualified from being a trustee;
- to contact you if necessary, for example where we cannot make contact with the person the charity has named as its Principal Contact for OSCR; and
- for any other purpose in line with our [Data Protection and Privacy Policy](#).
- Please find and read our [Privacy Notice](#) for more information relating your data as the Principal contact or a Charity Trustee.

Any personal information provided by you will be held by OSCR in accordance with the Data Protection Act 2018 and the General Data Protection Regulations. We will only use it for the purposes listed above.

The information supplied on this form is for internal purposes only and will not appear on the public Scottish Charity Register, unless you are the principal contact for the charity and the (proposed) charity does not have a principal office. In that case your name and address will be displayed.

Section 1 Organisation details

Proposed charity name

Section 2 Personal Details

Title First name(s)

Last name

Previous names

Home address
 Postcode

Home Tel no. Mobile no.

Email

Date of birth

Occupation

Are you a trustee of any other charity? Yes No

If yes, please provide details of the charity name(s) and charity number (s)

Section 3 Declaration

Please read our [Guidance for Charity Trustees](#) before signing this declaration.

I declare that:

- I am willing to act as a charity trustee of the above named organisation.
- I understand the organisations purposes and rules set out in its governing document.
- I am aware of my duties and responsibilities as a charity trustee in terms of section 66 of the Charities and Trustee Investment (Scotland) Act 2005 ('the 2005 Act').
- I am not disqualified from being a charity trustee in terms of the 2005 Act – that is:
 - I am not an undischarged bankrupt
 - I have not granted a Protected Trust Deed (PTD)
 - I do not have an unspent conviction for an offence involving dishonesty
 - I do not have an unspent conviction for an offence under the 2005 Act
 - I have not been removed by the Court of Session under the 2005 Act (or earlier legislation) from being a charity trustee or being concerned in the management or control of any charity or body
 - I have not been removed from being a charity trustee by the Charity Commission or the High Court in England due to misconduct or mismanagement
 - I have not entered into an individual voluntary arrangement (IVA) to pay off debts with creditors. (This only applies to trustees living in England or Wales)
 - I am not disqualified from being a company director.
- I understand that it is an offence under section 26 of the 2005 Act to knowingly or recklessly provide false or misleading information.
- I understand and agree that the personal information I have provided OSCR in this form may be used for the purposes listed above in line with the [Data Protection and Privacy Policy](#).

Signature

Print name

Date

ANNEX E



The charity that supports the RAF family

EDINBURGH, LOTHIANS and BORDERS BRANCH

(a charity registered in Scotland No: SC009110)

Declaration of Interest

Person or Organisation	Name of relationship and/or nature of conflict of interest
e.g. Millhouse Playing Field Association	Committee Member

Name:

Position:

Signed:

Date:

NB: Complete one form for each member of the committee and file with each Directors personal file.

ANNEX F

DATE	VERSION	AUTHOR
28 July 2018	DRAFT	Bob Bertram
01 August 2018	1.0	David Prior
01 August 2018	1.1	David Prior