

Conflict of Interest and Gift Policy

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1. Introduction

Conflicts of interest may be actual, perceived or potential. If not addressed, conflicts of interest may result in corrupt practices, abuse of office, unethical conduct, violation of trust or other illegal activities. Conflicts of interest that are undeclared or improperly managed could therefore result in financial losses, legal, compliance, moral, ethical and reputational risks to FSD Kenya.

2. Policy statement

FSD Kenya is committed to ensuring the highest levels of integrity in all that it does. Staff, Programme Investment Committee (PIC), Trustees, and relevant associates must perform their duties and conduct their private life in a manner that will not put FSD Kenya in a position where its integrity and reputation of being objective could be questioned.

FSD Kenya recognises that its staff and relevant associated parties will develop relationships, friendships and contacts in their personal and working lives. These relationships must, however, not interfere with their duty to act in the best interests of FSD Kenya. FSD Kenya staff are obligated to avoid or declare any ethical, legal, financial, or other conflicts of interest as soon as they become aware, failure of which could be a matter of disciplinary process.

3. Purpose

This policy is designed to protect the integrity of and promote continued public trust and confidence in FSD Kenya by ensuring that any actual, potential or perceived conflicts of interest whether direct or indirect are declared and managed. The policy provides guidance to FSD Kenya staff on declaration and management of conflicts.

4. Scope

This policy applies to all employees of FSD Kenya staff and all FSD Kenya's associated parties (both during and outside regular working hours) including members of the Programme Investment Committee (PIC), Trustees, implementing partners, vendors, contractors and any other third party. The term 'FSD Kenya staff' will be used throughout this policy to refer to those within scope.

5. Definitions¹

Conflict of interest is when the objectivity, personal judgement or independence of an employee or entity is perceived to be compromised.

An actual conflict of interest is a conflict between an individual's duty and the private interests of that individual, in which the individual will have private-capacity interests which could improperly influence the performance of their official duties and responsibilities.

An apparent or perceived conflict of interest can be said to exist where it appears that an individual's private interests could improperly influence the performance of their duties, which may not be the case.

¹ Partly adapted from OECD

A potential conflict of interest arises where an individual has private interests which are such that a conflict of interest would arise if that individual were to become involved in relevant (i.e. conflicting) official duties and responsibilities in the future.

6. Forms of conflict of interest²

To determine whether a conflict of interest exists, FSD Kenya staff should consider whether their private or personal interest could appear to interfere with their objective judgement. The following are situations where a conflict could arise.

6.1 Personal interest

The majority of personal relationships will not give rise to any concern and can be regarded as a private matter. A conflict of Interest may however arise where one party in the relationship can grant the other an unfair advantage or disadvantage or can exert improper influence over a decision relating to the other. This might attract perceptions of bias and unfair treatment, for example, where an employee:

- a) Makes or significantly influences any decisions about the other party in the relationship, such as selection for employment/promotion, pay and grading, performance management, discipline, access to opportunities and resources or the awarding of contracts for goods and services.
- b) Has a responsibility for the direct or indirect supervision or monitoring of the other party.

FSD Kenya staff must declare personal relationships that may be perceived to influence decision making.

6.2 Financial interests

A financial conflict of interest may arise where it could be perceived that a staff (or someone the staff has a personal relationship with) have:

- a) The opportunity to gain financially which prevented another from gaining financially or placed that individual at a disadvantage from the staff's decisions or actions;
- b) Financial interests which may influence the staff's independent judgement and integrity in carrying out his or her role; and,
- c) The opportunity to gain from the award of a particular contract for goods or services.

FSD Kenya staff must declare personal relationships that may be perceived to influence decision making.

6.3 Political interests

Staff may have firmly held political views, but under no circumstances must these be reflected in any decision-making process or alter aspects of work. Staff must not:

² Partly adapted from FCDO Conflict of Interest policy

- a) Take part in any political or public activity which compromises, or might be seen to compromise their impartiality;
- b) Allow their personal or political views to determine any advice they give or their actions including publishing personal comments in blogs or other web-based applications; and,
- c) Use FSD Kenya's resources to extend their political ambitions.

FSD Kenya staff must declare political ambitions before running for office.

6.4 Board memberships and voluntary services

FSD encourages staff members to undertake speaking engagements, serving on boards, take on lecturing and tutoring roles and write articles on the proviso that:

- a) The time spent on such activities does not interfere with official responsibilities.
- b) FSD Kenya resources are not used towards such activities unless express consent is obtained.
- c) Materials prepared and all activities undertaken in connection with these activities are done on personal time.
- d) The organisation the staff is engaging in is not a beneficiary of FSD Kenya grants.

Employees must disclose all their board affiliations, voluntary engagements, roles such as lecturers or tutors that could give rise to a perceived, potential or actual conflict of interest.

6.5 Private businesses

Staff must not:

- a) Further their financial interests or private businesses during working hours.
- b) Use FSD Kenya resources and proprietary information or intellectual property for their private businesses, even where the staff assisted FSD Kenya to obtain the resources, proprietary information or knowledge, or intellectual property.

Private businesses or commercial activities that might be perceived to conflict with FSD Kenya's must also be declared.

7. Gifts and hospitality

While accepting gifts and hospitality in certain circumstances may further FSD Kenya's interests this must be balanced with upholding high standards of propriety and guarding against any reasonable suspicion of perceived or actual conflicts of interest or an undue obligation being created.

Gifts and hospitality should typically not be accepted. However, reasonable small tokens (e.g. inexpensive promotional items or seasonal gifts) from an organisation or individual may be accepted provided they do not give rise to the risk of influencing the judgement of the intended recipient of the gift; place the intended recipient under any obligation, or a reasonable perception of the gift representing **bribery** or other corrupt practice, or giving rise to a **conflict of interest** on the part of the intended recipient. If there is any doubt, the gift **must** be declined.

Where refusal to accept the gift may be considered to be outside the normal cultural practice, to cause offence, or be impossible or otherwise present a material difficulty, the

matter should be referred to the operations manager) at the earliest opportunity. The operations manager will determine what further action to take. Gifts received by FSD Kenya staff must be declared, recorded in the gift and hospitality register and where appropriate handed back to FSD Kenya. Gifts valued over 5,000 Kenya Shillings must be approved by the Operations Manager before acceptance.

Staff who have accepted a gift or hospitality and find themselves in the position of taking a decision or making a judgement on the provider should also declare a potential conflict of interest.

The providing or accepting of hospitality or entertainment of a reasonable amount is allowed, as long as:

- a) It is not done with the intention of influencing the behaviour of the recipient.
- b) It is done openly.
- c) It is within reasonable limits.
- d) It complies with local law.

Handling of gifts received

All gifts received on behalf of FSD Kenya will be recorded on the gift and hospitality register. The Operations Manager will decide on how to handle such gifts. For example, they may be donated to a charity.

8. Declaration of interest

All staff must declare any perceived, potential or actual conflicts of interest. Staff must also declare gifts received under the guidance provided. The declaration must be made at the earliest opportunity possible, failure of which will be a disciplinary matter.

The declaration **must** be made in writing to Operations Manager. Verbal declarations or declaration to other staff will not be considered valid. Appropriate forms should be used when making conflict declaration.

Annual mandatory declarations must be made by all staff, including the PIC and Trustees; these should be made even where there is no conflict. FSD Kenya will from time to time, require additional nil declarations to safeguard against perceived risks in significant decision-making points such as onboarding of high-value grantees, board members or directors.

Potential conflicts relating to the CEO or the COO will be assessed by the PIC to ensure transparency.

The PIC team and Trustees must also declare any conflicting interest before accepting the appointment and annually after that. Conflicts of interest affecting the PIC and Trustees will be assessed by the Chair of PIC upon advice by the COO.

An employee who is in doubt or whether or not to declare may first discuss it with the Operations Manager or the line manager.

9. Failure to make a declaration

Failure to declare a Conflict of interest (actual, potential or perceived) or the offer of a gift or hospitality (accepted or declined), appropriate action will be taken in line with FSD

Kenya's misconduct, grievance and disciplinary policy. This could result in an investigation and the potential of dismissal. Any criminal offences will also be referred to the relevant authorities.

10. Managing the conflict of interest risk

It is the responsibility of line managers to manage conflict of interest risk. The Operations Manager will provide guidance and oversight over the administration and management of the conflict of interest.

When an employee declares a conflict, a conflict of interest risk management form must be completed by the line manager and handed over to the Operations Manager. The line manager must discuss the conflict with the staff and decide in consultation with the Operations Manager. The decision may be:

- a) To continue with the activity but implement actions to mitigate any risk. This could include closer monitoring, revisions to plans, exclusions from decision-making activities and disclosure of all relevant information to others involved in the process;
- or,
- b) To be excluded from the activity.

11. Managing conflicts at senior management and PIC/Trustees level

Conflicts declared by the Chief Executive Officer (CEO), the PIC or Trustees will be signed off by the Chair of the PIC.

Members of the PIC must have no direct financial or personal interest in the activities funded by the Trust. It is the responsibility of all potential or existing PIC members to declare any interests which may be relevant to these activities. Where a material conflict of interest is judged to exist by the remaining Members, the Member should step down and be replaced.

No material conflict of interest will be deemed to occur in the case of public sector funding proposals and representation by the National Treasury of the Government of Kenya. Funding proposals to the National Treasury or other Government of Kenya agency can be presented to the PIC without being deemed to compromise the position of the member representing the National Treasury. However, in the event of a need to vote on a funding proposal he/she will be expected to abstain.

The Operations Manager or COO may provide guidance. The Operations Manager is responsible for filing the relevant declarations, as necessary.

12. Conflict of interest in grantees

FSD Kenya grantees must hold its staff to similar standards and not put the reputation of integrity and objectivity of FSD Kenya into question. Arrangements entered into by the grantees must be free from bias, conflict of interest or the undue influence of others. Conflicts of interest that have an impact on FSD Kenya programmes must also be declared to FSD Kenya.

13. Roles and responsibilities

All FSD Kenya staff have a mandatory responsibility to read, understand and adhere to the contents of this policy.

The Chief Operating Officer and the Chief Executive Officer are responsible for ensuring that this policy is effectively communicated and implemented throughout the operations of FSD Kenya.

The FSD PIC have a responsibility to provide governance oversight.

The FSD Kenya Trustees have the responsibility to ensure that this policy is adhered to and that independent assurance of the integrity of the conflict of interest processes is obtained.

14. Review of this policy

The Chief Operating Officer (COO) is responsible for ensuring that this policy is reviewed on a timely basis. This policy will be reviewed after every two years.

15. Related policies

This policy should be read in conjunction with:

- Code of conduct
- Whistleblowing policy
- Anti-fraud and anti-corruption policy
- Misconduct, disciplinary and grievance policy.