



# Conflict of Interest Policy & Procedure

Version 1.0

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## 1. Documentation and Approval

### Revision History

This document is subject to revision control. The master electronic copy can be found in SharePoint.

Version	Revision	Summary	Author
1.0	2021-06-01	Published	

### Approvals

Names	Signature	Position	Date	Version
R&CC			17/5/21	
SLT			27/5/21	

### Distribution

Distribution List	Date of Issue	No. of Copies

## 2. Purpose, Scope and Definitions

### Purpose

Taking action or a decision while subject to a conflict of interest can lead to conduct or decisions that are not in the best interests of ClientEarth, and which are invalid or open to challenge. Actual, potential or apparent conflicts of interest, if poorly managed, can also damage ClientEarth's reputation and undermine public confidence in charities generally. Inattention to, or improper management of, conflicts of interest may even expose ClientEarth or individual members of staff to disciplinary actions or SLAPP suits.

ClientEarth has put in place this Conflict of Interest Policy & Procedure (the "Policy") that sets out comprehensive procedures for identifying and managing potential, actual and apparent conflicts of interest. ClientEarth will regularly review the procedures as needed to support the development of the organisation. The Policy will be reviewed and updated as necessary at least annually.

### Scope

This Policy applies to:

- Trustees in the various ClientEarth entities;
- Board (or similar body) members in the various ClientEarth entities;

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- All staff members, interns and volunteers in the various ClientEarth entities;
- ClientEarth as an organisation.

In addition and complementary to this Policy, specific matters related to conflicts of interest are governed by existing (professional) rules and regulations. These rules and regulations will not be treated in detail in this Policy, but they will need to be followed as and when they apply to a particular conflict of interest.

For example:

- Professional rules and regulations governing Qualified Lawyers<sup>1</sup> conflicts of interests. These typically apply when a Qualified lawyer is acting for multiple clients and there is a (potential) conflict between the interests of two or more clients;

e.g., Solicitors Regulation Authority (SRA) Guidance on Conflicts of Interest and the SRA Principles (<https://www.sra.org.uk>),<sup>2</sup> The Law Society's 'Regulation and In-house Lawyers' book and equivalent professional rules governing ClientEarth Qualified Lawyers regulated in other jurisdictions than England and Wales. Qualified Lawyers remain obligated to at all times know and comply with their own regulating body's specific rules and requirements.

- Charity-specific rules and regulations, governing Trustees' conflict of interests. These apply to situations in which a trustee's personal interests or loyalties could, or could be seen to, prevent the trustee from making a decision only in the best interests of the charity;

e.g., UK Charity Commission Guidance CC29 - Conflicts of Interest: a guide for charity trustees.<sup>3</sup>

- Local rules of corporate law and corporate governance, governing Board (or similar body) members' conflict of interests, as set out in the relevant by-laws or articles of association of the various ClientEarth legal entities. These apply to situations in which a Board (or similar body) member's personal interests or loyalties could, or could be seen to, prevent the Board member from making a decision in the best interests of the entity.

This Policy must also be read in conjunction with other ClientEarth policies dealing with specific issues that require the identification and management of conflicts of interest in a particular context, including:

- [Corporate Fundraising Policy](#) and Due Diligence Procedures led by Development;
- [Procurement Policy](#) and [Partner Due Diligence Policy](#);

The above policies deal with the processes for screening and selection of funders and programmatic partners, including a conflict of interests check.

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<sup>1</sup> As defined in the Professional Obligations Handbook: Qualified Lawyers are those who are currently licensed to practice law in the jurisdiction in which they are employed and/or in another "home" jurisdiction, assuming that they have a current practising certificate (if required), bar membership (if required), or are otherwise up-to-date and "in good standing" with the relevant regulatory body.

<sup>2</sup> See Annex B of the [Professional Obligations Handbook](#) for more specific detail on the SRA rules governing solicitors.

<sup>3</sup> <https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29>

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- [Acting for Third Parties Policy and Procedure](#);

In rare cases, a Qualified Lawyer employed by ClientEarth may act for third party/ies, in accordance with ClientEarth's Acting for Third Parties Policy and Procedure, that includes rules for identifying and managing client conflicts of interests.

- [Gifts and Hospitality Policy](#) and [Anti-Bribery and Corruption Policy](#);

These policies aim to ensure ClientEarth staff, Trustees and Board members abide by the highest ethical and legal standards and do not let personal interests (financial or other) prevent them from acting in ClientEarth's best interests.

## Definitions

An "**Interest**" is defined as a commitment, obligation, duty or goal associated with a particular social role or practice. An interest refers to the principal goals of a role, e.g., helping to achieve ClientEarth's mission. An interest can also include personal benefit, such as financial gain, but also motives such as the desire for professional advancement or the wish to do favours for family or friends.

We define a "**Conflict of Interest**" as the condition that arises when two coexisting interests conflict with each other: that is, when they are likely to compel contrary and incompatible outcomes.

A Conflict of Interest may be more potential than actual. Potential conflicts refer, as a general matter, to situations that do not necessarily constitute or appear to constitute a Conflict of Interest but where there is a reasonable possibility of an actual or apparent Conflict of Interest coming into play. Apparent conflicts are existing situations or relationships that reasonably could appear to other parties to involve a Conflict of Interest.

In this Policy, we distinguish between three types of Conflicts of Interest:

- Personal Conflicts of Interest,
- Organisational Conflicts of Interest, and
- Client Conflicts of Interest.

These will be explained in greater detail, and examples of each provided, below.

"**Conflict of Interest Declaration Form**" is the form to be used for declaring a Conflict of Interest, a template of which can be found in an Annex to this Policy.

"**Register of Conflicts of Interest**" is the central register for logging Conflicts of Interest and actions taken to mitigate the same, in accordance with this Policy.

## 3. Recognising the different types of Conflicts of Interest

### Duty to act in the best interests of ClientEarth

Due to the nature of their role in or relationship with ClientEarth, **anyone covered by this Policy** has a duty to act in the best interests of ClientEarth as an organisation and in line with the organisation's vision

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and mission to protect the planet and its people.<sup>4</sup> A (potential) Conflict of Interest does not necessarily preclude someone from acting, but it means that they need to be transparent about the (potential) Conflict of Interest and take steps to ensure that action is taken in ClientEarth's best interests.

They must therefore be mindful of (potential) Conflicts of Interest, and must raise any concerns to their line manager or in accordance with applicable procedures as described in this Policy, as soon as the (potential) Conflict of Interest arises or they become aware of it. See Section 4 for practical guidance on declaring a Conflict of Interest.

## Personal Conflicts of Interest

A personal Conflict of Interest can arise when an individual's duty to act in the best interests of ClientEarth conflicts, or is at significant risk of conflicting, with their personal interests or loyalties they owe to another person or body, and this may (or may appear to) unduly influence or affect a decision.

A personal Conflict of Interest may take a number of forms. It may be financial or non-financial. It may be professional or family-related. It may be direct, for example, when it relates to the trustee or staff member declaring the conflict, or indirect, for example when it relates to a family member of that trustee or staff member.

A personal Conflict of Interest may arise from (this ***list of examples*** is non-exhaustive):

- Holding interests in business enterprises; for instance when a staff member has an interest (financial or loyalty) in a supplier or partner that his/her team wishes to contract with;
- Owning shares in specific companies;
- Having (a) beneficial interest(s) in (a) trust(s);
- Engaging in professional or personal associations or relationships with other organisations or groups;
- Owing a duty of loyalty to (former) clients;
- Having family relationships (typically immediate family members) with any of the above; for instance when a staff member's family member works for a company ClientEarth is targeting in a potential Case;
- Holding multiple roles within ClientEarth (e.g., a Board member in a ClientEarth entity approving decisions that may affect local employees' rights if that same person is an employee of the same entity);
- Holding multiple roles in and outside of ClientEarth (e.g., performing free-lance or providing pro bono services to other individuals or entities, taking on additional roles outside of ClientEarth (e.g. trustee role; other paid or volunteer roles) that could conflict with ClientEarth's work);

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<sup>4</sup> People are free to make personal life choices but the duty to act in the best interests of ClientEarth also relates to some aspects of personal life that may affect ClientEarth's reputation, as described in the Social Media Policy [once finalised].

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- A ClientEarth staff member taking an individual opportunity (e.g., to write an article or consult with a company/government on a matter related to ClientEarth's work) that should have properly been considered a ClientEarth opportunity and/or that could conflict with ClientEarth's work.

Financial conflicts: These conflicts happen when a trustee, Board member or staff member with a duty to act in the best interests of ClientEarth, or person (e.g., family member) or separate organisation connected to them, could personally receive money or something else of value from the individual's decision.

## ***Some examples where there is an actual or potential financial Conflict of Interest:***

- ClientEarth employs or pays its trustee, or their relative, to provide a service to ClientEarth (the non-profit), or its trading company;
- a ClientEarth staff member's partner works for a company that ClientEarth proposes to hire, and is part of the decision-making team for the hire or can somehow influence that team;
- a ClientEarth lawyer is choosing a corporate target and purposefully avoids one in which they (personally) own shares or where their partner works;
- a ClientEarth staff member conducts (or is asked to conduct) freelance work related to ClientEarth's work (e.g., writing a paid article on an environmental topic related to our work).

It still counts as a conflict, even if ClientEarth would get a good deal for its money.

Non-financial conflicts, including loyalty conflicts: These conflicts are not about money or other benefits. They happen when, for other reasons, an individual might not be able to make decisions that are best for ClientEarth. Such other reasons include, for example, an increase in reputation/profile or, more often, a loyalty arising from a personal connection or duty to another person or organisation. There can be a conflict because the individual's responsibility or loyalty to the other organisation or person could compete with their responsibility to ClientEarth.

## ***Some examples where there is an actual or potential non-financial Conflict of Interest:***

- a ClientEarth trustee has a duty of loyalty to another charity where they are also a trustee;
- a ClientEarth staff member's family member works for a company ClientEarth is targeting in a potential Case;
- a ClientEarth staff member has a duty of loyalty (and confidentiality) to a former client of the law firm they used to work at;
- a ClientEarth staff member has a duty of loyalty to a group or organisation that works on divisive issues unconnected to our work.<sup>5</sup>

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<sup>5</sup> Staff should speak on issues that matter to them, as long as by doing so they do not jeopardise the organisation's ability to continue to influence across the political spectrum. Further guidance can also be found in our Social Media Policy [once finalised].



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## Organisational Conflicts of Interest

An organisational Conflict of Interest occurs when two coexisting interests of **ClientEarth as an organisation** conflict with each other: that is, when they are likely to compel contrary and incompatible outcomes.

Overall, ClientEarth's governance structure as an organisation is set up to ensure that the interests of the various entities are aligned with the interests of ClientEarth as a global organisation, and with its vision and mission to protect the planet and its people. The UK Board of Trustees sets ClientEarth's vision, mission and values, and monitors performance of the organisation against its strategic objectives. The Senior Leadership Team develops organisational long-term strategy.

A conflict may arise between a ClientEarth entity, on the one hand, and ClientEarth as a global organisation and its mission and values, on the other hand. For example, a conflict could arise if a ClientEarth entity is looking to enter into a local partnership that would boost its activities and reputation significantly in that jurisdiction, but the partner's messaging is not compatible with ClientEarth's organisational strategy or could conflict with its strategy in another jurisdiction. In this scenario, the local ClientEarth entity should raise the issue appropriately internally (e.g., to PMG or PLT, as appropriate) for discussion and resolution.

A conflict may also arise between one ClientEarth entity and another ClientEarth entity, for example, in the context of financial transactions taking place between two or more ClientEarth entities (e.g., for intercompany service provision or sub-granting). Such interactions are governed by existing intercompany agreements containing conflicts of interest provisions.

The focus of this section is on two principal types of organisational Conflicts of Interest: inter-programmatic conflicts and funding conflicts.

### *Inter-programmatic Conflicts*

An inter-programmatic Conflict of Interest can arise when ClientEarth as an organisation acts in different programmatic matters<sup>6</sup> where the strategy, interests or objectives of the organisation in one matter are at odds with those of the organisation in the other matter.

#### ***For example:***

- If one programme is advocating for a law to be interpreted in a way that is inconsistent with the interpretation advanced by another programme.
- If one programme is scoping a strategy to expand or adopt a legal theory or approach that, if successful, could potentially undermine another programme's strategy.
- If one programme is promoting the adoption of a policy or approach in a way that could potentially run afoul of another team's nuanced approach to that issue (e.g., the Energy System team promoting wind turbine electricity generation vis-à-vis the Wildlife team strategy on the Bird's Directive and Natura 2000 sites).

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<sup>6</sup> Here, 'matters' means **any** piece of work undertaken in the name of ClientEarth, including legal advocacy, litigation, communications, campaigns, or capacity-building activities.

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Inter-programmatic types of organisational Conflicts of Interest do not need to be declared by staff when completing the Conflicts of Interest Declaration Form.

## *Funding Conflicts*

Another kind of organisational Conflict of Interest may arise in relation to funding ClientEarth receives from external sources. Accepting external funding, especially if the amounts are considerable, may come with forms of pressure by the funder, or the perception of such pressure, on ClientEarth to take decisions or actions in the interest of the funder, which may be contrary to ClientEarth's interests. This could include something as overt as a foundation or major donor conditioning their funding on ClientEarth (a) endorsing an associated for-profit company, or (b) refraining from litigation or pre-litigation activities targeted at that entity. But such pressure could be more subtle, such as by excessively intervening in ClientEarth strategy or dictating projects or activities. ClientEarth has, and must at all times retain, full independence over its strategy and actions, and it must not be, or appear to be, unduly influenced by the interests of its funders. See also [Professional Obligations Handbook](#) at Duty of Independence and Duty of Loyalty.

## Client Conflicts of Interest

Qualified Lawyers must act at all times in the best interests of their client and with utmost loyalty to their client and its interests. To do so, Qualified Lawyers must avoid actual (and, where possible, potential) Conflicts of Interest. See also [Professional Obligations Handbook](#) at Duty of Loyalty.<sup>7</sup>

Qualified Lawyers employed by ClientEarth will normally act for or on behalf of ClientEarth, as in-house counsel, with the understanding that their sole 'client' is ClientEarth as the organisation, and not any individual or group of individuals therein, or any particular office. All legal strategies pursued will have been developed and approved on behalf of the organisation in accordance with its internal policies and procedures.

When ClientEarth Qualified Lawyers work with third-party entities, coalitions or individuals, they are almost never acting as their lawyers, and generally do not formally or legally represent them. Instead, ClientEarth is providing its own subject matter and legal expertise, as well as legal information, in its own interests to further the mutual objectives of the group.

Very rarely, a ClientEarth in-house lawyer will be authorized by ClientEarth to represent a third-party client. In such case, the lawyer's clients would be **both ClientEarth and the third party**. Such a relationship must be formed in compliance with ClientEarth's [Acting for Third Parties Policy & Procedure](#). As stated, it is very rare at ClientEarth that a Qualified Lawyer represents a third party client, so will not be further addressed here.

## 4. Identifying and Disclosing a Conflict of Interest

Conflicts of Interest reflect the objective states of affairs rather than internal mental states; they do not imply moral error. They are identified through processes involving dialogues based on ethical principles ('doing the right thing') among relevant stakeholders.

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<sup>7</sup> See the [Professional Obligations Handbook](#), Annex B for more specific detail on the SRA rules governing solicitors. Solicitors breach the SRA Code of Conduct if they act where there is a Conflict of Interest.

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The framework described in this Policy reflects the diversity of interests in ClientEarth and provides guidelines and specific processes for the identification, disclosure and management of conflicts arising between them.

As referred above, additional procedures exist for specific Conflict of Interest matters, e.g., for Qualified Lawyers regulated by a professional body, for trustees of the ClientEarth UK charity, for Board members of ClientEarth entities, and these specific procedures must also be followed as and when applicable.

If none of the processes described or referred herein apply, you are expected to raise any conflicts to line management and to submit a completed Declaration of Conflict of Interest Form to the following e-mail address: [Conflicts@clientearth.org](mailto:Conflicts@clientearth.org). ***If in doubt, disclose.***

## General process for making declarations of (Conflict of) Interest(s)

Raising a (potential) Conflict of Interest should be done by completing the ***Conflict of Interest Declaration Form***, except if provided otherwise in this Policy.

For raising Organisational Conflicts of Interest (Inter-programmatic and Funding) and Client Conflicts of Interest, the Conflict of Interest Declaration Form does not need to be completed.

The completed form must be submitted as follows:

- either in accordance with the specific processes described below, to the following e-mail address: [Conflicts@clientearth.org](mailto:Conflicts@clientearth.org);
- or in accordance with other applicable procedures (e.g. a trustee or Board member will notify the Board);
- or, if none of these processes apply, to the following e-mail address: [Conflicts@clientearth.org](mailto:Conflicts@clientearth.org)

In addition to this, the following must be adhered to:

- Annual declarations of Conflict of Interest should be made by Trustees and Board members in ClientEarth entities and by all staff members.
- Conflicts of Interest must be a standard agenda item at the beginning of each Board and Board Committee meeting to allow the opportunity for declaration of any actual or potential interest in any of the items on that agenda.
- During meetings, staff must declare verbally any (potential) Conflicts of Interest that arise from any item on the agenda or any specific matter, transaction, or decision under discussion or consideration. In appropriate instances, staff should volunteer to or be asked to recuse themselves from a discussion or decision-making process where the Conflict of Interest requires it.
- ***If in doubt, disclose.***

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## Specific processes

### *Personal Conflicts of Interest at recruitment: potential employees and new starters*

The following procedures must be followed at the time of recruitment:

1. At the second interview stage, the hiring manager or interviewer will ask the interviewee if there are any known or potential Conflicts of Interest that they may have. The interviewee should be made aware that anything they declare would not necessarily prevent them from securing the role. The hiring manager or interviewer will take a note of anything declared to notify to Recruitment.
2. The hiring manager will notify Recruitment of the outcome of the interview, and will also inform the hiring manager's line manager, where applicable, in writing of any (potential) Conflicts of Interest.
3. If no (potential) Conflicts of Interests are raised, and Recruitment and the hiring manager agree on the offer to be made, it will be for the hiring manager to make the offer to the successful candidate.
4. If any (potential) Conflicts of Interest are identified, Recruitment will review to assess whether there are any mitigating actions that can be put in place in order to enable the offer to be made. Suitable mitigation may simply involve disclosure of the Conflict of Interest, and/or either an ethical barrier between the new hire and certain other ClientEarth staff or a recusal of the new hire from certain decisions or activities (e.g., in the case of ClientEarth targeting a former client of a lawyer).
5. Recruitment will discuss the recommended mitigating actions with the hiring manager in order for the hiring manager to consider when making the offer.
6. Where there are no suitable mitigating actions evident, or where Recruitment wants a second opinion or further advice and discussion, the matter will be referred to the Risk and Compliance Committee. The Risk and Compliance Committee will discuss and advise on the course of action. When the R&CC has provided its recommendation, it will be communicated back to Recruitment, who will in turn cascade this to the hiring manager.
7. The final responsibility for the decision lies with the relevant Head of Programme / Geography / Function of the hiring manager. The hiring manager or the hiring manager's line manager will consult the Head of Programme / Geography / Function (as relevant and appropriate) to discuss the (potential) Conflict of Interest and any recommendations made by Recruitment and/or R&CC, as appropriate, and to set out a course of action to mitigate the Conflict of Interest to ClientEarth. If deemed useful, the Head may consult other relevant stakeholders (e.g., Communications).
8. This process will end in one of three decisions:
  - a. (Potential) Conflict of Interest has been identified, and no suitable mitigation can be put in place, therefore the employment offer cannot be made;
  - b. (Potential) Conflict of Interest has been identified, and suitable mitigation (which may include simple disclosure) can be put in place. Those measures should be detailed to the potential employee when the offer is made;
  - c. No (Potential) Conflict of Interest exists, and the employment offer can be made without any restrictions.

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Any decision will be notified to the R&CC.

9. If the Head would prefer to take a decision contrary to the R&CC's recommendation, and at the R&CC's election if it deems the matter severe and important, the matter may be escalated to the SLT for final decision.
10. When a conditional offer of employment is made to a potential new starter, they should be sent a Conflict of Interest Declaration Form to record any (potential) Conflicts of Interest that may affect their work as part of the recruitment checks, which they complete, and return. They must include the Conflicts of Interest already disclosed and discussed, along with any agreed mitigation activities.
11. Once the completed recruitment checks have been returned, all declared Conflicts of Interest will be logged in the Register of Conflicts of Interest.
12. Following this, on confirmation of the satisfying of the recruitment checks and the agreement of any mitigation, if necessary, Recruitment will confirm the conditional offer and the new starter will be on boarded.

## *Personal Conflicts of Interest during employment: current staff with undeclared or new Conflicts or Interests*

For all staff employed by ClientEarth, the following procedures must be followed<sup>8</sup>:

1. All staff complete a Conflict of Interest Declaration Form annually, which will be circulated by the Operations team. Any Conflict of Interest declared through this process will be notified to the line manager of the member of staff making the declaration.

Apart from the annual declaration, if at any time during employment, a staff member takes on a new activity or otherwise identifies a new issue or area that may present a (potential) personal Conflict of Interest with their role or a specific matter at ClientEarth, the staff member must immediately notify their line manager of the (potential) Conflict of Interest through a Conflict of Interest Declaration Form.

2. The final responsibility for the decision on how to manage and mitigate the conflict lies with the relevant Head of Programme / Geography / Function of the line manager. The line manager will consult the Head of Programme / Geography / Function (as relevant and appropriate) to discuss the (potential) Conflict of Interest and set out a course of action to mitigate the Conflict of Interest to ClientEarth.
3. The staff member will carry out any actions as agreed with their line manager (under the Head's responsibility) and will update their line manager on progress periodically. The outcome will be recorded in the Conflicts of Interest Register.

If the (potential) Conflict of Interest is of such a nature that it may affect the staff member's overall ability to perform their role, the following **additional** steps must be taken:

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<sup>8</sup> If the (potential) Conflict of Interest pertains to a Case, please follow the specific procedure for *Conflicts pertaining to Cases* described further in this Policy.

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4. The details of the (potential) Conflict of Interest, and proposed mitigating actions will be referred to the HR team. The HR team will review the Conflict of Interest and proposed mitigation. Following such review, HR will advise the line manager that it agrees with the proposed mitigation or provide a recommendation. ***If in doubt, consult HR team.***
5. The staff member will carry out any actions as agreed with their line manager (under the Head's responsibility) and reviewed by HR, and will update their manager and HR on progress periodically. The outcome will be recorded in the Conflicts of Interest Register.
6. If an agreement among the staff member / line manager (under the Head's responsibility) / HR on how the Conflict of Interest should be managed cannot be reached at this stage, or if the line manager or HR wants a second opinion or further advice and discussion, the Conflict of Interest is referred to the Risk and Compliance Committee, who will make a recommendation to the line manager and HR, including, where appropriate, on any mitigating actions to be taken by the staff member.
7. The line manager will consult the Head of Programme / Geography / Function (as relevant and appropriate) to discuss the (potential) Conflict of Interest and any recommendations made by HR and/or R&CC, as appropriate, and set out a course of action to mitigate the Conflict of Interest to ClientEarth. If deemed useful, the Head may consult other relevant stakeholders (e.g., Communications).
8. Any decision will be notified to the R&CC.
9. If the Head agrees with the R&CC's recommendation, the staff member will be informed by their line manager.
10. If the Head would prefer to take a decision contrary to the R&CC's recommendation, and at the R&CC's election if it deems the matter severe and important, the matter may be escalated to the SLT for final decision.
11. The staff member will carry out any actions as agreed with their line manager and reviewed by HR and (where appropriate) R&CC, and will update their line manager and HR on progress periodically. The outcome will be recorded in the Conflicts of Interest Register.

## *Personal conflicts pertaining to Cases<sup>9</sup>*

The following procedures must be followed for (potential) conflicts pertaining to Cases:

1. As soon as practicable at the beginning of each month, the Director of Litigation or her delegate will circulate the monthly New Matters Report and the monthly Pipeline Report from the Matter Management System (MMS) to the SLT, OMG and all programmatic and strategic communications staff. The New Matters Report includes all Cases opened for scoping in the month. The Pipeline report identifies all Cases preparing for launch in the coming 4 months.
2. All recipients will review the New Matters and Pipeline reports for (potential) personal Conflicts of Interest. If a staff member identifies any (potential) Conflict of Interest, they will inform the Lead Lawyer through a completed Conflict of Interest Declaration Form, who will in turn notify the Initiative

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<sup>9</sup> As defined in the [Case Management and Approval Policy](#).

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Lead, Head of Programme and/or Head of Geography (as relevant and appropriate) on the Case and the Director of Litigation.

3. The Head of Programme, Head of Geography (if any), and Director of Litigation will make a decision on how to proceed with the Case. If the Case is cross-programmatic, the Head(s) of the other programme(s) should be consulted.
4. If the Head of Programme, Head of Geography and Director of Litigation cannot reach a decision, the question shall be escalated to the Programme Leadership Team for a final decision. The PLT can consult with R&CC before making a decision. They may also decide to consult the Litigation Review Committee, if deemed appropriate.
5. The outcome will be recorded in the MMS as a note in the Matter narrative section, with any conflicts held in the Conflicts of Interest Register. The Lead Lawyer will be responsible for ensuring that any mitigation measures necessary are in place and report back to the Head of Programme/Geography (as relevant and appropriate) on the same.

## *Organisational conflicts: Inter-programmatic conflicts*

For any (potential) conflicts of strategy between different Programmes or Geographies, the following procedure must be followed:

1. If a member of staff identifies any (potential) conflict between or among teams' strategies, they will inform their line manager, or Lead, as appropriate, clearly articulating the nature of the conflict, the programmes/teams involved, and the risks (to each strategy, and/or to ClientEarth's reputation) from the (potential) conflict. The Lead should discuss the issue with their Head of Programme/Geography and determine whether to convene a meeting to discuss the (potential) Conflict of Interest.
2. Initially, the Head(s) of the relevant Programmes or Geographies involved in the (potential) conflicting strategies should meet to discuss and attempt to resolve the matter among themselves. This will generally involve deeper knowledge and/or strategy sharing, and attempts to more narrowly frame or nuance each team's approach to avoid or limit conflicts. Any such agreed narrowings, limitations, nuance should be shared with PMG and recorded, both in the relevant teams' strategic documents (e.g., annual plans) and in the PMG minutes.
3. Sometimes direct discussion may not be possible or practical, or may involve political sensitivities that prevent direct engagement on the issue in question. In which case, the relevant Head and/or Lead should bring the matter to the attention of PLT, to facilitate a discussion and resolution. The outcome should be shared with PMG and recorded, both in the relevant teams' strategic documents (e.g., annual plans) and in the PMG minutes.

In addition to the above procedure, a regular check of Cases in the Matter Management System will be undertaken to identify any (potential) Conflicts of Interest arising from the involvement of third parties in litigation supported by ClientEarth in different capacity (e.g. if a third party is a claimant in one case and a defendant in another case):

1. In the first week of each month, the Case Management Assistant or Officer will review the parties identified in all Cases in the New Matters report, as well as any parties added to Cases in the Pipeline report against the full MMS database.

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2. If the same party is named in more than one Case in a different capacity, the Case Management Assistant/Officer will notify the Director of Litigation to determine whether the circumstances create a (potential) Conflict of Interest. If a Conflict of Interest is identified, the Director of Litigation will discuss the issue with the Head(s) of Programme and Geography (if any), notifying the relevant Lead Lawyers.
3. The Director of Litigation and Heads of Programme and/or Geography (if any) will make a decision on how to proceed with the Cases. If any of the Cases are cross-programmatic, the Head of the other programmes should be consulted.
4. If the Head of Programme, Head of Geography and Director of Litigation cannot reach a decision, the question shall be escalated to the Programme Leadership Team for a final decision. The PLT may consult with R&CC or the Litigation Review Committee, if deemed appropriate.
5. The Lead Lawyer will record the outcome in the MMS as a note in the Matter narrative section. The Lead Lawyer will be responsible for ensuring that any mitigation measures necessary are in place and report back to the Head of Programme/Geography (as relevant and appropriate) on the same.

## *Organisational conflicts: Funding conflicts*

Each member of staff delivering programmatic work must be aware of the funders supporting their work and the funder's corporate structure and interests. The Development team will provide this information to the programmes promptly upon accepting new funding.

Potential Conflicts of Interest are considered in the Go/No Go decision-making process when assessing any new funding opportunities. For more information, refer to the [Corporate Fundraising Policy](#) and Due Diligence Procedures led by Development.

Where any member of staff undertaking a new piece of work believes there may be a potential appearance of or an actual Conflict of Interest arising in relation to funding source (e.g., the funder is a potential target or is going to be advocating on the other side of a piece of legislation, etc.), they will notify the Head of Programme undertaking that work and the Head of Grants or Philanthropy (as appropriate).

The Head of Programme and Head of Grants/Philanthropy may consult the Risk & Compliance Committee with any questions related to assessing the conflict and/or measures to mitigate the risk before deciding on what steps need to be taken to manage the (potential) conflict.

Where the Head of Programme and Head of Grants/Philanthropy cannot agree or where the question concerns a major funder<sup>10</sup>, the matter will be escalated for consideration by the SLT. The SLT's decision will be final.

The outcome will be recorded in the funder profile on Raiser's Edge by the development team. The Heads of Programme and Grants/Philanthropy are responsible for ensuring that any mitigation actions are implemented and will update the SLT on progress periodically.

## *A Partner must perform its own Conflict of Interest check*

Conflicts of Interest checks should be performed when contracting or engaging with a partner on behalf of ClientEarth, or when otherwise procuring goods or services from a third party. ClientEarth must first ensure

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<sup>10</sup> For the purposes of this Policy, a major funder means a funder who contributes more than 10% of the annual organisational income or a funder who contributes more than 2/3<sup>rd</sup> of the funding of a single team.



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that it performs the necessary checks to identify and manage any Conflicts of Interest. But ClientEarth must also ensure that the other party performs its own Conflict of Interest check and informs ClientEarth of any actual or potential conflict prior to signing a contract with ClientEarth and of any conflict that may arise during the relationship.

Sub-grantees, subcontractors, consultants, lawyers and providers of goods and services are required to disclose to ClientEarth at the time of their engagement any (potential) Conflicts of Interest with their engagement. ClientEarth's Procurement Policy and Partner Due Diligence Policy, as well as its contracting processes and contract templates/checklists/standard clauses, are designed to assist in this process. It is important that these policies and processes are duly followed, and that the contract tools are properly used by all staff involved in contracting, in order to identify and manage (potential) Conflicts of Interest prior to ClientEarth engaging or signing an agreement with the relevant party.

Should any Conflict of Interest be disclosed by the other party, either at the outset or during the relationship, ClientEarth may have to take appropriate action. This may include the insertion of an appropriate clause into any formal agreement/contract to manage the disclosed situation, should that be possible, but could include terminating the relationship, if necessary in accordance with ClientEarth policies and procedures.

## 5. Actions to take to avoid or mitigate a Conflict of Interest

Once a Conflict of Interest has been identified, responses must be determined based on the seriousness of the Conflict of Interest and the conditions that generated it. Such responses may be minimal or they may require a formal disengagement from one of the conflicting interests.

There is a broad range of actions for helping avoid or for mitigating a Conflict of Interest, including:

- a person recuses themselves from a project, Case or matter;
- a person is removed from a matter or excluded from a team or working group dealing with the issue or matter;
- an 'ethical wall' is established to prevent information flowing between two groups of people or teams;
- certain tasks or duties are re-assigned to another person;
- an agreement is made with or direction is given to a person not to do something;
- a person is transferred (temporarily or permanently) to another role or team;
- a person resigns or is dismissed from one or other role or entity or refrains from having further dealings with a person or organisation;
- a person withdraws from discussing or voting on a particular item at a meeting;
- the personal interest is relinquished (e.g., by selling the shareholding in a venture);

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- an appropriate clause is inserted into a contract with a third party to manage the disclosed Conflict of Interest;
- enquiries are made as to whether all affected parties will consent to the involvement of the person with the (potential) Conflict of Interest.

The above-mentioned is a non-exclusive list of possible actions to mitigate a Conflict of Interest. Alternative actions are possible and the stakeholders in the decision should always consider carefully and ethically which action(s) would be appropriate to mitigate a particular Conflict of Interest, in the best interests of ClientEarth and with respect also of the person(s) affected.

## 6. Recording Conflicts of Interest

The Conflict of Interest Declaration Form (See Annex 1) and annual collection of declarations from staff will be managed by Operations, who will act as the 'super user' that will receive returns and record Conflicts of Interest in a secure and confidential register the "Conflicts of Interest Register".

The declaration form will be used to capture only personal conflicts for staff (including interns and volunteers) and trustee and board members. For Inter-Programmatic/Organisational or Client related conflicts, these will be captured through the Matter Management System and Case approval process; and for Funder specific conflicts, these will be captured through the funder due diligence process.

A written record of reported Conflicts of Interest is maintained in the confidential Conflicts of Interest Register, which will record the following information for all declarations of Conflict of Interest:

- Date raised;
- The nature of the conflict;
- The person(s) affected;
- How management or the relevant body took the decision in the best interests of ClientEarth and with respect of the person(s) affected, describing the actions taken to avoid or mitigate the conflict.

The Operations department will disseminate information contained in the confidential Conflict of Interest Register to the *Risk & Compliance Committee* and to the relevant team or department when required or requested:

- *HR* for Staff related personal conflicts;
- *Board Secretary* for Trustees and Board members related conflicts.

## 7. Breaches of this Policy

Any breach of this Policy by an individual to whom it applies may constitute a breach of that individual's employment agreement and could invoke disciplinary procedures by ClientEarth.

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Any breach of this Policy by a non-employee of ClientEarth may result in similar consequences, consistent with their relationship with ClientEarth, including the possible termination of appointments, contracts or agreements, as the case may warrant.

## 8. Responsibilities for this Policy

The day-to-day implementation and management of the procedures set out in the Policy is the responsibility of HR for staff related Personal Conflicts of Interest and the Partners, Risk & Compliance Specialist for Organisational Conflicts of Interest, and Board Secretary for those relating to the Board and the Trustees. The SLT is responsible for monitoring adherence to the Policy, with assistance from the Risk and Compliance Committee.

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## Annex 1: Declaration Form

<https://forms.office.com/r/EpRGV6vPnz>

### Conflict of Interest – Declaration Form

Please refer to the ClientEarth Conflict of Interest Policy before completing this declaration form.

This form is intended to promote disclosure of **all (potential) conflicts of interest** that may affect the undersigned’s ability to act in the best interests of ClientEarth, including interests that may create the **appearance** of a conflict.

A **Conflict of Interest** is defined as the condition that arises when two coexisting interests conflict with each other: that is, when they are likely to compel contrary and incompatible outcomes.

An **Interest** is defined as a commitment, obligation, duty or goal associated with a particular social role or practice. An interest may be financial (e.g., financial gain) or non-financial (e.g., loyalty to family or to a former employer or client).

Below is a *non-exhaustive* list of Interests that should be declared. **If in doubt, disclose:**

<u>Tick the boxes that apply:</u>		
<input type="checkbox"/> Assets  <input type="checkbox"/> Gifts, Hospitality and Other Benefits  <input type="checkbox"/> Share ownership  <input type="checkbox"/> Interests in business enterprises  <input type="checkbox"/> Beneficial Interests in trusts	<input type="checkbox"/> The holding of multiple roles within the organisation, or in and outside the organisation  <input type="checkbox"/> Outside activities  <input type="checkbox"/> Political activities  <input type="checkbox"/> Personal relationships  <input type="checkbox"/> Family relationships  <input type="checkbox"/> Personal associations with other groups or organisations  <input type="checkbox"/> Professional associations or relationships with other organisations  <input type="checkbox"/> Fundraising	<input type="checkbox"/> Any (previous) employment in which you continue to have a financial Interest  <input type="checkbox"/> Appointments (voluntary or otherwise) e.g. trusteeships, directorships, local authority membership, tribunals etc.  <input type="checkbox"/> Entities that you represent on the Board of Trustees/Directors, if any, and in what capacity  <input type="checkbox"/> Membership of any professional bodies, special interest groups or mutual support organisations  <input type="checkbox"/> Investments in unlisted companies, partnerships

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	<input type="checkbox"/> Donations  <input type="checkbox"/> Duty of loyalty to (former) clients  <input type="checkbox"/> Duty of loyalty to former employer	and other forms of business, shareholdings, and beneficial Interests in any entity that does business or carries out activities with ClientEarth
<input type="checkbox"/> Any OTHER Interest conflicting with the Interests, mission and/or activities of ClientEarth, please specify: _____		

<p><b>Declaration:</b> Please provide details of Interest(s) declared, including whether it applies to yourself and/or connected persons (including family, personal relations and business partners)</p>

To the best of my knowledge, the above information is complete and correct.

I undertake to update as necessary the information provided, and to review the accuracy of the information on a regular basis.

I give my consent for it to be used for the purposes described in the Conflict of Interest Policy & Procedure and for no other purpose.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Please submit this form [Conflicts@clientearth.org](mailto:Conflicts@clientearth.org)

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Comments by [Line manager / Head/ HR / Board / R&CC / other, as appropriate]:

On behalf of [as appropriate]

Signed: \_\_\_\_\_

Date: \_\_\_\_\_