

**CODE OF PRACTICE FOR THE MANAGEMENT OF CONFLICTS OF INTEREST  
(GB2007/4, 27 February 2007)**

a) Any member of the Governing Body who has a material interest, not being an excluded interest, in any matter of business before the Council or the Governing Body shall declare that fact on each occasion that that business is under consideration. But that shall not apply to business solely for report which is not discussed by the Council or the Governing Body.

*“Material interest” is defined in paragraphs i and 0 below. “Excluded interest” is defined in paragraphs e and f 0 below.*

b) If the material interest in question is a pecuniary interest, then the member of the Governing Body declaring it shall withdraw from any meeting at which the business is under consideration, and shall not speak or vote on the matter.

*“Pecuniary interest” is undefined. Pecuniary interests exclude absolutely. But to have that effect they must be (i) material interests and (ii) not excluded interests.*

c) If the material interest is not a pecuniary interest, then the member of the Governing Body declaring it shall withdraw from any meeting at which the business is under consideration, and shall not speak or vote on the matter, unless the Governing Body shall have resolved to the contrary.

*The ordinary rule for material interests is exclusion, but that can be relaxed by the Council or the Governing Body in any particular case either wholly or partially (e.g. the member may be allowed to remain and speak, but not to vote). Any such relaxation should be minuted (see paragraph 0 below).*

d) Where a member withdraws from a meeting in accordance with paragraph (b) or (c) above, that fact shall be recorded in the Minutes of the meeting. Any resolution of the Council or the Governing Body under paragraph (c) above shall be recorded in the Minutes of the meeting at which it is made.

*It follows that all declarations of material interests (not being excluded interests) should be minuted. Minuting provides good evidence that the Council or Governing Body and the relevant members have addressed their minds to the importance of avoiding conflict of interest. The reasons for any relaxation granted need not be minuted however.*

e) An interest is an **excluded interest** for these purposes if:

- i) it is an interest which arises from the holding of an office or position in the College, where the other persons holding such an office or position in the College have a similar interest; or

- ii) it is an interest arising from membership of a Faculty or Department in the University, or the holding of an office or position in the University, where the other members of the Faculty or Department or the other persons holding such an office or position in the University, as the case may be, have a similar interest.

*The principle behind the category of excluded interests is that they may be taken to be well-known and of common occurrence within the College. An interest may be excluded notwithstanding that it is a pecuniary interest.*

f) In particular, an interest which arises from a general review of College stipends is excluded, but shall only be so in the case of the Master, Senior Tutor and the Bursar in relation to an increase in their respective stipends in accordance with a general percentage stipend increase.

*This would cover the approval of an ordinary annual increase in stipends. It would also cover a general review of stipends, including their relativities. But in the latter case a judgment has to be made by each member of the Governing Body—is he or she so affected as an individual that it would be best to declare the interest as material notwithstanding its excluded status? The Master, Senior Tutor and the Bursar are not given that choice because of the influence that those office-holders are likely to be able to exert over the Council.*

g) A Fellow's interest in his or her election or re-election to a Fellowship or appointment or re-appointment to any paid office or position in the College is not excluded, but matters concerning appointment or re-appointment to any unpaid position in the College are excluded.

*Election or re-election and appointment or re-appointment are always a personal matter representing a material interest. However it is not considered necessary to apply that rule in relation to unremunerated positions.*

h) Members of the Governing Body, on election or re-election to the Governing Body, shall register their material interests, along with those of their spouses, partners, children or dependents, with the Bursar, who shall record that information in a register kept for the purpose. Members of the Governing Body shall notify the Bursar of any new material interest occurring during the course of their membership whenever such new material interest occurs. The register shall include a statement of membership of any Faculty or Department in the University, and the holding of any office or position in the University. The register of interests shall be available for inspection in the College Offices by any Fellow.

*This provides for a register of interests and defines the public availability of that register.*

*It was asked at the meeting of the Colleges' Committee on 28 October 2006 to what extent e.g. shareholdings in public companies should be included in the register of interests. The following points respond to that question:*

- *It is very probable that such shareholdings do not represent material interests at all—see particularly paragraph 0 below. College Councils or Governing Bodies (and even Investment Committees) do not normally make decisions in relation to investments in particular stocks.*
- *If a College wished to deal with the point explicitly, it would be entirely reasonable to define a level below which shareholdings do not require registration. For example, the local authority*

*model code of conduct (see SI 2001/3535) only requires registration of shareholdings in excess of £25,000 nominal value or 1% of the total issued share capital.*

- *The material interest (if such there be) is in the company in which the shares are held and not in the amount of the shareholding. Thus it would suffice to register a shareholding in that company without recording the number or value of the shares held.*

i) Subject to paragraph (j) below, a material interest is any matter which may influence the judgment of the person possessing it, or may reasonably appear as capable of influencing that person's judgment, so that the judgment may not be exercised wholly and exclusively in the interests of the College.

*The test for deciding whether or not an interest is material is an objective one. It also depends on appearances—the test is not simply whether the interested person might be influenced, but whether the possibility of influence might reasonably seem to arise.*

j) An interest shall not be a material interest unless the person having that interest either knew about it or should reasonably have been aware of it. Any position as a company director or charity trustee shall not constitute a material interest unless there is a reasonable possibility that the company or charity, as the case may be, may be engaged in any business, appeal, or transaction involving the College.

*The directorship of a trading company wholly owned by the College is virtually certain to be a material interest and is not excluded. A College may wish to bring such interests within the class of excepted interests (in which case it should consider specifying such directorships as registrable under paragraph 0 above). Any College officer who is a director of a subsidiary company of the College will already know of the special care necessary to manage the conflict that can arise between his or her duty to the College and that to the company, and of the need to be aware at all times in which capacity he or she is acting.*

k) If the Master considers that any member or members of the Governing Body may have an interest which should be treated as a material interest for the purposes of paragraphs (a) to (d) above, then the Master may ask the Governing Body to determine the matter. The Governing Body shall then determine it in the absence of the member or members concerned, after hearing his, her or their views, and the Governing Body's decision shall be binding on the member or members concerned. For the purpose of this paragraph, the Governing Body may set aside the rules above relating to excluded interests.

*The basic principle is that it is for each member of the Governing Body, having conscientious regard to the management of conflict, to judge for him or herself when a material interest (not being an excepted interest) arises and to act according to the code. But this paragraph provides for an objective external control of the matter by the College.*

l) The above rules, with the exception of those contained in paragraphs (h) and (k) above, shall apply with necessary modifications to the College Council, committees, working parties and other bodies constituted by the Governing Body, as they apply to the Governing Body, except in so far as they may be specifically disapplied by decision of the Governing Body.

*The extension of the provisions to committees, etc. represents good practice. But members of committees will not, by such membership alone, be charity trustees of the College.*

## **2. Additional notes:**

1. Council should consider making provision for the inclusion of a standard item “declaration of interests” at the beginning of each agenda. That addition is probably worthwhile and might be achieved through the addition of an additional sentence at the end of paragraph (a):

Each Council agenda shall contain an early item “Declaration of Interests”.

2. Paragraph (h) provides that the register of interests shall be available for inspection by any fellow. The model was drafted before the freedom of information act 2000 came into force. Colleges may wish to consider, in the light of that act and of the charity commission guidance, whether to make the register more widely available.
3. A college may adopt other methods in addition to the introduction of a code of practice for managing conflict of interest—for example by limiting the circumstances in which conflict is likely to arise. Thus, as mentioned at the Colleges’ Committee on 28<sup>th</sup> October 2006, a college might constitute its Stipends Committee with a majority of members who are neither officers nor employees of the college.
4. The need to manage conflicts of interest (a governance issue) is distinct from the rule that a charity trustee shall not profit from his or her trust. That rule requires that any profit to a charity trustee requires sufficient authorisation. For a college that authority derives from its statutes, which empower the college to employ its fellows and to make payments for its charitable purposes.

## **3. Charity trustees and their disqualification**

It will be necessary, for the purpose of charity registration, for a college to identify its charity trustees. That term is defined by section 97(1) of the charities act 1993 as follows:

"charity trustees" means the persons having the general control and management of the administration of a charity.

The following paragraphs are reproduced from a paper entitled “The implications of charity registration for the Colleges”, the executive summary of which was circulated to the Colleges’ Committee for their meeting on 28<sup>th</sup> October 2006. The full paper has been circulated to bursars.

50. Who are the charity trustees of a College, and who are the charity trustees of the trust funds held by the College? There is no authority directly bearing on the point, but the following observations seem right in principle:
- Whether or not a person is a charity trustee is not a matter of choice or designation, but of fact. If that person has (no doubt normally with others) the general control and management of the charity, then he or she is a charity trustee. Otherwise he or she is not.
  - A person cannot, in relation to a given charity, be a charity trustee for some purposes but not others. Thus in a College in which the general control and management is devolved to a College Council, the fact that the ultimate authority in the College is the Governing Body, and the fact that only the Governing Body can amend the Statutes of the College, and the fact that the Governing Body can by resolution over-rule the decisions of the Council, does not mean that the general control and management is other than in the hands of the Council alone. Similarly the fact that the College Council may have junior members who are excluded for certain business does not prevent those junior members from being charity trustees, for they participate in the general control and management of the College. (In both regards “general” is a key word in the definition; the result will be otherwise if the representative junior members only attend for certain defined items of business)
  - The charity trustees of a College are the persons who comprise that body which has the general control and management of the College. If the College has a Council, then generally the charity trustees will be its members. If the College is administered by a Governing Body, not necessarily comprising all the Fellows, then the members of the Governing Body so constituted will be the charity trustees.
  - In relation to a trust of which the College is sole trustee, the charity trustees of the trust will be the College and additionally the charity trustees of the College unless the general control and management of the trust has been delegated to some other body, such as a managing committee, in which case it will be the members of that other body.
51. Section 72 of the 1993 Act specifies circumstances in which a person is disqualified from being a charity trustee or a trustee for a charity. Section 73 sets out the consequences of acting while disqualified. In summary, a person shall be disqualified who has been convicted of an offence involving dishonesty or deception, or has been adjudged bankrupt, or has made a composition with his or her creditors.
52. What if Dr Lightfinger, a member of the College Governing Body and a collector of books, is convicted of shoplifting? No provision exists in the College Statutes that would prevent him from attending and participating in Governing Body meetings. It is considered that the Statutes must plainly be read subject to the general law as defined in section 72 of the 1993 Act. Dr

Lightfinger does not cease to be a member of the Council, but must not attend meetings, vote or act in any way in the capacity of member. If the College permits Dr Lightfinger so to act then it is liable to conviction as a secondary party for aiding and abetting Dr Lightfinger in acting as a charity trustee while disqualified.

It should be noted that the disqualification of charity trustees by section 72 of the 1993 act already applies to all charities, whether registered or exempt. It is not a new provision introduced by the charities bill. We may wish to consider making a rule requiring any fellow or other charity trustee to notify the Master in the event that the circumstances described in section 72 arise.

**APPROVED BY GOVERNING BODY, 27 FEBRUARY 2007**

**AMENDED BY COLLEGE COUNCIL, 11 OCTOBER 2011**

# Selwyn College Cambridge

## Fellows' Register of Interests

**Name:** Dr AN Other

<b>Member</b>	<b>Member Interests</b>	<b>Related Party Transactions</b>
<p><b>Employer:</b> University of Cambridge</p> <p><b>Position:</b> University Lecturer, Department of XX</p>	<p><b>Other Remunerated Activities</b> Pensions Consultancies Directorships (Declare position, not amount earned)</p> <p><b>Shareholdings</b> <b>(in excess of £25k or 1% of the voting capital of the company)</b> Nil</p> <p><b>Non-Pecuniary Interests</b> Visiting Professor of XXX Faculty Position School Governor Major Academic collaborations Charity positions Political/pressure group positions (positions of control or management only)</p> <p><b>Research Interests</b> <b>(in excess of £50k per grant)</b> XYZ Foundation</p> <p><b>Other interests</b> Nil</p>	<p>Spouse is Director of XXX Institute</p> <p>(where relevant)</p>

**AMENDMENT – COLLEGE COUNCIL, 10 OCTOBER 2011 (CP2011/94)**

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Amended by College Council, 10 October 2011