

## NORTH YORKSHIRE COUNTY COUNCIL

## PENSION BOARD

30 JULY 2015

## CONFLICTS OF INTEREST POLICY

## Report of Legal &amp; Democratic Services

**1.0 PURPOSE OF REPORT**

- 1.1 To seek adoption of the Conflicts of Interest policy.

**2.0 BACKGROUND**

- 2.1 As detailed in the Terms of Reference, a policy for identifying, monitoring and managing conflicts of interest is to be set out in a separate policy document, which should be regularly reviewed by the Pension Board. The Scheme Advisory Board and the Pension Regulator's Code of Practice both include the requirement for there to be a Conflicts of Interest policy in place for each Pension Board.

**3.0 CONFLICTS OF INTEREST POLICY**

- 3.1 The Conflicts of Interest Policy was prepared by Council officers in February 2015 in accordance with the draft legislation and guidance available at the time and is attached at **Appendix 1**.
- 3.2 Pension Board members may wish to review the Conflicts of Interest policy by referring to the following hyperlinked documents, being the enacted legislation, tPR Code of Practice and the updated guidance from Government:
- i. [Public Service Pensions Act 2013, sections 5\(4\) and 5\(5\)](#)
  - ii. [the Pensions Regulator Code of Practice 14, conflicts of interest and representation](#)
  - iii. [LGPS guidance on the creation and operation of local Pension Boards in England and Wales, section 7](#)
- 3.3 The Conflicts of Interest policy will be updated with any amendments agreed by the Pension Board.

4.0 **RECOMMENDATIONS**

- 4.1 Pension Board members to adopt the Conflicts of Interest policy attached at **Appendix 1**, subject to any amendments (see **paragraph 3.3**).

Legal & Democratic Services  
County Hall  
Northallerton

21 July 2015

## NORTH YORKSHIRE COUNTY COUNCIL

### PENSION BOARD

#### CONFLICTS OF INTEREST POLICY

##### **Introduction**

There is a requirement for Pension Board members not to have a conflict of interest. However, it is important to note that the issue of conflicts of interest must be considered in light of the Pension Board's role, which is to assist the Administering Authority. The Pension Board does not make decisions in relation to the administration and management of the Fund: this rests 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 the Pension Fund Committee). Nevertheless, steps need to be taken to identify, monitor and manage conflicts effectively.

The Regulator has a particular role in relation to members of the Pension Board and conflicts of interest. Whilst members of the Pension Board may be subject to other legal requirements when exercising functions as a member of the Pension Board, the Regulator expects the requirements which specifically apply by virtue of the Public Service Pensions Act 2013 to be met and the standards of conduct and practice set out in its Code of Practice to be complied with.

The Code of Practice offers guidance about managing potential conflicts and the identification, monitoring and management of actual conflicts. This Policy is intended to reflect the principles of the Regulator's Code of Practice and apply them in an LGPS context.

##### **Identifying conflicts of interest**

For the purposes of a member of the 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 the Pension Board. 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.

Therefore, a conflict of interest may arise when a member of the Pension Board must fulfil their legal duty to assist the Administering Authority and at the same time they have:

- a. a separate personal interest (financial or otherwise); or
- b. another responsibility in relation to that matter, giving rise to a possible conflict with their first responsibility as a Pension Board member

The Regulations place a duty on the Administering Authority to satisfy itself that those appointed to its Pension Board do not have an actual conflict of interest prior to appointment and “from time to time”.

There is a corresponding duty on any person who is proposed to be appointed to the Pension Board, and on an appointed member of the Pension Board, to provide the Administering Authority with such information as the Administering Authority reasonably requires to be satisfied that there are no conflicts of interest. Pension Board members also have a responsibility to anticipate potential conflicts of interest in relation to plans for future Pension Board activity.

Some examples of how a conflict might arise specifically in relation to a member of a Pension Board include:

- i. a finance officer appointed as a member of the Pension Board may, from time to time, be required to take or scrutinise 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 Pension Board to take or scrutinise 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
- ii. a Pension Board member who works in the Administering Authority’s internal audit function 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 Pension Board
- iii. 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 provided by it

Conflicts of interest may also arise in respect of advisers to the Pension 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. The risk to the 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.

### **Monitoring and Managing potential conflicts of interest**

In order for the Administering Authority to fulfil its obligation to ensure that members of the Pension Board do not have a conflict of interest, the Pension Board must include an item on conflicts of interest at each meeting of the Pension Board and in its annual report to the Administering Authority.

The Pension Board is required to maintain a written register of dual interests and responsibilities which have the potential to become conflicts of interest, which may adversely affect members' or advisers' suitability for the role. Each member of the Pension Board (as well as any other attendees participating in the meeting) will be expected to declare, on appointment and at each meeting, any interests which may lead to conflicts of interest. Such a conflict could be in relation to a general subject area or to a specific agenda item of a Pension Board meeting.

The Chair of the Pension Board must be satisfied that the Board is acting within:

- the conflicts of interest requirements of the Public Service Pensions Act and the LGPS Regulations, and
- in the spirit of any national guidance or code of practice in relation to conflicts of interest for Pension Board members, and

Each member of the Pension Board, or a person proposed to be appointed to the Board, (as well as attendees participating in the meeting) must provide the Chair of the Pension Board with such information as he or she reasonably requires for the purposes of demonstrating that there is no conflict of interest.

Pension Board members are required to 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.

The Pension Board is required to evaluate the nature of any dual interests and responsibilities, assess the impact on operations and governance were a conflict of interest to materialise, and seek to prevent a potential conflict of interest becoming detrimental to the conduct or decisions of the Pension Board. The Pension Board

may consider seeking independent legal advice from a nominated officer (for example, the monitoring officer) or external advisers where necessary on how to deal with these issues, if appropriate.

Individual members of the Pension Board must know how to identify when they have a 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.

Options for managing an actual conflict of interest, should one arise, include:

- a. a member withdrawing from the discussion and any decision-making process;
- b. the Board establishing a sub-board to review the issue (where the terms of reference give the power to do so); or
- c. a member resigning from the Board if the conflict is so fundamental that it cannot be managed in any other way