

Governance & Disclosure Practices

Learning Series for Voluntary Organisations, Issue - VI, 2013

Conflict of Interest & Principles of Public Life



A joint initiative of Credibility Alliance & Oxfam India



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Improving Governance Building Trust

Governance & Disclosure Practices

Learning Series for Voluntary Organisations, Issue - VI, 2013

Conflict of Interest & Principles of Public Life

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* The Advisory support members have contributed to the document, however, the entire content is not necessarily the opinion of the advisory group.

The word "Foreword" is written in a green, elegant cursive font. The letter "F" is significantly larger and more decorative than the rest of the word. The text is set against a light green, triangular background that points towards the top-left corner.

Foreword

When NGOs hold their own debates about improving their management, accountability is often seen in limited terms as an administrative duty, with other concepts such as responsibility, values and effectiveness being used to frame a discussion of the positive attributes of NGOs.

A non-profit charitable organization dealing with public funds is expected to demonstrate highest forms of accountability and commitment and function with integrity. However, it needs to be understood that to demonstrate accountability an organisation should have developed good policies and implementation framework in its governance system as only this will support accountable practices. This warrants the need for such policies that will enable an organisation to demonstrate its honesty, sincerity, transparency in all its transactions.

This Issue of CA Learning Series speaks about one such crucial aspect – Conflict of Interest. It is about instances and decisions and or transactions that will push the organisational priority backwards vis-à-vis to another competing interest at the same time. Often many organisations come across such instances and in the absence of proper understanding of how to deal with such instances often adopt inferior practices. Most non-profit discussions about Conflicts of Interest are similar to those in the for-profit sector; they focus on financial benefit to Board Members or Staff to the detriment of the organisation.

CA is grateful to all its Advisory Panel Support Members and the author for their active, prompt and valuable inputs in fine tuning this Issue.

S. P. Selvi

Executive Director,
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Conflict of Interest & Principles of Public Life

Overview of Conflict of Interest

- 1.1.1** A conflict of interest may be defined as the existence of interest in different capacities of any person in the same decision. For instance an organisation may take on rent the property belonging to one of the Directors; when such decision is taken then the concerned Director is having simultaneous interest in dual capacity. One, the concerned Director is duty bound to find the right kind of premises at right rent for the NPO, on the other hand the same concerned Director, being the owner of the property, is in his/her personal capacity interested to get the best possible bargain for his/her premises. In this case, there is a clear Conflict of Interest.
- 1.1.2** From the NPOs point of view the Board should bargain for the lowest possible rent and from the Director's personal point of view, he/she should bargain for the highest possible rent. In such circumstances it is desirable that the concerned director should not participate in the decision making. Similarly conflict may also arise when there is a conflict in loyalty or the mandate of person. For instance, if a person is on the board of the donor as well as the implementing organisation or is holding key position on both the sides in a transaction.
- 1.1.3** Whenever there is conflict of interest the interested person should not participate in such decision making. In other words, one should not act as the service provider as well as the service taker at the same time.
- 1.1.4** All the important persons in an organisation, who can influence the decision making, are required to exercise their skills and abilities in a honest and prudent way for the benefit of the organisation. They should not use their power or authority for their personal benefit, directly or indirectly. Therefore, it is important that all organisations should have appropriate conflict of interest policy.

Does Conflict of Interest applies only to Trustees/Board Members

- 1.2.1** Generally the conflict of interest policy in any organisation is made to cover the decision made at board level only. However, ideally conflict of interest policy should cover all persons who are in a position to influence important decisions. Apart from the board member the CEO and Senior Management personnel should also be, in some sense, be covered by a conflict of interest policy.
- 1.2.2** NPOs deal in public resources therefore, it is important that anybody who is in a position to exercise any material/substantial power over the utilisation or use of public resources should be subjected to certain principles of integrity and transparency.

Is Trusteeship in an NPO comparable to Public Life

- 1.3.1** All NPOs are not necessarily public institutions. As a matter of fact, NPOs are private institutions unless they are substantially funded by the Government. However, NPOs are private institutions for public purposes, they generally deal in public funds for benefit of public in general. Therefore, even if NPOs are technically private institutions, they are more like public institutions.
- 1.3.2** The trustees in an NPO do not and cannot have any personal interest in any activity or work of an NPO, therefore, the authority and responsibility which they assume are more analogous to a public office. It is expected that a trustee/board member possesses high degree of honesty and accountability.
- 1.3.3** The moot point is that an NPO is an steward of public resources, therefore, anybody who is handling such resources is engaged in a public service. Any public service should be based on desirable standards of assurance.

Recommended Principles of Public Life

- 1.4.1** The Trustees/Board Members of an NPO are expected to possess certain qualities and principles which befit the nature of public services they undertake. The *Fourteenth Report of the Committee on Standards in Public Life, Govt. of U.K. 2013* provides the Principles of Public Life which every person assuming any important public place should possess. The Principles of Public Life provided in

the said report are provided in **Annexure 1**. In brief the Seven Principles provided in the said report are as under :

Selflessness	Holders of public office should act solely in terms of the public interest.
Integrity	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
Objectivity	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
Accountability	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
Openness	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
Honesty	Holders of public office should be truthful.
Leadership	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Instances of Conflict of Interest

1.5.1 There should be a clearly defined policy to ensure that any conflict of interest is properly dealt with. The issues which may be regarded as material interest are as under :

- Appointment of relatives in Board or senior management.
- Ownership or substantial interest in organisations which are engaged or may seek business or consultancies.
- Payment of fees and remuneration.

- Directorship or management position in other NPOs.
- Providing consultancies in personal capacities.
- Having commercial interest in any decision or resolution.
- Having direct or indirect relationship with the donor or donee organisations.
- When contracts are awarded to relatives of the Board members.
- Persons supplying goods and services to the organisation are relatives of interested person.

1.5.2 The Board of Directors or the Trustees should declare such interests. The interested Trustees and Directors should not participate in the decision making and voting process for that particular resolution. An annual declaration of such interests should be placed in the annual general meeting.

1.5.3 It is also important to define who the interested persons are. Normally, the Board Members and Trustees are considered to be the interested person, but there may be other category of persons who should also be covered under 'conflict of interest policy'. Such persons could be the CEO, Senior Managers, Major Donor, Sister Concern etc.

1.5.4 Further, the various statutes applicable to the NPO may also prescribe conditions regarding the various conflict of interest transactions. Therefore, it is important to analyse such requirements under various statutes, for instance, the Income Tax Act in India is very strict and prohibits any kind of benefit to any interested persons. It further requires disclosures of all legitimate and permissible transactions with interested persons.

1.5.5 Normally, it is permissible to have reasonable and legitimate transaction with interested persons. However, proper disclosures and decision making processes should be followed while entering into any such conflict of interest transactions.

Who are Interested Persons

1.6.1 As discussed earlier, apart from the Board of Directors or the Trustees various other persons can also be considered as an interested person. An illustrative list is as follows :

- (1) Author of the Trust or Founder(s) of the institution;
- (2) Board of Directors or the Trustees
- (3) Any CEO or Senior Management person (by whatever name called) of the institution;
- (4) Person who has made a substantial contribution to the Trust or Institution.

Each organisation may set a limit beyond which the donor would be considered as an interested person.

- (5) any relative of any such author, founder, person, member, Trustee or manager as aforesaid;
- (6) any concern or organisation in which any of the persons referred to in (1) to (5) above has a substantial interest.

Who is a 'Founder'

1.7.1 It is important to understand the implication of the scope of the term 'founder' for the purpose of identifying interested person. In case of Societies and Not-for-Profit Companies, the persons who subscribe to the Memorandum of Association can be described as the founders of the organisation. The *Chambers' Twentieth Century Dictionary* (1971) defines the word "founder" as "one who founds, establishes or originates: an endower".

1.7.2 In our view, the persons who subscribed to the Memorandum of Association of a society could, therefore, be described as the "Founders" of the society. In case of Trust, the Settler and the first Trustees can be considered as the founders. The Supreme Court of India in the case *DIT v. Bharat Diamond Bourse* [2003] 126 Taxman 365, observed that it was not necessary for the founder to have contributed any money towards the formation or running of an organisation. The Supreme Court further held that the expression 'founder of the institution' meant that '*the person concerned should be the originator of the institution, or, at least, one of the persons responsible for the coming into existence of the institution*' and that contribution of money was not an inexorable test of a person being a 'founder', though it might happen often that person who originated an institution might often also fund it.

Who is a 'Relative'

1.8.1 A "relative" may be defined as "*relative, in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual*". Thus, the definition of the term 'relative' is enlarged one to include even the lineal ascendant or descendant of the spouse, brother or sister of either the individual or the spouse. However, various statutes define 'relative' differently, therefore, all NPOs should check the applicable statutes for the definition of relative, if any. If the applicable statutes are silent about the term

relative than the NPO may adopt the following definition of relative :

- (i) spouse of the individual;
- (ii) brother or sister of the individual;
- (iii) brother or sister of the spouse of the individual;
- (iv) any lineal ascendant or descendant of the individual;
- (v) any lineal ascendant or descendant of the spouse of the individual;
- (vi) spouse of a person referred to in (ii), (iii), (iv) or (v) above;
- (vii) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

Meaning of Substantial Interest

1.9.1 As we have already understood that any transaction with an interested person comes under the purview of 'conflict of interest'. In this context, it may also be noted that transaction with organisation or entity where an interested person has 'substantial interest' also comes under the purview of 'Conflict of Interest'. Therefore, it becomes important to understand the meaning and scope of the term 'substantial interest'.

1.9.2 The meaning and scope of "substantial interest" under various circumstances could be defined as under :

- ◆ The interested persons should not hold more than 20% of the shares of that concern, individually or collectively.
- ◆ The interested persons should not hold more than 20% of the voting power of that concern, individually or collectively.
- ◆ The interested person should not be the Chief Functionary or be in influential decision making position of such concern.
- ◆ The above elaboration of "substantial interest" is indicative in nature. NPOs may have their own understanding or definition of the term "Substantial Interest".

Some Examples of Conflict of Interest Transaction

1.10.1 A conflict of interest as discussed above relates to an interest or benefit, direct or indirect, provided to any persons or organisation discussed above. Some

examples are given below :

1. Providing advances or loan to either interested person or organisation where such person have substantial interest or to their relatives.
2. Providing donations or gifts to either interested person or organisation where such person have substantial interest or to their relatives.
3. Taking on lease or giving lease of buildings, property, equipments, vehicles etc. to/from either interested person or organisation where such person have substantial interest or to their relatives.
4. Providing employment to either interested person or to their relatives.
5. Providing consultancy contract or other commercial contracts to either interested person or organisation where such person have substantial interest or to their relatives.
6. Undertaking consultancy contract or other commercial contracts from either interested person or organisation where such person have substantial interest or to their relatives.

1.10.2 It may be noted that all the above transactions are not legally prohibited, an organisation may enter into the above type of transaction provided they are reasonable and legitimate. All the above transactions, should be done in compliance with the conflict of interest policy of the organisation.

Benefit to Interested Person which is Prohibited

1.11.1 It may be noted that conflict of interest transaction may be done if they are reasonable and legitimate with adequate disclosures. However, no NPO can provide any benefit directly or indirectly to any interested persons. Some example of the various benefits are provided as under :

- (1) lending of funds to specified persons without adequate security and adequate interest. Generally, lending of funds to any individual or organisation is not permitted. However, there might be circumstances where lending is necessary for charitable purposes, in such cases the lending should be made with adequate security and adequate interest.
- (2) making available building or property of the trust for the use of the specified persons without charging adequate rent or other compensation.
- (3) paying salaries or remuneration to specified persons, in excess of what may be reasonably paid for the services rendered by such persons.
- (4) providing services of the organization to the specified persons without adequate remuneration or other compensation.

- (5) purchasing services, materials, equipments or other properties from specified persons for consideration which is more than adequate.
- (6) selling services, materials, equipments or other properties to specified persons for consideration which is less than adequate.
- (7) diversion of income or property of the organization to any of the specified persons.
- (8) investing funds of the organization in concerns where the specified persons have substantial interest.

1.11.2 The above transactions will not be deemed as reasonable or legitimate and therefore, are not permitted.

Disclosure Policy & Transparency for Conflict of Interest Transaction

1.12.1 As discussed above it is legally possible to have transaction with parties having a conflict of interest. However, certain procedures of transparency as discussed below should be followed for approval of such transactions :

1. The conflict of interest should be fully disclosed at the time of the initiation of transaction and also after completion of transaction in various reports and MIS as may be required/determined.
2. The person having conflict of interest should be excluded from the discussion and approval of such transactions.
3. The transaction must be through a normal competitive bid or procurement procedure as the case may be. Otherwise justifiable reason for such transaction should be on record.
4. The Board or the authorised body should determine that the transaction is in the best interest of the organization. In other words, Board or the authorised body should collectively take the responsibility of such transaction.
5. Disclosure regarding the transaction should be made to the CEO, if the transaction does not pertain to any Board members or Trustees. If the CEO himself/herself is involved, then the disclosure should be made to the Board or the Executive Committee of the organisation. Such authority, before whom such disclosure is made shall make the necessary due diligence and inform the Board or General Body on case to case basis.
6. Disclosure regarding the transaction should be made to the Chairperson or the President if the transaction pertains to any Board Members or Trustees. If the Chairperson or the President is involved then the disclosure

should be made to the Board or the General Body of the organisation. Such authority before whom such disclosure is made shall make the necessary due diligence in this regard on case to case basis.

7. The Board or an authorised body shall determine whether a conflict of interest exists and whether such transaction can be treated as reasonable, fair, transparent and in the interest of the organisation.

Sample of the Minutes Record of Conflict of Interest Transaction

- 1.13.1 A sample of the minutes record involving a conflict of interest transaction could be as under :

“A motion was moved by Mr. _____ towards approval of a rent agreement for renting out the _____ property of the NPO to Mr. _____ who happens to be a Board member.

The details of the agreement and the due diligence report was placed before the Board. The members present verified the process of identifying the tenant and the adequacy of rent. It was found that the rent payable was comparable to the market rates for similar premises. The motion was seconded by _____. The resolution was passed unanimously and the interested director Mr. _____ did not participate in the vote.

Honorary Director or Independent Director

- 1.14.1 The conflict of interest policy should apply equally to both the honorary paid or full time Directors of Trustees. It should not be misunderstood that conflict of interest policy applies only to paid or full time Directors of Trustees.
- 1.14.2 The term ‘independent director’ is more relevant in the corporate world. In the voluntary sector most of the Directors are in any case expected to be independent. Clause 49 of the listing agreements on corporate governance defines independent Directors as follows:

“For the purpose of this clause the expression ‘Independent Directors’ means Directors who apart from receiving director’s remuneration, do not have any other material pecuniary relationship or transactions with the Company, its promoters, its management or its subsidiaries, which in judgment of the Board may affect independence of judgment of the Directors.”

- 1.14.3** The non-executive independent Directors are not supposed to receive any financial consideration except the sitting fees.
- 1.14.4** **In case of NPOs all the Directors are not supposed to take any kind of benefit or privilege from the organisation. Therefore, in letter and spirit, all the Directors in case of NPOs are independent in nature.** However, as a concept it needs to be ensured that the Directors or Trustees are not enjoying any undue benefit or are not involved in any conflict of interest transaction irrespective of the fact whether they are remunerated position, honorary position.
- 1.14.5** Similarly the same principles should be followed for ex-officio positions.

Procedure of Handling Conflict of Interest Transaction

- 1.15.1** The various issues/steps involved in an conflict of interest transaction are as under :
- ◆ An interested person should only be allowed to pursue/initiate conflict of interest transaction/decision if it qualifies under non-negotiable norms. For instance, under non-negotiable norms the relative of the CEO should not be appointed as the Statutory Auditor.
 - ◆ The matter should be subjected to a basic due diligence by the Executive Team, unless the matter is such that it should be addressed only at the Board level.
 - ◆ The interested person may make presentation before the Board members, however, any interested director or Trustee should not be present at the time of decision making. Such person should not be eligible to vote for such resolution.
 - ◆ The Board may further investigate the matter directly or through a person or committee, to ensure that the transaction is in the best interest of the organisation.
 - ◆ Once a positive finding/report is available, then the resolution may be passed with a majority vote without considering the vote of the interested person.
 - ◆ The interested person should declare, on record, all the relevant information and possible conflict of interest in the transaction.
 - ◆ The transaction may be regular in nature or an one time transaction. In case of a regular transaction a fair, transparent and equal opportunity process should be followed. In case of one time transaction, the need of such transaction with such interested person may also be recorded.

- ◆ In all resolution where there is a conflict of interest, such interest should be formally recorded as a part of the resolution and the minutes.
- ◆ The Board of Directors in their annual report should make a formal declaration of all the conflict of interest transaction and the quantum thereof.

Violation of Conflict of Interest Policy

1.16.1 The Board or the Trustees of all NPOs should review various important transaction/decision, periodically, to ensure that all the decision taken are in compliance with the conflict of interest policy of the organisation. The Board or the Trustees of NPOs should also ensure that there is no violation of the conflict of interest policy. In this context the following are relevant :

- ◆ A proceeding pertaining to violation of the conflict of interest policy may be initiated if the Board or the Trustees have reason to believe that any such violation might have occurred. Or the Board or the Trustees receive any written complaint with relevant facts or evidence.
- ◆ The failure of disclosure of interest by any interested person could also be a primary reason for initiating and proceeding of violation of conflict of interest policy. It should be noticed that even if a transaction is fair and reasonable, it should still follow the conflict of interest policy and adequate disclosure should be made prior to the transaction by the interested person.
- ◆ Whenever a proceeding of violation of conflict of interest policy is initiated, it is important that the concerned interested person is provided adequate opportunity of being heard.
- ◆ The findings of any inquiry for investigation against violation of conflict of interest policy should be placed before the meeting of the Board or Trustees. The Board or Trustees may decide to take necessary disciplinary/penal action. They may also initiate appropriate legal action wherever there is a serious violation.

Conflict of Interest Disclosure Statement

1.17.1 All the Trustee/Directors and other interested persons should provide a conflict of interest disclosure statement, annually. A suggested format of such statement is provided in **Annexure 2**.

Annexure 1

The Seven Principles of Public Life

(Fourteenth Report of the Committee on Standards in Public Life, Govt. of U.K., 2013)

Introduction

1.1 Any values system needs to be based on clear, broadly expressed principles which are aspirational, rooted in the core purposes of an organisation or profession and easy to communicate and understand. These values should underpin an organisation's governance and be embedded in all its processes:

“A hallmark of good governance is the development of shared values, which become part of the organisation's culture, underpinning policy and behaviour throughout the organisation, from the governing body to all staff. These are in addition to compliance with legal requirements...”²⁶

Seven principles of public life

1.2 The seven principles of public life have been an influential example of the values with which organisations seek to underpin their ethical framework. They have been adopted by a significant proportion of public sector organisations in the UK.

1.3 Many of these organisations have chosen to adapt the principles for their own purposes. We welcome this development as evidence of active consideration by those organisations of the way in which key values can best be expressed to be most relevant to their own work. In all the cases of which we are aware the underlying sentiments are recognisably the same.

1.4 The civil service, for example, has chosen to promote four values – integrity, honesty, objectivity and impartiality.²⁷ The Scottish Commission for Ethical Standards in Public Life has nine principles, adding “duty and public service” and “respect”. They have also amended “accountability” to “accountability and stewardship”.²⁸ The Welsh code of conduct for local councillors has ten principles, adding “duty to uphold the law”, “stewardship” and “equality and respect” and amending “integrity” to “integrity and propriety”.²⁹ The detailed definitions are recognisably similar in both the latter two cases.

²⁶ The Independent Commission on Good Governance, *The good governance standard for public services*, 2004, p.13.

²⁷ *Civil Service Code*, paragraph 3.

²⁸ Commission for Ethical Standards in Public Life in Scotland, *Annual report 2011–12*, September 2012, inside front page.

²⁹ Public Service Ombudsman for Wales, *The code of conduct for members of local authorities in Wales: Guidance from the Public Service Ombudsman for Wales*, March 2012, pp.8–9.

The voluntary code of conduct for local councillors in Northern Ireland does not make any reference to the seven principles as such, but includes versions of a number of them in its description of the “general duties” of a councillor (including “accountability and openness”, “selflessness and stewardship”, “objectivity and propriety” and “integrity”. Honesty and leadership are not mentioned specifically.³⁰

1.5 The fact that other organisations have felt the need to adapt the seven principles raises the question of whether the principles should be reformulated. A number of participants in our seminars suggested that they should.

1.6 Our view is that changing the principles now would be both pointless and unnecessary. It is clear to us that they can be criticised on a number of philosophical, semantic or other grounds. We doubt that if we were inventing them for the first time today they would look exactly the same. But we see no advantage, and the risk of some possible confusion, in seeking to alter them now. As with many ethical principles, their value lies not in their exact formulation but in the behaviour which they stimulate when – adapted or not – they become part of an organisation’s culture.

Amending the descriptions

1.7 Leaving the principles as they are does not mean that we cannot change the words used to describe them. Since the seven principles were first formulated our understanding of the meaning of certain words has developed. This does matter. As the Chair of the Committee’s Research Advisory Board has put it:

“Most people are not professional philosophers and while they may have very strong intuitions about certain things, those intuitions are not easily turned into analytically precise principles. But that is one reason why principles in the public domain should be clear, and should depart as little as possible from their ordinary meanings. Too much divergence breeds misunderstanding, and misunderstanding exacerbates mistrust.”³¹

1.8 Comments made to us during the course of this review, and previously, suggest there are a number of areas where the descriptions of the seven principles could usefully be brought up to date.

- ◆ The description of the present formulation of honesty refers to holders of public office having a duty to declare any conflicts of interest. The avoidance of conflicts of interest fits more obviously into our current understanding of integrity. Most people today would expect honesty to have a much broader meaning, focusing on truthfulness. This has particular resonance at the present time since a number of issues of current concern have involved allegations of inappropriate behaviour being covered up.

³⁰ Department of the Environment, *The Northern Ireland code of local government conduct: A code of recommended practice for the guidance of local councillors*, April 2003, pp.3–8.

³¹ Mark Philp, *The seven principles of public life: What they say and what they mean*, report to the Committee, 2002 (revised 2012), p.10.

A focus group participant demonstrated a nuanced understanding of honesty:

“It may not be appropriate to give complete truth on something, as long as you’re not directly lying or misleading... Like you wouldn’t necessarily want to hear about the complete plans for anti-terrorism in the run up to the Olympics, so concealing that is appropriate to do so, but you wouldn’t lie about something.”³²

- ◆ Discussion around the importance of public office-holders making decisions on merit, including in our focus groups, tends to refer more frequently to impartiality than to objectivity. We think it would be helpful to include impartiality in the description of the meaning of objectivity.
- ◆ Equality of opportunity has become even more of a central tenet of thinking about ethics and values in the period since the principles were first established. We think it would be helpful to make clearer that objectivity requires giving full regard to the importance of equality of opportunity and fair treatment, irrespective of individual characteristics such as disability, race, gender or sexual orientation.
- ◆ Public office-holders sometimes need to show courage in speaking up about difficult issues, speaking “truth to power” and making or sticking by difficult decisions.³³ We see this as a key element of ethical leadership and have amended the description of leadership accordingly.

1.9 In the course of our review a number of people suggested to us that a public organisation could have high standards yet deliver neither an effective service nor value for money. This may be true in principle. But we doubt that an organisation delivering poor service or value for money could really be described as having integrity. We also suspect that there may often be a positive empirical relationship between high ethical standards and high service standards. More to the point perhaps, while public office-holders should certainly be held to account for their use of public money, it is not the role of ethical regulators to do so.

1.10 The revised descriptions of the seven principles which the Committee will use in all future publications are set out in **figure 4** (for the original descriptions see appendix 6). The revisions include some clarifications reflecting earlier research carried out for the Committee.³⁴

³² *Qualitative research on public perceptions of ethical standards in public life.*

³³ One focus group participant described the resignation of a Chief Constable because he felt that due to spending cuts he was no longer able to provide an adequate level of service as a courageous act which he attributed to the individual’s high level of personal ethical standards: *“He was ambitious in the –shire police and he was a very, very fine police officer, now he’s recently stepped down because he has decided that with the money that I’m now being given I can’t provide a service to the people of –shire and he said I’m not putting my name to this... he’s walked away from it and all credit to the guy for doing that”* (*Qualitative research on public perceptions of ethical standards in public life*)

³⁴ TNS BMRB, *Review of the descriptors of the seven principles of public life: Report from stage three*, report to the Committee, November 2006.

Figure 4: The seven principles of public life

Principle	Revised description
<i>Preamble</i>	The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.
<i>Selflessness</i>	Holders of public office should act solely in terms of the public interest.
<i>Integrity</i>	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
<i>Objectivity</i>	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<i>Accountability</i>	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
<i>Openness</i>	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
<i>Honesty</i>	Holders of public office should be truthful.
<i>Leadership</i>	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

To whom should the seven principles apply?

1.11 There is a growing area of ambiguity occupied by people contracted to deliver public services who may not be public office-holders. We strongly believe that the ethical standards captured by the seven principles should also apply to such individuals and their organisations. Like traditional public servants they are being paid public money to

provide services on behalf of the community to individuals who may not have a choice about going elsewhere.

1.12 Principles are what matters in determining what people “should” do as opposed to what they might “get away with”. But the more ambiguous the circumstances (that is the less the principles might seem to an individual to be clearly applicable) the less purchase they are likely to have. This seems likely to be particularly important in the case of non-traditional suppliers of public services. Unless the principles are clearly translated into contracts and clear guidance, it is unlikely that private contractors in particular will believe that they are unambiguously applicable to them (given the likelihood of conflicts between the motives of private profit and public service), or spend time deducing from the principles how they are supposed to behave. There is therefore a responsibility on public office-holders to specify particular and proportionate ethical requirements in the contracts they let on behalf of the public sector.³⁵ This is a difficult area, the implications of which will require some effort to work out in practice. It is an issue of possible future inquiry for the Committee.

The private behaviour of public office-holders

1.13 The seven principles specifically apply to public life. Public office-holders do, of course, also have private lives, which are affected by a whole range of emotions and other factors in which the seven principles of public life are unlikely to be a major consideration.

1.14 It is important both for reasons of principle and to prevent unnecessary inhibitions on willingness to perform public roles that the privacy of the personal lives of public office-holders should be respected. The legal protection of the right to privacy under the Human Rights Act 1998 applies to public office-holders as well as to other citizens.

1.15 On the other hand, the separation between the public and private lives of public office-holders can never be absolute. There are circumstances in which private behaviour can legitimately affect an individual’s employment in public office because of its impact on the reputation or integrity of the organisation concerned.

1.16 Some of these circumstances are recognised in law. If an individual is declared bankrupt or insolvent, for example, they cannot stand as a Parliamentary candidate and can be denied employment in a wide number of public posts. Others are incorporated in specific codes. The General Teaching Council for Scotland’s ethical guidance to teachers, *Code of professionalism and conduct*, states that:

“You should avoid situations both within and without the professional context which could be in breach of the criminal law, or may call into question your fitness to teach... you must uphold standards of personal and professional conduct, honesty and integrity so that the public have confidence in you as a teacher and teaching

³⁵ See Chapter 7, paragraph 7.7.

as a profession... you should maintain an awareness that as a teacher you are a role model to pupils.”³⁶

These guidelines are clearly intended to apply to teachers’ private as well as public lives. The code is not statutory. But any serious breach or series of minor breaches of it could lead to an adverse “fitness to teach” finding and possible sanctions.

1.17 Whatever the law or principle might imply, the public are likely to draw conclusions about an individual’s public behaviour from what they know of their private behaviour. History provides numerous examples of apparently scandalous behaviour, usually of a sexual or financial nature, casting such doubt on the suitability of politicians or others for public office that they have resigned or been removed from their posts. This is not necessarily an irrational reaction to media pressure – though it can sometimes be. It is not unreasonable for people to think that individuals who display poor behaviour or bad judgement in their private lives are at risk of doing the same in their public lives. Moreover, people’s own willingness to behave well can be critically affected by what they see of the behaviour of those in leadership positions. There is no reason to think that in doing so they discriminate between behaviour in public and in private roles. One focus group participant expressed this as follows:

“At the end of the day, if you’re in a place of power, you’ve got to be honourable no matter what – whether you’re at home in bed, or sitting and having tea with the Queen.”³⁷

1.18 We are not seeking to impose public morality on private life. But it is important to recognise that there are occasions when public and private lives can overlap and where private acts that become known can damage public confidence in office-holders and institutions. There are therefore circumstances in which it is appropriate to take account of the private behaviour of public office-holders in judging their suitability for office. Such intrusions should be exceptional, always proportionate, and only happen where the public interest clearly requires it. The Parliamentary Commissioner for Standards recently expressed it thus in recommending a revision to the code of conduct for MPs:

“I recognise the House’s concern about any intrusion into a member’s private and personal life. Like anyone else, Members are entitled to a private and personal life and for that to remain private. Any intrusion into that should be both necessary and proportionate. There needs to be a very clear public interest in such intrusion, recognising, as a rule in the Code says, that any conflict between the private and public interest must be resolved in favour of the public interest.”³⁸

1.19 In our view instances where an individual’s private behaviour might affect their public life need to be looked at case by case. They should be addressed not by a lengthy philosophical debate but by clarity about acceptable behaviours and possible sanctions.

³⁶ General Teaching Council for Scotland, *Code of professionalism and conduct*, May 2008 (revised April 2012), p.6.

³⁷ *Qualitative research on public perceptions of ethical standards in public life*.

³⁸ Parliamentary Commissioner for Standards, *Annual report 2011–12*, HC 311, June 2012, p.9.

Summary

- ◆ The seven principles of public life remain broadly relevant, but there is scope for updating what they mean in practice, particularly in respect of honesty and integrity.
- ◆ There is a growing area of ambiguity occupied by people contracted to deliver public services who may not be public office-holders. The ethical standards captured by the seven principles should also apply to such people. There is therefore a responsibility on public office-holders to specify requirements about standards of behaviour in the contracts they let on behalf of the public sector.
- ◆ Public office-holders are entitled to privacy in their personal lives. But it is important to recognise that there can be circumstances in which private behaviour can affect the reputation and integrity of a public institution, and which require an appropriate response. Such intrusion should only happen where there is a clear public interest to justify it, and should always be proportionate.

Annexure 2

A Model Format of Conflict of Interest Disclosure Statement

- 1. Name of the Organization :
- 2. Name of the Interested Person :
- 3. Capacity/Position/Relation of the Interested Person :
- 4. Address of the Interested Person :
- 5. Have you or any of your related persons/organisations provided services or rented out properties or had any monetary transaction _____ in the past year ? If yes, provide details.

- 6. If the probable conflict of interest transaction is provided by related persons/ organisations, than the identity of the related persons/organisations and your relationship may be disclosed:

- 7. Have you or any of your related persons/organisations purchased services or taken on rent property or provided/taken any tangible or intangible services during the past year? If yes, provide details :

If, similar transactions as mentioned above are provided by your relative or related organisation, then provide the details below :

8. Please indicate whether you or any of your relative or related organisation had any direct or indirect interest in any business transaction(s) in the past year. If yes, provide details

9. Please indicate whether you or any of your relative or related organisation had taken any loan or advances (including travel and programme advance) or deposits in the past year. If yes, provide details

10. Please indicate whether you or any of your relative or related organisation had given any loan or advances (including travel and programme advance) or deposits in the past year. If yes, provide details

11. Please indicate whether you or any of your relative or related organisation had receive any benefit or undue advantage in the past year. If yes, provide details

12. Please indicate whether you or any of your relative or related organisation have any interest in any donor contract, project, asset, liability or legal proceeding where the NPO is involved. If yes, provide details

13. Please indicate whether you or any of your relative or related organisation is privy to or aware of any events, transactions, arrangements or other situations that have occurred or may occur in the future and which should be brought to the notice of the Board of Directors or Trustees in accordance with the conflict of interest policy. If yes, provide details

I HEREBY CONFIRM that I have read and understood the conflict of interest policy and the information provided above are complete and adequate to the best of my knowledge, in compliance both in letter and spirit of the conflict of interest policy. I further submit that if I become aware of any information that might require additional disclosure then, I will inform the appropriate authorities immediately.

Signature

Date

About Credibility Alliance

Credibility Alliance (CA) is a consortium of Voluntary Organizations committed towards enhancing Accountability and Transparency in the Voluntary Sector through good Governance. Registered in May 2004 as an independent, not-for-profit Organization, CA emerged as an initiative from within the Sector after an extensive consultative process over a period of two years involving thousands of VOs all over India. As an Organization, CA aspires to build trust among all stakeholders through improving Governance within the Voluntary Sector. As an initiative whose hallmark has been the participatory approach, CA has developed suitable Norms through wide-ranging consultation with and participation of diverse Organizations within the Sector by developing a large membership base.

With the mission 'to build credibility of the Voluntary Sector through creation and promotion of Norms of Good Governance and Public Disclosure', CA's core programme areas comprise of: Accreditation, Capacity Building, Networking and Information Dissemination.

- I. **Accreditation:** Accreditation of Voluntary Organizations refers to the certification of upholding of the quality of an organization, which adheres to the minimum norms or desirable norms set by Credibility Alliance. The main purpose of the Accreditation exercise is to develop a cost effective mechanism of periodic evaluation of VOs in the country.

'Minimum Norms' are the Norms that all VOs should follow. It is mandatory for all the Accredited Members of CA to comply with the Minimum Norms or give an undertaking that they will do so within an year, whereas 'Desirable Norms' are the next level of Norms for good Governance and public disclosure. These are the practices that are at present not mandatory and some Organizations may require time to adopt such practices.

- II. **Capacity Building:** Credibility Alliance focuses on the Capacity Building process to maximize its potential and sustain its work by adopting the existing best practices. CA plans the Capacity Building initiatives for the Voluntary Organizations by identifying and outlining the gaps in the Sector, assessing the needs and finally instituting the programs to address those needs.
- III. **Networking:** Credibility Alliance facilitates interaction between experts in different areas and promotes the sharing of ideas and information between the Voluntary Organizations and the experts. CA helps VOs to seek issue-based information in the Sector that they are working in, which helps in building the professional capacities of VOs through training, thereby enabling them to increase institutional capacities.
- IV. **Information Dissemination:** Credibility Alliance sensitizes, spreads awareness, assists, educates and appraises on the recent developments, responsibilities and other critical issues pertaining to Voluntary Sector by disseminating vital information periodically to all VOs.



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