

## 7. **Conduct of Members and Conflicts of Interest**

### **Introduction**

- 7.1 There are various legal requirements which need to be considered to make sure that sound governance principles are followed, and in particular that conflicts of interest are properly managed. These include:
- 7.1.1 Section 5(5) of the 2013 Act, which defines “conflict of interest” for the purpose of a Local Pension Board;
  - 7.1.2 Regulation 108 of the Regulations, which places duties on the Administering Authority to satisfy itself that Local Pension Board members do not have conflicts of interest on appointment or whilst they are members of the Board;
  - 7.1.3 The 2011 Act, which requires councillors to comply with the code of conduct of their local authority and to disclose interests;
  - 7.1.4 The ‘Seven Principles of Public Life’, also known as the ‘Nolan Principles’, with which any holder of public office is also expected to comply; and
  - 7.1.5 The expectations contained in the Code of Practice.
- 7.2 This section of the Guidance takes account of the above requirements and gives guidance on how the different duties can be reconciled in a practical way.
- 7.3 The importance of following these requirements needs to be clearly appreciated at the outset. Failure to follow applicable codes of conduct or declare a conflict of interest can impact on good governance in various ways. For example, such failure may result in a Local Pension Board actually acting improperly, may lead to a perception that the Local Pension Board has acted improperly, or may result in a challenge to the work carried out by the Board.

### **Codes of Conduct and Disclosure of Interests for Councillors**

- 7.4 The elected and co-opted members of a local authority (referred to as “councillors” for the purposes of this section of the Guidance) are governed by their local authority’s code of conduct for councillors. This code is required of every local authority by the 2011 Act and sets out the standards of behaviour expected of individuals in their capacity as councillors.

- 7.5 In addition, there is a legal obligation for councillors to disclose, in a register maintained by the authority's monitoring officer, certain pecuniary interests, as defined in regulations made under the 2011 Act.
- 7.6 Both of these requirements will apply to any members of a Local Pension Board who are also councillors of a local authority (whether that is the Administering Authority or another local authority). They will not apply to members of a Local Pension Board who are not councillors unless they are specifically adopted in terms of reference or other policy document to apply to the other members of the Local Pension Board.

### **Seven Principles of Public Life**

- 7.7 The members of a Local Pension Board should have regard to the 'Seven Principles of Public Life' (known as the Nolan Principles), which are:
- 7.7.1 **Selflessness** - Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
  - 7.7.2 **Integrity** - Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
  - 7.7.3 **Objectivity** - In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
  - 7.7.4 **Accountability** - Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
  - 7.7.5 **Openness** - Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands it.
  - 7.7.6 **Honesty** - Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to

resolve any conflicts arising in a way that protects the public interest.

**7.7.7 Leadership** - Holders of public office should promote and support these principles by leadership and example.

7.8 As members of a publicly-funded body involved in the discharge of public business, all members of a Local Pension Board should comply with these principles in the exercise of their functions. They require the highest standards of conduct.

### **Code of Conduct for Local Pension Boards**

7.9 When establishing its Local Pension Board, the Administering Authority should prepare and approve a code of conduct for the Board to adopt. The code of conduct should set out the standards of behaviour expected of members, incorporating the Seven Principles. An Administering Authority may wish to effectively adopt some or all of an existing Code of Conduct for the Local Pension Board. Once adopted, the Local Pension Board should keep this code of conduct under regular review.

7.10 The code of conduct should also make reference to the need for members of the Local Pension Board who are councillors to comply with any separate code of conduct and disclosure requirements which apply to them in their capacity as councillors (in other words, the Local Pension Board's code should make it clear that it is not an exhaustive statement of the standards of behaviour required of Board members).

7.11 It is important that individual members of the Local Pension Board are familiar with and understand the importance of following the principles in the Board's code of conduct, and the Board should arrange appropriate training for members on this issue.

### **Conflicts of Interest – General Comments**

7.12 As an introductory point, although there is a requirement for Local Pension Board members not to have a conflict of interest, it is important to note that the issue of conflicts of interest must be considered in light of the Local Pension Board's role, which is to assist the Administering Authority. The Local Pension Board does not make decisions in relation to the administration and management of the Fund: these rest with the Administering Authority. As a result, it is not anticipated that significant conflicts will arise in the same way as would be the case if the Board were

making decisions on a regular basis (compared, for example, to a Pensions Committee). Nevertheless, steps need to be taken to identify, monitor and manage conflicts effectively.

### **The Regulator's Code of Practice on Conflicts of Interest**

- 7.13 The Regulator has a particular role in relation to members of a Local Pension Board and conflicts of interest. Whilst members of a Local Pension Board may be subject to other legal requirements, when exercising functions as a member of a Local Pension Board, the Regulator expects the requirements which specifically apply by virtue of the 2013 Act to be met and the standards of conduct and practice set out in its Code of Practice to be complied with.
- 7.14 The Code of Practice offers guidance about managing potential conflicts and the identification, monitoring and management of actual conflicts. This Guidance is intended to reflect the principles of the Code of Practice and apply them in a LGPS context.

### **What is a Conflict of Interest?**

- 7.15 For the purposes of a member of a Local Pension Board, a 'conflict of interest' is defined in section 5(5) of the 2013 Act as a financial or other interest which is likely to prejudice a person's exercise of functions as a member of a Local Pension Board.
- 7.16 The 2013 Act also specifies that a conflict does not include a financial or other interest arising merely by virtue of that person being a member of the LGPS and/or Fund (or any connected scheme).
- 7.17 Therefore, a conflict of interest may arise when a member of a Local Pension Board:
- 7.17.1 must fulfil their legal duty to assist the Administering Authority;  
and
  - 7.17.2 at the same time they have:
    - 7.17.2.1 a separate personal interest (financial or otherwise); or
    - 7.17.2.2 another responsibility in relation to that matter,  
  
giving rise to a possible conflict with their first responsibility as a Local Pension Board member.

## **Examples of Conflicts of Interest**

- 7.18 Some examples of potential conflicts in this context would include:
- 7.18.1 A finance officer appointed as a member of a Local Pension Board may, from time to time, be required to review a decision which may be, or appear to be, in opposition to another interest or responsibility. For example, they may be required as a member of the Local Pension Board to review a decision which involves the use of departmental resources to improve scheme administration, whilst at the same time being tasked, by virtue of their employment, with reducing departmental spending.
  - 7.18.2 A member representative who works in the Administering Authority's internal audit department may be required as part of his work to audit the Fund. For example, the employee may become aware of confidential breaches of law by the Fund which have not yet been brought to the attention of the Local Pension Board.
  - 7.18.3 An employer representative from the private sector may also have a conflict of interest as a decision-maker in their own workplace. For example, if an employer representative is drawn from a company to which the Administering Authority has outsourced its pension administration services and the Board are reviewing the standards of service provided by it.

## **Identifying, Monitoring and Managing Conflicts – The Role of the Administering Authority**

- 7.19 The Regulations place a duty on the Administering Authority to satisfy itself that those appointed to its Local Pension Board do not have an actual conflict of interest prior to appointment and “from time to time” thereafter.
- 7.20 There is a corresponding duty on any person who is proposed to be appointed to a Local Pension Board, and on an appointed member of a Local Pension Board, to provide the Administering Authority with such information as the Administering Authority reasonably requires to satisfy itself that such person has no conflicts of interest.
- 7.21 To comply with its duty in relation to conflicts, the Administering Authority needs to put procedures in place in respect of the appointment of members and establish policies to be included in the Board's constitution to ensure

that interests are declared, potential conflicts are identified and members of the Board are trained and receive advice on conflicts. In doing so, the Administering Authority may wish to delegate its duty in relation to conflicts to a particular officer or officers, for example, the monitoring officer.

- 7.22 Looking first at the process of appointments, the Administering Authority should ensure that members of a Local Pension Board are appointed under procedures that require them to disclose any interests or responsibilities, which could become conflicts of interest and which may adversely affect their suitability for the role, before they are appointed. The appointment process should facilitate scrutiny of potential areas of difficulty by eliciting relevant information. The fact an individual could potentially have a conflict of interest at some point in the future should not preclude an individual being appointed provided he or she does not have an actual conflict of interest when appointed.
- 7.23 All terms of engagement (for example, appointment letters and any contracts for services) should include a clause requiring disclosure of all interests and responsibilities which have the potential to become conflicts of interest, as soon as they arise. All interests and responsibilities disclosed should be recorded.
- 7.24 As regards the Administering Authority's ongoing obligation to ensure that members of the Local Pension Board do not have a conflict of interest, the Administering Authority will need to keep appointments under review and also monitor whether appointed members have potential conflicts of interest and are declaring them appropriately. This could be achieved by requesting reports from the Local Pension Board, perhaps annually.

### **Identifying, Monitoring and Managing Conflicts – The Role of the Local Pension Board**

- 7.25 Local Pension Boards should cultivate a culture of openness and transparency. The need for continual consideration of conflicts should be recognised. Disclosure of interests and responsibilities, which have the potential to become conflicts of interest, should not be ignored.
- 7.26 The Local Pension Board should ensure that its members have a clear understanding of their role and the circumstances in which they may find themselves in a position of conflict of interest, and should know how potential conflicts should be managed. Many Local Pension Board members are likely to be familiar with the concept of a conflict of interests

and it should not be difficult to adapt established procedures to meet the obligations in the 2013 Act and the Regulations.

- 7.27 Local Pension Boards should identify, monitor and manage dual interests and responsibilities which are or have the potential to become conflicts of interest.
- 7.28 Local Pension Boards should evaluate the nature of any dual interests and responsibilities and assess the impact on their operations and good governance were a conflict of interest to materialise.
- 7.29 When seeking to prevent a potential conflict of interest becoming detrimental to the conduct or decisions of a Local Pension Board, the Board should consider obtaining professional legal advice when assessing any option.
- 7.30 A register of interests should provide a simple and effective means of recording and monitoring dual interests and responsibilities.
- 7.31 Local Pension Boards should also capture decisions about how any identified potential conflicts of interest should be managed – ideally, in their register of interests.
- 7.32 Options for managing a potential conflict of interest from becoming an actual conflict of interest, include:
- 7.32.1 a member withdrawing from the discussion and any decision-making process;
  - 7.32.2 the Board establishing a sub-board to review the issue (where the terms of reference give the power to do so); or
  - 7.32.3 a member resigning from the Board if the conflict is so fundamental that it cannot be managed in any other way.
- 7.33 The Local Pension Board's register of interests should be circulated to the Local Pension Board for ongoing review it should be made available to the Administering Authority and it should be published (for example, on the Fund's website). The Local Pension Board should report any concerns to the Administering Authority and include in an annual report a section on good governance and management of conflicts.
- 7.34 Conflicts of interest should be included as an opening agenda item at Local Pension Board meetings, and revisited during the meeting where

necessary. This provides an opportunity for those present, including non-Board members, to declare any dual interests and responsibilities, which have the potential to become conflicts of interest, and to minute discussions about how they will be managed so as to prevent an actual conflict arising.

- 7.35 Local Pension Boards should take time to consider what key decisions are likely to be made during, for example, the year ahead and identify and consider any conflicts of interest that may arise in respect of these future decisions.

### **Considering Conflicts of Interest – Responsibilities of Board Members**

- 7.36 It is important that individual members of the Local Pension Board know how to identify when they have a potential conflict of interest which needs to be declared and which may also restrict their ability to participate in meetings or decision-making. They also need to appreciate that they have a legal duty under the Regulations to provide information to the Administering Authority in respect of conflicts of interest.

- 7.37 Individual Local Pension Board members should seek professional advice from a nominated officer (for example, the monitoring officer or the chief finance officer) or external advisers where necessary and the importance of doing so should be emphasised in the Local Pension Board's conflicts policy.

### **Managing Adviser and Officer Conflicts**

- 7.38 A Local Pension Board may need to seek specialist advice or support, for example legal advice. The Board may use an officer of the Administering Authority or a third party adviser. However, in both cases the Board should be confident that such advice is independent and any potential or actual conflicts are disclosed by the officer or adviser on a timely basis to the Board. For example, an adviser may have a conflict of interest if he or she (or the same firm) is also advising the Administering Authority.

- 7.39 The risk to the Local Pension Board is that the adviser does not provide, or is not seen to provide, independent advice. Where there is likely to be a conflict of interest in giving advice, the Board should consider carefully whether it is appropriate to appoint the adviser in the first place. It may also be necessary to consider carefully whether they should take steps to remove an adviser who has already been appointed.

### **Conflicts Policy**

7.40 When establishing its Local Pension Board, the Administering Authority should prepare and approve a conflicts policy for the Board to adopt. The conflicts policy should cover the points discussed in the preceding paragraphs relating to the identification, monitoring and management of potential conflicts of interest (including adviser conflicts). Once adopted, the Local Pension Board should keep this policy under regular review.

7.41 The conflicts policy should include as a minimum:

7.41.1 examples of scenarios giving rise to conflicts of interest (which may include those set out at paragraph 7.18 above);

7.41.2 how a conflict might arise specifically in relation to a member of a Local Pension Board; and

7.41.3 the process to be followed by members of a Local Pension Board and the Administering Authority to address a situation where members are subject to a potential or actual conflict of interest.

**Action Points:**

- An Administering Authority should prepare a code of conduct and a conflicts policy for its Local Pension Board for approval in accordance with the Administering Authority's constitution and at the first meeting of the Local Pension Board. The Local Pension Board should keep these under regular review.
- Training should be arranged for officers and members of a Local Pension Board on conduct and conflicts.
- A Local Pension Board should establish and maintain a register of interests for its members.