

# **TATE POLICY ON TRUSTEE AND COMMITTEE MEMBER CONFLICT OF INTEREST MANAGEMENT**

**Approved by the Board of Trustees on 4 July 2012**

**Date of Next Review: July 2015**

## **1. Introduction**

In order to act in the public interest, it is important that Tate's Trustees and Committee Members do not materially benefit in any way from their position on the Board or its Councils and Committees. It is also important for actual, potential and perceived conflicts of interest for Trustees and Committee Members to be proactively managed. This policy sets out the manner in which Tate will deal with actual, potential and perceived conflicts of interest which could affect Trustees and subcommittee members.

This policy applies equally to Trustees and members of the Board's Councils and Committees unless explicitly stated otherwise.

This policy supersedes Tate's three previous policies on Loan and Purchase of Works of Art from Trustees and Committee Members; on Transactions involving Benefit with Artist Trustees and on Sponsorship of Tate Activity by Individual Trustees or by Corporate Bodies with which Trustees are involved.

Throughout this policy, reference to 'conflicts of interest' is intended to refer to any actual, potential and perceived conflicts of interest. 'Benefits' is also intended to refer to any actual, potential and perceived benefits, whether financial, reputational or otherwise.

## **2. Principles**

This policy complements Tate's Acquisitions and Disposals Policy, Ethics Policy and Donations Policy, as well as conflict of interest management guidelines for employees, and assumes the principles and parameters laid down in these policies. This policy also complies with the Bribery Act 2010.

The further general principles which underpin this policy are as follows:

- a. No Trustee or Committee Member should materially benefit from their position on the Board or a Committee in any way. If any potential benefits from Tate arise, they must be handled and authorised according to the specific procedures outlined in this policy in order to ensure legal compliance and the maintenance of public trust.
- b. Due to the potential for conflicts of interest, the test for deciding to collaborate or enter into any transaction with any Trustee or Committee Member must necessarily be high.
- c. It is the responsibility of the individual Trustee or Committee Member to declare conflicts of interest as they arise and to follow subsequent advice on conflict of interest management given by Tate.

- d. Tate is committed to compliance with the Bribery Act 2010. Acts of bribery have never been, and will never be, tolerated. If bribery is suspected it will be promptly and thoroughly investigated. If a Trustee or Committee Member is found to have committed an act of bribery of any kind appropriate further action will be taken.
- e. Tate will assist Trustees and Committee Members as far as is reasonably possible in advising on, and in the management, authorisation and documentation of, conflicts of interest.
- f. Trustees and Committee Members should not knowingly compete with Tate, directly or indirectly, for the acquisition of works of art which fall within the ambit of Tate.

### **3. Bribery**

Tate is committed to compliance with the Bribery Act 2010. As laid out in the principles above, acts of bribery have never been, and will never be, tolerated. In common with steps laid out in the Employee Code of Conduct, if bribery of a Trustee or Committee Member is suspected it will be promptly and thoroughly investigated. If a Trustee or Committee Member is found to have committed an act of bribery of any kind appropriate further action will be taken. The offences are: promising, offering or giving a bribe; requesting, receiving or agreeing to receive a bribe; bribery of a foreign public official; consenting to or conniving in an offence by Tate.

An example of bribery would be if a Tate Trustee received a financial or other advantage from a third party which induced the Trustee to influence decision-making in favour of that third party. Another example would be a Trustee or Collection Committee member receiving a financial or other advantage which induced them to arrange for a work of art to be acquired for the Collection.

If any Trustees or Committee Members believe they have been or may be offered a bribe, they should report it to the Governance and Policy team\* immediately.

\*Governance and Policy team = Head of Director's Office, Governance and Policy Manager, Governance and Policy Assistant

### **4. Annual Register of Interests**

All Trustees and Committee Members are required to complete a Register of Interests on initial appointment and thereafter once annually, at financial year end. These will be issued, collected and kept on record centrally by the Governance and Policy team in the Director's Office, with local copies held by Committee administrators as appropriate. The Register of Interests is an auditing requirement and will enable Tate to assist Trustees and Committee Members with proactive ongoing conflict of interest management.

## **5. Conflict of Interest Declarations and Advice**

Each Board or Committee meeting will have a standing 'Conflict of Interest Declarations' item on the agenda, during which Trustees and Committee Members are required to declare any conflicts of interest for any of the meeting agenda items.

'Declaring a conflict of interest' means that the Trustee or Committee Member must withdraw from the discussion, leave the room and not be part of the quorum during any meeting when the relevant matter is discussed. The Chair of the meeting will take responsibility for overseeing this procedure at the appropriate point in the agenda, and the declaration of interest, subsequent withdrawal, discussion and final decision will be clearly minuted.

Any Trustee or Committee Member may at any time seek initial advice on conflicts of interest from a member of the Governance and Policy team or from a member of the Executive who attends their Board, Council or Committee. The member of the Executive must then refer the issue to the Governance and Policy team.

The onus is on non-executives to be proactive in declarations and members of Tate's Committees are encouraged to contact the Governance and Policy team if they are unsure at the point of receiving papers. Tate undertakes to respond to any such enquiries prior to meetings as to whether the perceived conflict is considered material; at this point the interest would be formally recorded and steps would be taken as per this policy to manage the conflict.

## **6. Loan and Purchase of Works of Art from Trustees and Committee Members**

### **6.1 Background**

As directed by the terms of the Museums and Galleries Act 1992, Tate collects British art from 1500, international art from 1900, and archival material relating to these areas. In recognition of the fact that a number of Tate's advisors make and collect art, Tate has established the following policies to protect the public interest.

### **6.2 Personal Collections**

As per the terms of the Acquisitions and Disposals Policy, the Board of Trustees delegates authority for purchases up to £250,000 to the Collection Committee. No other non-executive groups hold authority for additions to Tate's collections.

Tate appreciates that Trustees and Committee Members may collect art, but it is important that they and their family members should not knowingly compete, directly or indirectly, with Tate for the purchase of works of art of interest to Tate. Similarly Trustees and Committee Members, and their family members, may not purchase deaccessioned works of art directly from Tate or at auction if consigned by Tate.

The guidelines below must be followed when Trustees or Committee Members are debating the acquisition (usually Collection Committee) or major monographic exhibition of work (usually Councils, in an advisory capacity) by an artist whose work they or their family members own themselves. This is in the acknowledgement that work could increase in value as a result of Tate buying or exhibiting work by the same artist, and that this could therefore be a potential benefit.

- If any Trustee or Collection Committee Member owns *any* work by an artist whose work is under consideration for acquisition, they must declare a conflict of interest. This conflict of interest is amplified if the artist is proposed to enter Tate's collection for the first time. First time acquisitions are specifically highlighted in Board notes.
- Trustees and all Committee Members must also declare a conflict of interest in the event of an artist represented in their personal collection being considered for a monographic exhibition, and this consideration being brought before the Committee on which they sit e.g. a Tate Modern Council member who owned works by Munch would need to declare an interest if the *Edvard Munch* show was being discussed by Tate Modern Council.

### 6.3 Lending to Tate

Loans of works of art by a non-executive to Tate are generous gestures on the part of the lender and can be of great benefit to Tate. However, it should be recognised that exhibition of a work of art at Tate can enhance its value.

Trustees and Committee Members should not lend any work of art to Tate or maintain it on loan if they are intending to sell it. The Collection Committee has delegated authority to approve loans. This Committee will be advised of any forthcoming loans by any Trustee or Committee Member, and the procedures outlined under 5.2 above would then apply to the Collection Committee discussion of the loan.

### 6.4 Acquiring Works by and/or from Trustees

If Trustees, or their family members, wish to sell or gift works of art to Tate, via direct or indirect (i.e via an art dealer) means, Tate will follow the procedure as detailed below. This encompasses the work of Artist Trustees and any work being offered to Tate currently owned by any Trustee (or any of their close family members).

- a. The work is recommended for discussion by the Director and considered by the Collection Committee, who make their recommendation to the Board of Trustees of whether or not to acquire based on the criteria by which all acquisitions are judged. The vendor and/or artist, if member(s) of the Committee, will declare an interest as outlined in section 4 above. Any concerns in relation to conflicts of interest should be referred to Tate's Ethics Committee for advice at this stage.
- b. If there is a positive recommendation, and in circumstances when the work is being purchased by Tate, the Director will seek an independent valuation (the approach would be on same basis as probate valuations). Regardless of purchase price, the Collection Committee cannot decide to acquire the work; it must be referred to the Board of Trustees for decision.
- c. The proposed acquisition is discussed by the Board of Trustees and an 'in principle' decision will be made to acquire the work. The vendor and/or artist, if Trustee(s) will declare an interest as outlined in section 4 above. The Trustee(s) will not be involved in any decision-making on the acquisition.
- d. Tate is then legally obliged to consult with the Charity Commission to obtain authority under Section 105 of the Charities Act 2011 for the acquisition and additionally refer to DCMS. Tate must demonstrate to the Charity Commission that it has followed the relevant procedures set out by this policy (thereby arguing that the proposal to acquire is in the interests of the charity, the terms are reasonable and the conflict of interest can be effectively managed).

- e. The Director will report to the Board that all necessary approvals have been granted.
- f. The Board of Trustees will then take the formal decision to acquire the work. It is only at this stage, when permission has been granted by the Charity Commission, that Tate can make a 'formal commitment' with the vendor to acquire a work from and/or by a Trustee.
- g. The Trustee must complete the Register of Interests as outlined at section 4 above.
- h. The Trustee Benefit must be reported to the Audit Committee.
- i. Tate will reveal the purchase price (where the work is purchased rather than acquired by gift) to the public as soon as is reasonably possible.

## **6.5 Acquiring Works by and/or from Committee Members**

In the case of Committee Members who are not Trustees, Tate is not legally required to seek Charity Commission approval. However, in the interests of openness and transparency Tate will notify the Charity Commission and DCMS and will therefore follow the procedure below:

- a. The work is recommended for discussion by the Director and considered by the Collection Committee, who make their decision or recommendation to the Board of Trustees of whether or not to acquire based on the criteria by which all acquisitions are judged. The vendor and/or artist, if member(s) of the Committee, will declare an interest as outlined in section 4 above. Any concerns in relation to conflicts of interest should be referred to Tate's Ethics Committee for advice at this stage.
- b. If there is a positive decision or recommendation, and in circumstances when the work is being purchased by Tate, the Director will seek an independent valuation (the approach would be on same basis as probate valuations). The Collection Committee can decide to acquire the work if it falls within their normal purchase limit.
- c. The proposed acquisition is noted appropriately as being by/from a Committee Member in the Board of Trustees papers and minutes.
- d. In the interests of openness and transparency, Tate will notify the Charity Commission and DCMS as a courtesy, demonstrating that it has followed the relevant procedures set out by this policy (thereby arguing that the proposal to acquire is in the interests of the charity, the terms are reasonable and the conflict of interest can be effectively managed).
- e. The Committee Member must complete the Register of Interests as outlined in section 4 above.

## **7. Transactions involving Benefit with Trustees**

Tate is also legally required to obtain Charity Commission approval in advance for any transaction involving benefit for any serving Trustee e.g. payment for goods or services. The procedure is similar to that of acquiring a work by or from a Trustee as outlined at section 5.4 above, but is outlined here for absolute clarity:

- a. The potential transaction is reported to the Governance and Policy team in advance both by the Trustee concerned and by the responsible Tate Director.
- b. The transaction is put forward for discussion by the Board of Trustees and an 'in principle' decision will be made to approve the transaction. The Trustee concerned will declare an interest as outlined in section 4 above and will not be involved in any decision-making on the transaction.
- c. Tate is then legally obliged to consult with the Charity Commission to obtain authority under Section 105 of the Charities Act 2011 for the acquisition and additionally refer to DCMS. Tate must demonstrate to the Charity Commission that

it has followed the relevant procedures set out by this policy (thereby arguing that the transaction is in the interests of the charity, the terms are reasonable and the conflict of interest can be effectively managed).

- d. The Director will report to the Board that all necessary approvals have been granted.
- e. The Board of Trustees will then take the formal decision to approve the transaction. It is only at this stage, when permission has been granted by the Charity Commission, that Tate can make a 'formal commitment' to approve a transaction which benefits a Trustee.
- f. The Trustee must complete the Register of Interests as outlined at section 4 above.
- g. The Trustee Benefit must be reported to the Audit Committee.
- h. Tate will reveal the purchase price (where the work is purchased rather than acquired by gift) to the public as soon as is reasonably possible.

## **8. Working with Artist Trustees**

In accordance with the principles outlined above, Tate will not usually seek to collaborate professionally with serving Artist Trustees.

However, there may be certain circumstances where the obligation on Tate to form a representative and significant collection and displays can result in a need to collaborate. Due to the conflicts of interest inherent in this kind of transaction, the test for deciding to collaborate must be high.

The detail of situations in which Tate might work with or transact with Artist Trustees in relation to acquisitions, exhibitions, display of a work of art and commercial collaboration, and steps to take to manage the conflict of interest, is set out below.

### **8.1 Acquisitions**

Tate will only consider purchase where the work is of particular significance in relation to the artist's overall oeuvre i.e. is unlikely to be repeated and/or represents a new departure or an iconic moment for the artist.

Tate will only consider purchase where the artist is one who is already represented in the collection and where the opportunity for the acquisition will almost certainly not arise again in this way.

Tate must be satisfied that the price is a favourable one, in part by attaining an independent valuation.

Tate will consider gifts of works by serving Artist Trustees, whether from the artist or a third party, on the merits of each work, as it would with any other offer of a gift.

Where there is a decision to acquire, whether by purchase or gift, the procedure outlined at section 5.4 above must be adhered to.

### **8.2 Exhibitions**

There should be no major monographic exhibitions of serving Artist Trustees. Works by serving Artist Trustees may, however, be included in survey exhibitions.

### **8.3 Display of a work of art**

Works by serving Artist Trustees may be included in Tate Collection displays.

### **8.4 Commercial collaboration**

Commercial collaboration with Artist Trustees is allowed provided that the Charity Commission Guidelines on Trustee Benefit and Tate procedure on transactions involving Trustee Benefit as outlined at section 6 above is followed. Where commercial collaborations are already in existence for newly appointed Trustees, these will be reviewed according to the guidelines and procedure and the appropriate action will be taken (and where necessary, appropriate permissions will be sought).

## **9. Sponsorship of Tate Activity by Trustees, Committee Members and/or Related Third Parties or Companies**

Tate's Development team seeks individual and corporate sponsors to fund Tate activities within the boundaries of Tate's Ethics Policy and Donations Policy, approved by Trustees in 2012. These sponsors are reported to the Board for noting at each meeting.

As part of the due diligence process Development will consider whether there is a connection between a corporate or individual sponsor and a serving Tate Trustee or Committee Member which could give rise to an actual, potential or perceived Trustee benefit, conflict of interest or conflict of loyalties. If a connection is identified, the decision of whether to accept the sponsorship will be elevated to the Board for approval and consideration of how best to manage the matter. As per the terms of the Donations Policy, the Ethics Committee may also be consulted.

The Trustee(s) concerned will declare an interest as outlined in section 4 above.

The Board's decision on sponsorship approval and management of a conflict or benefit will vary from case to case.

If the Board is clear there is no conflict or benefit they may grant approval and decide that management of any perception issues can be undertaken using mechanisms already outlined in this guidance (such as declaration and/or leaving the room).

In other cases, although the Board is clear that there is no direct or indirect benefit or conflict, Trustees may feel that perception alone could give rise to a challenge and cause accusations of impropriety. In this situation, the Board will consider whether to seek advice or permission from the Charity Commission, via the procedure outlined at section 6 above, to accept the sponsorship providing comfort to Trustees and putting the sponsorship beyond challenge.

In cases where the Board concludes that there is a direct or indirect benefit they will seek express permission from the Charity Commission to accept the sponsorship, via the procedure outlined at section 6 above. In this case the Commission would need to be satisfied that the transaction was demonstrably in the interests of the charity. Any potential or actual benefit to the trustee would be examined to ensure that it was incidental. In addition, Tate must ensure that the transaction itself is within the objects of the charity.

These sponsorships must be declared on the Register of Interests as outlined at section 4 above.

**10. Charitable Donations to Tate from Trustees, Committee Members or Related Third Parties or Companies**

Any donations to Tate from Trustees, Committee Members or related third parties or companies will be handled in accordance with the terms of Tate's Donations Policy.

These donations must be declared on the Register of Interests as outlined at section 4 above.