

## **North Wales Fire and Rescue Service policy and procedure for managing conflicts of interest**

For the purpose of this policy the term 'trustee' refers to the Local Pension Board members.

### **Background**

Conflicts of interest have always existed for pension scheme trustees and their advisers. This simply reflects the fact that individual trustees and their advisers will have a variety of other roles and responsibilities, for example as members of the scheme or as senior managers of the sponsoring employer or as trade union officials.

Trustees have a strict duty to act in the best interest of scheme members and beneficiaries, but this does not preclude a trustee from having other roles or responsibilities which may result in a conflict of interest. Appendix 1 contains various guidance notes issued by the Pensions Regulator on this matter. Appendix 2 details types of conflicts.

The trustees must be able to identify conflicts of interest and have procedures in place to manage them. This document outlines the procedure members of the Local Pension Board have adopted to do this.

### **Policy and procedure**

For this policy and procedure to work the trustees have agreed that they must:

- acknowledge any potential conflict of interest they may have;
- be open with each other on any conflicts of interest they may have; adopt practical solutions; and
- plan ahead and agree on how they will manage any conflicts of interest which arise.

With these objectives in mind the trustees have adopted the following procedure:

1. Maintaining a register of trustees' interests which could give rise to a conflict.
2. Maintaining a register of interests covering the trustees' advisers.
3. Each trustee and adviser of the pensions department will sign an annual return confirming that their information contained in the register of interests is correct. The updated register will then be circulated to all trustees. These two events will be added to the trustees' calendar of events distributed with each set of trustee meeting papers.
4. The member liaison officer is to identify any potential conflicts of interest and to advise the chairman. The clerk should also be alerted so they could be ready to comment on how best to deal with this matter. The chairman is to decide on the action required and to advise the trustees of any actions taken.

- 5 FRS issues or proposals covered at trustee meetings are to be presented by a representative who is not a trustee, for example the Deputy Chief Fire Officer.
- 6 Any trustee wishing to speak from the FRS' view must state this clearly at meetings and have this recorded in the minutes.
- 7 Any trustee who feels that they, another trustee, adviser or member of the pensions department has a conflict of interest on a particular topic must advise the member liaison officer prior to the meeting or state this clearly at the meeting. The chairman should then decide whether the conflicted individual needs to leave the meeting during the discussion on the conflicted matter or, if a trustee, to withdraw from voting on the conflicted matter. If such a conflict is identified outside of a trustee meeting the chairman will consult with the Independent trustee prior to making a decision. If the conflict is identified at a trustee meeting the chairman will consult with the other trustees prior to making a decision. In this way the conflict of interest and the action taken can be recorded in the minutes.
- 8 Any trustee must identify information which they think should not be shared with FRS representatives and to advise the scheme secretary. The member liaison officer will then advise the trustees, including the independent trustee, seeking a decision from them on whether this information should be withheld from the FRS representatives.

## Appendix 1 – Guidance from the Pensions Regulator

The regulator has provided guidance to help trustees manage conflicts of interest in a number of codes of practice and guidance issued since April 2005, including their guidance on conflicts of interest. Other than guidance, conflicts of interest are referred to in:

- **Code of practice on funding defined benefits**
- **Guidance on clearance statements**
- **The trustee toolkit ([www.trusteetoolkit.com](http://www.trusteetoolkit.com))**

<http://www.thepensionsregulator.gov.uk/guidance/guidance-conflicts-of-interest.aspx>

<http://www.thepensionsregulator.gov.uk/docs/conflicts-of-interest-summary.pdf>

## Appendix 2 – Types of conflict (general principles)

The basic principle in relation to conflicts of interest can be found in the High Court case of *Re Thompson's Settlement* [1986] where the Court held that:

*'...a man must not put himself in a position where duty and [personal] interest conflict or where his duty to one conflicts with his duty to another unless expressly authorised'*

Some examples of situations where an individual may find themselves in a position which could constitute a conflict of interest include:

### **Role related examples (where the responsibilities of a trustee diverge):**

- a trustee is a principal officer or senior employee of the sponsoring employer.
- an individual is a trustee of more than one scheme with the same sponsoring employer.
- a trustee is also a director of a service provider to the scheme.
- a trustee is also employed by a potential service provider to the scheme.
- a trustee is also a trade union representative or employee representative.

### **Situation specific examples (where other duties may influence an outcome):**

- the sponsoring employer pays for administration but is seeking to reduce costs; this aim may diverge from the trustees' objective to improve standards of administration (possibly at a higher price).
- the pensions administration service is performed in-house, and the pensions manager is responsible for providing services to one or more schemes, as well as advising the employer on confidential pensions related matters.
- trustee involvement in corporate transactions involving the sponsoring employer, where the interests of the scheme as a creditor may diverge from the benefits accruing to other parties to the transaction.
- a trustee who also holds a role within the employer is privy to sensitive information relating to the employer, which could have an impact or potential impact on the scheme.

- where conversion terms for member options are under discussion, particularly those for commutation of pension at retirement; while trustees are likely to be motivated to ensure broad cost neutrality within the scheme, the employer may prefer and encourage conversion terms that lead to lower expected costs.
- trustees approaching retirement may be motivated by favourable options to improve benefits at a personal level as opposed to considering the wider implications.
- Investing to improve scheme administration vs. saving money. An employer representative, who may be a Permanent Secretary, finance officer or local councillor, is aware that system X would help to improve standards of record-keeping, but it would be costly to implement. The department or local authority would need to meet the costs of the new system at a time when there is internal and external pressure to keep costs down. In order to meet the costs of the new system, the department or local authority would need to find money, perhaps by using a budget that was intended for another purpose. This decision could prove unpopular with the wider public/taxpayers. A conflict of interest could arise where the scheme employer representative was likely to be prejudiced in the exercise of their function by virtue of their dual interests and responsibilities.
- Outsourcing a function vs. keeping a function in-house. In an extension of this example, a member representative, who is also an employee of a participating employer, is aware that system X would help to improve standards of record-keeping, but it would mean outsourcing a function that is currently being undertaken in-house. The member representative could be conflicted if they were likely to be prejudiced in the exercise of their functions by virtue of their employment.
- Representing the breath of membership vs. representing narrow interests: A member representative, who is also a trade union representative, appointed to the pension board to represent the entirety of a public service pension scheme's membership, could be conflicted if they only serve to act in the interests of their union and union membership, which does not include all the professionals/staff who are in the scheme.
- Sharing information with the pension board vs. a duty of confidentiality to an employer: An employer representative has access to information by virtue of their employment, which could influence or inform the decisions or actions of the pension board. They have to consider whether to share this information with the pension board in light of their duty of confidentiality to their employer. If their decision to withhold this information is likely to prejudice their ability to carry out their functions as a member of the pension board, this would constitute a conflict of interest.

## Trustees

The regulator does not consider that the mere potential for conflict (as a result of the other positions held by the trustee) should preclude the appointment of a trustee. However this does not justify the appointment of a trustee if this is likely to give rise to acute or pervasive conflicts. Furthermore the benefits of having a mix of trustees with wider roles and responsibilities must always be balanced against the risk of conflicts and the problems for the management and administration of the scheme, which are likely to arise from such conflicts.

Possible areas that could give rise to conflicts of interest include:

- negotiations between the trustees and the sponsoring employer; and
- the management of confidential information.

On the first point, the regulator has made it very clear that it expects a trustee who could be involved in both sides of a negotiation to consider their position very carefully. One option to manage this conflict of interest could be the delegation of duties to a sub-committee.

On the second point it is important to note that all trustees have signed a confidentiality agreement concerning FRS information.

With regard to trustees sharing confidential trustee information with other parties (for example the FRS, trade unions, other members etc.) it is important to remember that each trustee has a fundamental responsibility to act on behalf of the scheme and this duty should not be compromised by acting on behalf of other groups.

## Advisers

All of the trustees' advisers also have a professional responsibility to advise the trustees if any circumstances arise in which they feel they are conflicted. These responsibilities and guidelines for dealing with them are also covered by the respective professional bodies.