

# Public Service toolkit downloadable

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## Module: **Conflicts of interest**

To help you work offline, at a time and place convenient to you, we have created this downloadable version of the e-learning module. The module includes:

- Tutorial (technical background to the topic)
- Case study (here you will work through scenarios related to the topic of this module by answering questions and receiving feedback)

Once you have completed the module you may wish to try the assessment. This can only be completed online and is accessed from the **Conflicts of interest** course page.



You can also download other activities from the course page including:

- Exercise (can be completed individually or as a group): 'Managing conflicts of interest'
- Check your scheme worksheet (to help you apply the learning from this module to your own scheme)

### **Learning objectives**

By the end of this module you will better understand:

- the difference between an actual and potential conflict of interest
- the need to immediately report an actual conflict of interest to the scheme manager
- the potential consequences of failing to manage potential conflicts of interest
- the importance of having a conflict of interest policy and documenting conflicts
- the importance of having an equal number of employer and member representatives on the pension board
- the process for identifying, investigating and managing potential conflicts of interest
- the actions that could be taken to manage potential conflicts of interest

# Tutorial

Here you will find out what a conflict of interest is, how important it is to be aware of them and the potential impact of having a conflict of interest. You will also find out how to manage conflicts.

## What is a conflict of interest?

You are likely to deal with conflicts of interest on a regular basis in both your personal and professional life.

Imagine you are working at an organisation and a trainee job with good prospects is advertised in your department. You are part of the shortlist panel and know the tests the applicants will have to take. You have a responsibility to your employer to help recruit the best applicant.

Your friend's son is looking for his first job and you want to help him succeed. So you wonder if you should tell him about the role and help him to apply by taking him through the tests.

This has the potential to be a conflict of interest. A conflict of interest is a dual interest or responsibility that may prejudice decisions you make or are involved with.

Take a moment to think about any conflicts of interest you might have had in your personal or professional life before continuing with this module.

## The importance of managing conflicts of interest

### Why are conflicts of interest important?

It is highly likely that pension board members will have dual interests and responsibilities and may face potential conflicts of interest in their role.

Where this happens, a conflict of interest may prejudice how they carry out their role as a pension board member. For example, it may prejudice how they contribute to discussions or vote on decisions that the board has to make.

A conflicted pension board member might not act in a way which is conducive to fulfilling the board's responsibility for assisting the scheme manager. In turn, this could result in the scheme not complying with the law and/or ineffective governance and administration of the scheme.

Even if there is no actual conflict of interest, others may perceive that there is a conflict.

It is vital that potential conflicts are declared straight away so that pension board members do not make decisions or take actions which could result in the ineffective governance and administration of the scheme. Pension board members must disclose any potential conflicts to the scheme manager. It is the scheme manager who has the responsibility to decide if there is a potential conflict, so a pension board member must give the scheme manager enough information to make this decision.

## **Failure to manage conflicts of interest**

Failing to properly manage potential conflicts of interest could have serious consequences.

Members could challenge decisions made by the pension board if the members feel a decision may have been prejudiced. Even if it hasn't, it is important that members perceive that independent judgement has been exercised.

Exercising independent judgement, and the need to be perceived to be doing so, is essential in reassuring scheme members that the correct decisions are being made on their behalf.

## **Conflicts of interest**

### **Legal requirements**

The Public Service Pensions Act 2013 and Public Service Pensions Act (Northern Ireland) 2014 set out the legal requirements for scheme managers and pension boards for conflicts of interest.

Scheme managers must:

- be satisfied that public service pension board members do not have a conflict of interest
- check from time to time that none of the members of the pension board have a conflict of interest as a crucial part of managing potential conflicts

Pension board members must:

- provide the scheme manager with such information as they reasonably require for the purposes of meeting the legal requirements for conflicts of interest

## Potential and actual conflicts of interest

A potential conflict of interest is where a person has dual interests and responsibilities which may conflict with their role as a pension board member but either:

- it has yet to materialise into an actual conflict
- the person declares it and it is managed so that it does not materialise into an actual conflict

Only potential conflicts can be managed.

Actual conflicts are interests likely to prejudice a pension board member's exercise of their functions and which actually materialise. Where an actual conflict exists, there is a risk that the board member could be biased in favour of a particular decision which favours their interests, or they could place undue weight on the arguments opposing their interests in an attempt to address the conflict. This bias could be conscious or unconscious.

Actual conflicts of interest are prohibited under the Public Service Pensions Act 2013 and Public Service Pensions Act (Northern Ireland) 2014 and cannot be managed because of the risk of unconscious bias.

## How conflicts may arise

A conflict of interest may arise when a person's duties as a pension board member conflict with their other responsibilities or interests.

For example when a pension board member must fulfil their legal duty to assist the scheme manager and at the same time they have either:

- a separate personal interest (financial or otherwise)
- another responsibility in relation to that decision, giving rise to a possible conflict with their first responsibility

Legal duties include securing compliance with:

- scheme regulations
- other legislation relating to governance and administration of the scheme
- requirements of the regulator
- any other matter for which they are responsible



### Exercise

Take a moment to think about other situations where conflicts of interest may arise.

Turn to page 10 to see some examples.

## Where could a conflict of interest become a problem?

As we have already covered, conflicts of interest may arise for pension board members who have dual interests and responsibilities and this may result in problems occurring. This could become a problem where:

- decisions are being considered that may involve the scheme incurring an administrative cost which is not legally required (eg where the cost of communicating with members could be significant to the employer, either directly or indirectly)
- the scheme is appointing outsourced service providers
- the scheme is appointing advisers
- decisions are being considered that affect one specific group of beneficiaries
- the scheme is appointing investment managers (funded schemes)
- decisions are being considered regarding the investment strategy (funded schemes)

This list is not exhaustive and we understand that the roles and responsibilities of pension board members may vary from scheme to scheme. It is important that all pension board activities are assessed for potential conflicts of interest.

## Managing conflicts of interest

Understanding how to identify potential conflicts of interest and how to deal with them is essential and schemes should ensure that there is an agreed and documented conflicts policy and process. The policy should:

- outline the steps to be followed by pension board members and scheme managers to address a situation where board members have a potential or actual conflict of interest
- include a three-stage process to identify, monitor and manage potential conflicts of interest
- be regularly reviewed

Alongside this, clear guidance on the roles, responsibilities and duties of pension boards and their members should be set out in scheme documentation.



### Exercise

Take a moment to think about the types of guidance on roles, responsibilities and duties that should be included in the scheme's conflict of interest policy. Which three of the following are important?

- a. Developing or delivering governance and/or administration policies
- b. Taking or scrutinising decisions relating to governance and/or administration
- c. Whether they are allowed to be a member of a board that is not related to the pension scheme
- d. Whether they have responsibility for administering or monitoring the administration of the scheme
- e. Whether they have responsibility to review the scheme's annual report

**Turn to page 10 for the answer.**

## Three-stage process: 1. Identifying conflicts of interest

The policy should include a description of what a conflict is and how it might arise in relation to a pension board member of the scheme. This includes understanding conflicts that:

- exist already
- may arise in the future
- are perceived by others whether or not they are conflicts of interest

For pension board members to demonstrate that they have fulfilled their obligations independently and without prejudice, they must identify and declare all conflicts of interest. Schemes should keep records of conflicts of interest that have been declared and should maintain a register of conflicts of interest.

The three-stage process allows management of potential conflicts. However, if at any stage of the process it becomes likely that a potential conflict has become an actual conflict, it cannot be managed and must be reported to the scheme manager.

### Register of conflicts of interest

When managing conflicts of interest, it is essential that all conflicts of interest are recorded and the action taken is documented. The scheme should be able to demonstrate that records of conflicts are kept and that the register is monitored and reviewed regularly.

The register should outline areas where potential conflicts may arise and include details of:

- all obligations owed by pension boards
- all corporate hospitality offered (whether or not it has been accepted)
- personal financial interests (such as significant investments in particular organisations)
- other employment (for example where a pension board works with more than one scheme or where the spouse/family member of a pension board member works for an organisation which is bidding to provide services to the scheme)
- actions or mitigations taken

## Three-stage process: 2. Monitoring conflicts of interest

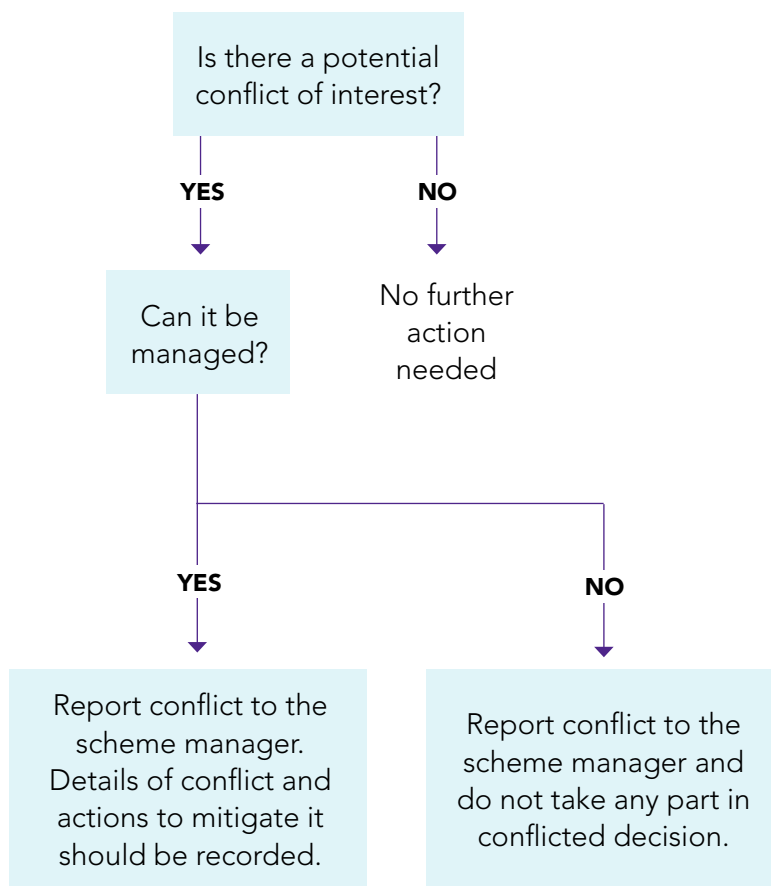
At the start of all pension board meetings it is good practice for pension board members to declare whether they have any new conflicts of interest, either due to a change in circumstances, or because of a particular item that is to be considered at the meeting. If a conflict of interests arises unexpectedly during a meeting it must be declared then. Pension board minutes should record details of any conflicts reported, and actions taken regarding the conflict.

However recording a conflict, although necessary, will not in itself be sufficient to deal with it.

## Three stage process: 3. Managing conflicts of interest

To be able to manage a conflict, schemes should evaluate it first.

This decision tree may help schemes evaluate how to manage a particular conflict of interest.





The action taken will depend on the nature and severity of the conflict. Schemes should always bear in mind that whilst it may be possible to manage potential conflicts, any actual conflict cannot be managed and must be reported to the scheme manager.

Possible courses of action could include:

- the conflicted pension board member taking no part in the discussion of the matter giving rise to the conflict
- the conflicted pension board member leaving the meeting for some or part of the time
- the scheme manager seeking independent legal advice as to the way in which to manage the conflict
- the scheme manager seeking independent advice from other professionals, for example an accountant or actuary, on the matter in question

In some cases, it will become apparent that even the potential for a conflict is so significant that a pension board member may be obliged to resign. This may be preferable to having a pension board member who is regularly unable to play a full part in the work of the pension board.

## **Representation on pension boards**

Pension boards must have an equal number of employer and member representatives.

This is to ensure that the boards have a fair and transparent balance of skills, experience and representation (eg of membership categories, participating employers etc).

Having a variety of people and representation on the pension board may help schemes to minimise potential conflicts of interest by ensuring that pension board matters, discussions or votes on decisions are made fairly and all those involved in the scheme are taken into consideration.

It is important for schemes to consider the mix of skills and experience needed on their pension boards so that they:

- operate effectively
- exercise their roles and responsibilities without prejudice and with independent judgement



## Answers

### Situations where conflicts of interest may arise

We thought of the following, with some examples. This is not exhaustive.

**A duty to one of the scheme's employers:** An employer representative may oppose a decision to buy a costly system that would improve standards of record-keeping because there is pressure from the employer not spend any money.

**Responsibility to particular beneficiaries of the scheme:** A pension board member may make, or influence, a decision to increase contribution rates, as they know that it will impact a family member.

**Duty of confidentiality:** A pension board member has access to information by virtue of their employment, which they could use to influence or inform the decisions or actions of the pension board.

### Types of guidance

The correct answers are A, B and D. Clear guidance on the roles, responsibilities and duties of pension boards and the members of those boards should be set out in scheme documentation which records policy and processes about the administration of the scheme. This should cover, for example, whether they have responsibility for administering or monitoring the administration of the scheme; developing or delivering governance and/or administration policies; and taking or scrutinising decisions relating to governance and/or administration.

You have now reached the end of this tutorial.

# Case study

Here you will work through a scenario related to the topic of this module by answering questions and receiving feedback. You can use the case study to find out how much you have learnt after completing the tutorial, or test how much you already know before starting the tutorial.

Cecilia is a finance officer for Yellowshire Health Authority, who is trying to reduce expenditure. She is also a member of the pension board for Yellowshire Health Authority Pension Scheme. The scheme conducts a review of their administration processes annually. Whilst carrying out the review, some issues with incorrect and missing member data were identified. The pension board were advised of the issues at their pension board meeting.

To improve this, a pension board member suggested that the scheme's in-house administration team urgently carry out work to review and address gaps and inaccuracies in all member data. This would ensure that all member records were correct, all data was present and that the scheme was meeting record-keeping legal requirements. This work would incur extra costs for the scheme and the employer may have to pay increased employer contributions to fund it. The pension board members were asked to consider whether they should go ahead.



## Question

Which course of action should Cecilia take?

- a. Don't tell anyone and vote against the decision as having a high standard of member data is not important and the scheme should spend money elsewhere
- b. Tell her employer and then vote against the suggestion as she must always be working towards reducing her employer's spend
- c. Tell one of her fellow pension board members and vote for the suggestion as she must always prioritise the pension scheme above her other interests
- d. Tell the scheme manager and offer to abstain from voting

Turn to the next page for the answer.



## Answer

The correct answer is D.

Pension board members must provide scheme managers with information reasonably required by the scheme manager to enable them to be satisfied that pension board members do not have a conflict of interest. If Cecilia does have a conflict of interest she should not take part in any decision making as her interest could prejudice her vote.

You have now reached the end of this case study.

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