

## **Conflicts of Interest**

---

### **Background**

On 1 October 2008, the Pensions Regulator ('the Regulator') published guidance relating to conflicts of interest in work-based pension arrangements. The primary objective of the guidance is to promote good scheme governance by helping trustees to assess the adequacy of their existing governance arrangements and to monitor and manage both actual and potential conflicts of interest going forward.

### **What are Conflicts of Interest?**

Conflicts of interest may arise when a trustee's personal interest or duty to another party conflicts with their fiduciary duty to the scheme. Conflicts can impede the decision-making process, and may result in actions or inactions which are not in the best interests of the beneficiaries.

Whilst conflicts of interest should not be ignored, the Regulator recognises that they cannot always be entirely eliminated. The Regulator encourages increased transparency and disclosure of conflicts, and hopes the guidance will lead to more formal procedures being put in place. This should allow for conflicts to be identified, monitored and managed to the satisfaction of both trustees and sponsoring employer.

The Regulator recognises that conflicts are more likely to arise if representatives of an employer are trustees of a scheme and emphasises the importance of identifying, monitoring and managing such conflicts, if they cannot be avoided completely. The guidance is also aimed at professional advisers involved in the running of pension schemes who may also encounter conflicts of interest.

### **The Key Principles**

The guidance introduces five key principles, which apply to both defined benefit and defined contribution arrangements:

#### **Principle 1: Understanding the importance of conflicts of interest**

##### ***Trustees should:***

- 1.1 be aware of their fiduciary obligations to beneficiaries, the requirement to exercise independent judgement and to be perceived to be doing so.
- 1.2 have a clear understanding of the circumstances in which they may find themselves in a position of conflict of interest.
- 1.3 communicate the legal requirements and duties imposed on trustees and discuss the scheme's conflict of interest policy with persons nominated to be a trustee, or upon appointment of such persons.

##### ***Trustees must:***

- 1.4 recognise that there are legal complexities in the area of conflicts of interest and should seek legal advice as necessary.

## **Principle 2: Identifying conflicts of interest**

### ***Trustees should:***

- 2.1 identify and consider any conflicts that *may* arise in the future and notify the other trustees as soon as practically possible.
- 2.2 identify and consider any conflicts that *have* arisen and notify the other trustees as soon as practically possible.
- 2.3 be appointed under procedures that require them to disclose any conflicts.
- 2.4 confirm that they are not aware of any further conflicts that have not been disclosed to the other trustees.
- 2.5 maintain an up-to-date register of each trustee's interests, e.g. financial interests and other appointments.
- 2.6 have a means of recording conflicts that have arisen or are likely to arise, for example by using a conflicts register.

## **Principle 3: Evaluation, management or avoidance of conflicts**

### ***Trustees should:***

- 3.1 implement procedures for evaluating that have been identified in a way that ensures that decisions are not compromised by the conflicted trustee(s).
- 3.2 clearly detail, in the minutes of the meeting, conflicts which may arise during a decision-making process and record the action taken to manage the conflict.
- 3.3 seriously consider seeking independent legal advice where a non-trivial conflict of interest is identified and where such a conflict could have the potential to be detrimental to the conduct or decisions taken by the trustees, in order to help decide the best approach to manage or avoid it.
- 3.4 be aware that some conflicts due to their acute or pervasive nature cannot be managed; they may determine that resignation and appointment of an independent trustee, is the only option.
- 3.5 understand that the Regulator cannot give guidance appropriate for every scheme as this depends on the nature of the conflict and the scheme's trust documentation, which is why seeking independent legal advice is emphasised throughout the guidance.

## **Principle 4: Managing adviser conflicts**

### ***Trustees should:***

- 4.1 actively manage their relations with advisers to ensure that advisers are able to provide independent advice.
- 4.2 require their advisers to declare any conflicts that may arise in respect of their engagement on a timely basis.
- 4.3 consider in advance whether conflicts make it undesirable for a particular adviser to be appointed or continue to act for them, in circumstances where a conflict with the sponsoring employer may arise.
- 4.4 evaluate the nature of the conflict, where a conflict has been declared, and determine an appropriate course of action.
- 4.5 where applicable, understand the reporting lines and conflicts their in-house pensions manager and secretariat may have.

## **Principle 5: Conflicts of interest policy**

### ***Trustees should:***

- 5.1 agree and document their policy (or procedures) for identifying, monitoring and managing all conflicts of interest.
- 5.2 ensure that their conflicts management policies (or procedures) are kept under regular review.
- 5.3 understand their conflicts policy, with training provided as required.

The guidance is not compulsory however, trustees should note that failure to take appropriate action in the event of a conflict may result in the Regulator taking action. This could include replacement of a trustee or appointment of an independent trustee.

Although the guidance is aimed at helping trustees improve their management of conflicts of interest, it is important to note that it is not designed, nor intended, to provide legal advice to trustees and does not replace the requirement to seek independent legal advice where necessary.

The information in this note should not be relied upon or taken as an authoritative statement of the law.