

Conflicts of interest - summary

This summary includes the key principles for addressing conflicts effectively and some questions trustees should be asking themselves

Our guidance is designed primarily to be viewed online. This is a print version of web content as at October 2008.

www.thepensionsregulator.gov.uk/guidance/conflictsOfInterest/

Conflicts of interest

This summary aims to provide educational support for trustees and employers for addressing **conflicts of interest**.

It includes the key principles for addressing conflicts effectively and some questions trustees should be asking themselves.

This summary is not a substitute for the full conflicts of interest guidance.

Conflicts of interest - at a glance

- 1 The management of conflicts of interest is key to good scheme governance. While the Pensions Regulator recognises that many schemes have robust procedures, evidence suggests that there are aspects of conflicts management where further attention is required.
- 2 A well-run scheme will be underpinned by a robust governance framework. It is vital that decisions are not affected or tainted by conflicts of interest so that valid decisions are made, and are perceived to be made, in the beneficiaries' best interests.
- 3 The conflicts of interest guidance ('the **Guidance**') is relevant for all trustees of occupational pension schemes and employers (and may be of interest to scheme advisers). For defined contribution (DC) schemes, there may be less scope for conflicts of interest than defined benefit (DB) arrangements, and even less scope for conflicts which are DC specific. However, the requirement to manage conflicts still remains. The Guidance does not address conflicts which may arise in contract-based arrangements.
- 4 The Guidance aims *to provide educational support*, particularly to smaller schemes, with a view to both *sharing good practice* and *raising standards*, in line with the regulator's statutory objective.
- 5 The Guidance acknowledges that there are certain aspects of the law relating to conflicts of interest which are unclear. It is not a substitute for taking legal advice.
- 6 A conflict of interest may arise when a trustee is required to take a decision where:
 - (1) he or she is obliged to act in the best interests of the scheme's beneficiaries and
 - (2) at the same time he or she has or may have either:
 - (a) a separate personal interest; or
 - (b) another fiduciary duty owed to a different beneficiary.
- 7 Conflicts of interest are a serious concern for the regulator. They arise in the trustee governance model because many trustees have a stake in the scheme or its sponsoring employer. If not managed effectively decisions may be taken

that put the interests of beneficiaries at risk, or subsequently prove to be invalid. Our aim is to help trustees identify and manage conflicts and avoid such consequences.

- 8 Broadly, when considering conflicts of interest this should be done in three stages:
- 1) **identification**;
 - 2) **monitoring**; and
 - 3) **managing**.
- 9 The regulator recognises that it can be beneficial to appoint senior staff of an employer as trustees, particularly in terms of knowledge, expertise and experience. However, conflicts are inherently likely to arise before and after appointing staff of an employer as a trustee, particularly senior staff.
- 10 Trustees also need to ensure that adviser conflicts, that may affect the independence of advice, are identified and appropriately managed.
- 11 The way in which conflicts are managed will be case specific and may reflect the nature or scale of the conflict. Some conflicts of interest can be managed by a variety of methods (including those set out in the Guidance) while others may be so acute or pervasive that it would be better to avoid them entirely.
- 12 When seeking to manage a non-trivial conflict of interest, and where the conflict could have the potential to be detrimental to the conduct or decisions of the trustees, the regulator would expect trustees to seriously consider obtaining independent legal advice, and to act on that advice.
- 13 Conflicts management is an ongoing process - trustees should regularly review their arrangements to ensure they are still adequate, particularly when circumstances change.
- 14 There should be a culture of openness - disclosure of conflicts should be embraced not ignored. We expect all conflicts of interest to be resolved sensibly. Where a conflict comes to the attention of the regulator and the regulator considers that it is not being managed appropriately, we will take appropriate action.
- 15 For those schemes which already have processes in place, the Guidance will be a useful tool to assess the adequacy of existing arrangements, for example it may help trustees to:
- address any gaps that are identified; and
 - understand what the regulator's expectations are in respect of sound conflict management arrangements.
- 16 Below we summarise the key principles for addressing conflicts effectively and some questions trustees should be asking themselves. To find out how to apply these you should refer to the main Guidance.

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 conflicts of interest policy with persons nominated to be a trustee, or upon the 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 (see Principle 3.3).

Some points for consideration by trustees

- ☒ Have you considered the role of the chair in identifying and managing conflicts?
- ☒ Have you debated and agreed the types of conflict that may arise in your specific circumstances?
- ☒ Do your newly appointed trustee colleagues receive induction training on their roles and responsibilities?

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 of interest;
 - 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, for example 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.
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Some points for consideration by trustees

- ☒ Do you require new trustees to declare any interests and potential conflicts?
- ☒ Do you have a process to identify new conflicts?
- ☒ Do the minutes of meetings record when conflicts are either disclosed or identified and the action taken to address the conflict?
- ☒ Do you have a means, eg a register, to record any interests or conflicts that are declared?
- ☒ Have you considered the key decisions to be made in the future and whether there may be any conflicts that are likely to arise?

Principle 3: Evaluation, management or avoidance of conflicts

Trustees should:

- 3.1 implement procedures for evaluating and managing conflicts 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 it¹;**
 - 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 (this is why reference to seeking independent legal advice is emphasised throughout the guidance).**
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Some points for consideration by trustees

- ☒ Do you have an agreed policy on how to decide whether or not a conflict should be managed?
- ☒ Does your policy outline the options available to manage conflicts?
- ☒ How do you deal with conflicts of a confidential nature (i.e. those where disclosure may not always be an available remedy)?

¹ The regulator would also expect trustees to seriously consider seeking legal advice if they are in any doubt whether or not a conflict is non-trivial or whether or not it could have the potential to be detrimental to the conduct or decisions taken by the trustees

Principle 4: Managing adviser conflicts²

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.
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Some points for consideration by trustees

- ☒ Does your conflict of interest policy or other procedures detail your procedures for ensuring adviser conflicts are identified and managed?
- ☒ Does the letter of appointment to the adviser require disclosure of any conflicts that arise?
- ☒ Do you, as part of the selection of an adviser, make enquiries into the adviser's conflict management procedures?

² Many professional advisers are already under an obligation to follow strict ethical guidelines relating to conflicts of interest as issued by their professional body's code of conduct.

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.**
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Some points for consideration by trustees

- ☒ Do you have a documented conflicts of interest policy?
- ☒ Are you familiar with the policy?
- ☒ Does the policy have a process for monitoring compliance?
- ☒ Does your policy have a process for its review?