

National Youth Jazz Orchestra Conflict of Interest Policy and Procedures

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Purpose

NYJO exists to serve young people and young adults, to enhance their education and cultural life, and to provide an excellent jazz education to enthusiastic young people as well as emerging professionals. In carrying out their work for NYJO, our professionals are expected to act with the utmost integrity and be honest, open and accountable at all times. Conflicts of interest can cause reputational damage for both the organisation and the individuals associated with us. The purpose of this policy is to protect the integrity of NYJO’s decision making process, to give confidence to our stakeholders and to protect the integrity and reputation of everyone that works for or with us.

Scope

NYJO is an organisation that values everyone who contributes to and benefits from our work. We are a community of employees, freelance administrators and artists, guest artists, trustees, education partners, funders, audiences, young performers, students and project participants, and their families. For the purposes of this document, we will use the terms ‘professionals’, denoting employees, freelance administrators and artists, guest artists and trustees; and ‘beneficiaries’, denoting young performers, students, project participants and their families, and communities.

Amongst its professionals, NYJO recognises the different legal obligations inherent in relationships based on contracts of employment (ie staff) and contracts for services (ie freelancers). Whilst acknowledging the different contractual arrangements, we are committed to treating all professionals with equal and appropriate respect, fully engaging with and appreciating all who contribute to the success of our work.

Definition of conflict of interest

A conflict of interest means an actual, potential or perceived conflict of interest which arises when a relationship, connection, responsibility, activity, interest, contract or other arrangement outside NYJO could influence, or be perceived by others to influence, your views or actions within NYJO. A conflict of interest arises when an individual, or someone close to them, has something to gain or lose from a decision or action taken by NYJO.

A conflict of interest also arises where there is no direct benefit or gain, but where a professional's duty to act in NYJO's best interests could conflict with a loyalty to, relationship or association with another organisation or individual.

Application

This policy applies to NYJO's professionals, their relatives and family members. For these purposes, relatives and family members are deemed to include children, grandchildren, brothers, sisters, spouses, civil partners, persons living as partners, and close relatives of a spouse or partner. The policy may refer to the charity's beneficiaries, but beneficiaries are not deemed to be at risk of experiencing a conflict of interest. They may, however, alert us should they perceive a conflict of interest within our operations.

Examples of conflicts of interest

- NYJO professionals having an association with an external organisation which may be awarded a contract by NYJO to provide goods or services to the charity;
- NYJO professionals sitting on the board of, or being employed by, an organisation that may be competing with NYJO for funding;
- NYJO professionals becoming beneficiaries of projects funded by NYJO, either personally or through an external organisation with which they are associated;
- NYJO professionals being invited to perform for NYJO;
- NYJO professionals engaging guest artists for NYJO, where the arrangement could be deemed to be reciprocal, risking suggestions of bribery or abuse of influence;
- Connections of a NYJO professional applying for a job or other role at NYJO.

This is not an exhaustive list; where NYJO professionals are in any doubt as to whether something represents a conflict of interest, they should seek advice from the Conflicts Reviewer.

In essence, if a stakeholder or member of the public, knowing the facts of a specific situation, might reasonably conclude that a professional's interests outside NYJO have influenced their conduct for NYJO, then it should be declared.

Individual Obligations Relating to Conflicts of interest

You must:

- a) read, understand and be familiar with this policy;
- b) ensure that decisions or actions at NYJO are not influenced by, or perceived by others to have been influenced by, conflicts of interest;
- c) immediately declare in writing any actual potential or perceived conflict of interest as soon as you become aware of it, using the form provided in Appendix 2;
- d) consult with the Chief Executive wherever possible before putting yourself into a position of a potential conflict of interest; and
- e) take any appropriate steps, as required by the Chief Executive, to manage or resolve a potential conflict of interest.

Non-observance of this policy, whether by acts or omissions, may constitute gross misconduct.

NYJO Obligations Relating to Conflicts of Interest:

Declare – Review – Act – Record

Declare: Prior to appointment, all NYJO professionals are required to submit a conflict disclosure form. In addition to ad hoc updates (which are the responsibility of the individual as soon as a potential conflict emerges), NYJO management should every two years pro-actively remind all relevant individuals of the need to update disclosure forms.

Review: The Chief Executive shall review all potential conflicts of interest, save where the conflict relates to the Chief Executive; in such cases the conflict shall be reviewed by the Chair, advised by any legally qualified trustee.

Act: The Conflicts Reviewer should use their discretion to decide how best to handle conflicts of interest as and when they arise, in order to ensure the integrity of NYJO's decision making process. Appropriate actions will vary according to the circumstances and could consist of:

- Permitting or not permitting the conflicted person to take part in the relevant meetings, discussions or decisions;
- Arranging for the conflicted person not to perform specific tasks in relation to the organisation with whom the conflict of interest occurs;
- Taking legal advice and/or refer the matter to a legally qualified member of the board;
- Deferring a decision pending advice from the Charity Commission;
- Asking the conflicted person to resign from his or her position.

Record: The Chief Executive shall maintain a record of all disclosures for a period of 10 years, filed with this policy.

Gig Opportunities

NYJO recognises that its professionals will often be asked to perform or “dep” at gigs for each other. This does not necessarily present a conflict of interest, provided that the frequency of engagement and payment are reasonable and not likely to unduly influence, or be perceived as influencing decision making in the course of their work for NYJO.

It is crucial to NYJO that we include amongst our trustees leading jazz artists to help to deliver NYJO's charitable mission, advise the organisation and assist with its good governance. However, by appointing such trustees we do not wish to preclude them from working with our beneficiaries in a professional capacity, whether as educators or performers, and we believe that all professionals should be paid for their work. To avoid a conflict of interest, or perceived conflict of interest, we will ensure that:

- The regularity of such professional performances by a trustee is approved by a majority of the Board;
- The payment for such performances is benchmarked across engagements of comparable artists for NYJO;
- A trustee declaration (Appendix 3) is completed by NYJO and signed by the trustee and Conflict Reviewer, with board oversight and approval;
- All payments are in line with our ability to pay trustees for services, in line with Charity Commission regulations and our Articles of Association, the relevant sections of which are referenced below and provided as an extract in Appendix 4.

Additional Rules on Directors' Potential Conflicts and Benefits and Payments to Directors in the NYJO Articles

Declarations of a conflict of interest are a standing item on Board Meeting agendas.

Article 25 of NYJO's Articles of Association contain specific provisions mandated by the Charity Commission around conflicts of interest. These are mandatory and in addition to the requirements of this policy. Where there are perceived inconsistencies between this policy and Article 25, the Articles supercede this policy. The relevant Articles are set out in Appendix 4, for ease of reference.

In essence the Articles require that:

- a) Directors declare the nature and extent of any interest, direct or indirect, which they have in a proposed transaction or arrangement with the Charity;
- b) Directors absent themselves from part of a meeting in order for a decision to be taken about potential conflicts of interest.

The articles set out the circumstances in which the Board may assess a potential conflict of interest to be manageable. It is at the Chair's discretion to permit a trustee to participate in initial board discussions about their potential conflict of interest, in order to allow them to make their views known; there should always be a subsequent discussion without the trustee being present, and they cannot be present when final decisions are made.

The receipt of benefits or payments by Directors may also involve conflicts of interest. Article 5 of NYJO's Articles (which can be found in Appendix 4) sets out when such benefits and payments are and are not permitted.

Policy Review

Policy last reviewed: July 2022
Policy approved by board:
Next review due: September 2023
Responsible Trustee: Nigel Tully

Appendix 1: Further Guidance on Scope of Conflicts of Interest

Please note that this guidance is not exhaustive. It is intended to provide guidance to individuals about conflict of interest situations. If individuals are unsure of whether a conflict of interest situation exists, they are advised to speak to the Chief Executive (or, if the perceived conflict relates to the Chief Executive, then to the Chair or any legally qualified trustee).

Conflicts of Interest may involve personal financial gain or loss, but also extend to any form of benefit for NYJO professionals or the entity with which they are connected.

Examples of such interest and connections include instances in which NYJO professionals, or a relative or family member, act in any of the following capacities: employee, shareholder, director, trustee, contractor, supplier or procurer of goods or services. For these purposes, relatives and family members are deemed to include children, grandchildren, brothers, sisters, spouses, civil partners, persons living as partners and relatives of a spouse or partner.

The interest or connection could for example be with an actual or potential grantee, supplier, funder or an entity that effectively competes with NYJO for funding.

An interest or connection may be current or in the past. As a general rule, it will certainly be considered relevant if applied within the last three years e.g. if a NYJO professional worked with or for an organisation within the last three years and is now involved within NYJO in decisions about contracts with, or grants to, that organisation.

Conflicts of interest can occur after you have left NYJO. NYJO professionals must keep information acquired during their time at the charity confidential and comply with any other contractual terms and conditions that apply after their service with NYJO ends.

Appendix 2: Declaration of Interest Form

Name

Role within NYJO

Please give details of any circumstances applicable to you that may be classed as a conflict of interest or a duality of interest:

I hereby declare that I:

- a. Have received, read, and understand the conflict of interest policy;
- b. Agree to comply with the conflict of interest policy, and any additional confidentiality clauses outlined in my contract with NYJO;
- c. Will amend and update this form promptly if any information therein changes substantially, or new information arises.

Signed.....

Date.....

Please submit completed form to the Conflicts Reviewer within 14 days.

For internal use

Reviewed by

Name	Position	Date

Details of actions taken

Appendix 3: Trustee Performer Declaration of Interest Form

Trustee Name

Booking

Reason for engaging trustee

Fee arrangements and evidence of benchmarking

Board approval (names of trustees approving booking, date of approval)

Comments

I hereby declare that I:

- Have read, understand and agree to comply with the conflict of interest policy;
- Agree to comply with the policy and NYJO Trustee Terms of Reference;
- Will amend and update this form promptly if any information therein changes substantially, or new information arises.

Signed

Trustee	Date
Conflict Reviewer	Date

Appendix 4: Provisions in NYJO Articles Relevant to Directors Conflict of Interest and Benefits and Payments to Directors and Connected Persons

CLAUSE 25: CONFLICTS OF INTEREST

25.1 A Director must declare the nature and extent of any interest, direct or indirect, which he has in a proposed transaction or arrangement with the Charity or in any transaction or arrangement entered into by the Charity which has not previously been declared.

25.2 A director must absent himself or herself from that part of the meeting when a decision is taken about a matter in which a Director has a possible conflict of interest between his or her duty to act solely in the interests of the charity and any personal interest (including but not limited to any personal financial interest).

25.3 If a conflict of interest arises for a director because of a duty of loyalty owed to another organisation or person and the conflict is not authorised by virtue of any other provision in the articles, the un-conflicted directors may authorise such a conflict where the following conditions apply:

- a) the conflicted director is absent from the part of the meeting at which there is a discussion of any arrangement or transaction affecting that other organisation;
- b) the conflicted director does not vote on any such matter and is not to be counted when considering whether a quorum of directors is present; and
- c) the un-conflicted directors consider it is in the interests of the charity to authorise the conflict of interest in the circumstances applying.

In this article 25.3 a conflict of interest arising because of a duty of loyalty owed to another organisation or person only refers to such a conflict which does not involve a direct or indirect benefit of any nature to a director or to a connected person

CLAUSE 5: BENEFITS AND PAYMENTS TO DIRECTORS AND CONNECTED PERSONS

5.1 A Director:

- (a) is entitled to be reimbursed or pay out of the property of the Charity reasonable expenses properly incurred when acting on behalf of the Charity;
- (b) may benefit from trustee indemnity insurance purchased by the Charity in accordance with and subject to section 189 of the Charities Act;
- (c) may receive payment under an indemnity from the Charity in the circumstances set out in Article 33;
- (d) may not receive any other benefit or payment from the Charity unless it is authorised by this *Article 5*.

5.2 Unless the benefit or payment is permitted under *Article 5.3*, or authorised by a court or the prior written consent of the Charity Commission has been obtained, no Director (including a Member who is also a Director) or Connected Person may:

- (a) buy any goods or services from the Charity on terms preferential to those applicable to members of the public;
- (b) sell goods, services, or any interest in land to the Charity;
- (c) be employed by, or receive any remuneration from the Charity; or
- (d) receive any other financial benefit from the Charity.

In this article a “financial benefit” means a benefit, direct or indirect, which is either money or has a monetary value.

5.3 A Director or a Connected Person may:

- (a) receive a benefit from the Charity in the capacity of a beneficiary of the Charity provided that a majority of the Directors do not benefit in this way;
- (b) enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the Charity where that is permitted in accordance with, and subject to the conditions in, sections 185 and 186 of the Charities Act;
- (c) subject to *Article 5.4*, enter into a contract for the supply of goods to the Charity that are not supplied in connection with services provided to the Charity by the Director or Connected Person;
- (d) receive reasonable and proper rent for premises let to the Charity;
- (e) receive interest at a reasonable and proper rate on money lent to the Charity;
- (f) take part in the normal trading and fund-raising activities of the Charity on the same terms as members of the public; and
- (g) receive or retain any payment for which prior written authorisation has been obtained from the Commission.

5.4 The Charity and its Directors may only rely on the authority provided by *Article 5.3(c)* if each of the following conditions is satisfied:

- (a) the amount or maximum amount of the payment for the goods:
 - (i) is set out in an agreement in writing between the Charity and the Director or Connected Person supplying the goods (the **Supplier**) under which the Supplier is to supply the goods in question to the Charity;
 - (ii) does not exceed what is reasonable in the circumstances for the supply of the goods in question;
- (b) the other Directors are satisfied that it is in the best interests of the Charity to contract with the Supplier rather than someone who is not a Director or Connected Person. In reaching that decision, which must be recorded in the minutes of the meeting, the Directors must balance the advantages of contracting with a Director against the disadvantages of doing so;
- (c) the Supplier:
 - (i) is absent from the part of the meeting at which there is discussion of the proposal to enter into a contract or arrangement with regard to the supply of goods to the Charity by them;
 - (ii) does not vote on any such matter and is not counted when calculating whether a quorum of Directors is present at the meeting; and
- (d) a majority of the Directors then in office are not in receipt of remuneration or payments authorised by *Article 5*.

5.5 In *Article 5.3* and *Article 5.4*, the “Charity” includes any company in which the Charity:

- (a) holds more than 50% of the shares; or
- (b) controls more than 50% of the voting rights attached to the shares; or
- (c) has the right to appoint one or more Directors to the company.