

The Pensions Regulator

Code of conduct for board members

Introduction

The board of the Pensions Regulator (the Regulator) is established under section 2 of the Pensions Act 2004. This document sets out a code of conduct for members of the board. It applies to executive and non-executive members. It also applies to invited regular attendees at Regulator Board meetings, including those from other organisations.

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**To be reviewed: as required, but at least annually.
Agreed by the Board in December 2011.**

1 Public service values

Members of the board of the Pensions Regulator will at all times:

- observe the highest standards of propriety involving impartiality, integrity and objectivity in relation to the stewardship of public funds and the management of the bodies concerned;
- maximise value for money through ensuring that services are delivered in the most economical, efficient and effective way, within available resources, and with independent validation of performance achieved wherever practicable;
- be accountable, through DWP, to Parliament, users of services, individual citizens and staff for the activities of the Regulator, its stewardship of public funds, and the extent to which key performance targets and objectives have been met;
- ensure that the Regulator operates in accordance with Better Regulation principles of good regulation.

2 Relationship with the Department for Work and Pensions

The Secretary of State for Work and Pensions is answerable to Parliament for the policies and performance of the Pensions Regulator, including its use of resources and the policy framework within which it operates. The respective roles of the Department and the Regulator are set out in TPR's Framework Document.

3 The role of the chair

The chair has particular responsibility for providing effective strategic leadership on matters such as:

- formulating the board's strategy for discharging its statutory duties;
- encouraging high standards of propriety and promoting the efficient and effective use of staff and other resources throughout the organisation;
- ensuring that the board, in reaching decisions, takes proper account of guidance provided by the responsible Minister or sponsoring department;
- representing the views of the board to the general public; and
- providing an assessment of the performance of individual board members, on request, when they are being considered for re-appointment to the board or for appointment to the board of some other public body.

The chair will ensure that the board meets at regular intervals throughout the year and that the minutes of meetings accurately record the decisions taken and, where appropriate, the views of individual board members.

Communications between the board and the responsible Minister will normally be through the chair except where the board has agreed that an individual member should act on its behalf. Nevertheless, an individual member has the right of access to Ministers on any matter which he or she believes raises important issues relating to his or her duties as a member of the board. In such cases the agreement of the rest of the board should normally be sought.

The main point of contact between the Regulator and the Department on day-to-day matters will be the chief executive.

The chair will ensure that all members of the board, when taking up office, are fully briefed on the terms of their appointment and on their duties, rights and responsibilities. The chair and other members of the board should each have copies of:

- this *Code of Conduct*;
- *TPR's Framework Document*;
- the latest *Corporate Plan and Annual Reports and Accounts*;
- the Treasury's memorandum *The Responsibilities of a NDPB Accounting Officer*;
- the board's standing orders, committee terms of reference, and schedules of financial and regulatory delegations;
- the Cabinet Office *Code of Conduct for Board members of Public Bodies*.

The chair will ensure an induction programme is organised for new board members and will encourage them to attend.

4 Corporate responsibilities of board members

Members of the board have corporate responsibility for ensuring that the Regulator complies with any statutory or administrative requirements for the use of public funds.

Other important responsibilities of board members include:

- ensuring that high standards of corporate governance are observed at all times;
- establishing the overall strategic direction of the organisation within the policy and resources framework agreed with the Minister for Pensions;
- ensuring that the board operates within the limits of its statutory authority and any delegated authority agreed with DWP, and in accordance with any other conditions relating to the use of public funds;
- ensuring that, in reaching decisions, the board had taken into account any guidance issued by DWP;
- ensuring that the board operates sound environmental policies and practices, and operates within the framework of the Government's Sustainable Development Strategy.

The board will oversee production of the corporate plan, ensuring that the policy and resources framework within which the Pensions Regulator will discharge its duties; and its key strategic objectives and targets, are agreed with the responsible Minister, or officials on his or her behalf.

5 Delegation

To the extent permitted by the Pensions Act 2004, responsibility for day-to-day management matters will be delegated to staff so far as is practicable, within a clearly understood framework of strategic control.

The board will approve a schedule of delegations clearly indicating which matters are delegated and which are reserved for decision by the board. The latter will include issues of corporate strategy; key strategic objectives and targets; major decisions involving the use of financial and other resources; and personnel issues including key appointments and standards of conduct.

Decisions taken by individual members or committees of the board under delegated powers will be recorded in written minutes available to the board as a whole.

Whilst staff of the Regulator are acting on behalf of the board when carrying out delegated responsibilities, ultimate responsibility for delegated matters remains with the board.

6 Responsibilities of individual board members

Individual board members should be aware of their wider responsibilities as members of the board. Like others who serve the public, they should follow the Seven Principles of Public Life set out by the Committee on Standards in Public Life. The principles are printed at **Appendix A**. Board members must:

- ensure that high standards of probity are observed at all times;
- undertake on appointment to comply at all times with this Code of Conduct, and with rules relating to the use of public funds;
- play a full and active role in the work of the Pensions Regulator, and act in good faith and in the best interests of the Regulator;
- respect the principle of collective decision-making and corporate responsibility; once the board has made a decision, members should support that decision;
- deal with the public and their affairs fairly, efficiently, promptly, effectively and sensitively, and not act in a way that unjustifiably favours or discriminates against particular individuals or interests;
- not misuse information gained in the course of their public service for personal gain or for political purpose, nor seek to use the opportunity of public service to promote their private interests or those of connected persons, firms, businesses or other organisations; and to declare to the chair and corporate secretary any private interests which may be perceived to conflict with their public duties;
- not misuse official resources¹ for personal gain or for political purposes: use of such resources must be in line with any Regulator rules on their usage;
- ensure that they comply with the Regulator's rules on the acceptance of gifts and hospitality;
- comply with any statutory or administrative requirements relating to the post, and;
- ensure that they comply with the requirement on Confidentiality and Disclosure of Information as stated in their Terms and Conditions; duties on confidentiality and disclosure continue to apply after leaving board membership.

Board members have a statutory duty under section 82² of the Pensions Act 2004 to protect restricted information.

¹ This includes facilities, equipment, stationery, telephony and other services.

² 'Section 82 of the Pensions Act 2004' prohibits the disclosure of 'restricted information' which means any information obtained by the Regulator in the exercise of its functions which relates to the business or other affairs of any person.

7 Political activity

Members of the board of the Regulator are subject to the House of Commons Disqualifications Act 1975. Non-executive members are otherwise free to engage in political activities, provided that:

- they are conscious of their general public responsibilities and seek to abide by the seven principles of public life (see Appendix A: selflessness, integrity, objectivity, accountability, openness, honesty, leadership);
- they exercise a proper discretion in relation to the work of the Regulator, agree not to make political speeches or engage in other political activities that relate directly to pensions policy or pensions regulation, and comply with Cabinet Office rules on attendance at Party Conferences;
- they are conscious of the need in their Regulator role to be even handed in all dealings with political parties, and to be and be seen to be politically impartial;
- they remain alert to the possibility of a conflict arising between their political interests and their TPR role, and declare all such conflicts as they arise.

Executive members of the board are expected to abstain from all controversial political activities.

All board members are expected:

- to consult the chair of the board or corporate secretary if they have any queries or doubts in relation to these requirements;
- to inform the chair of the board before undertaking any significant political activity, and;
- to understand that their appointment as a board member may be terminated, if in the view of the chair of the board, the positions are incompatible.

8 Conflicts of interests

Board members of the Pensions Regulator are entitled to manage their own affairs in privacy. However, their work must be carried out in an environment which is free from any suggestion of improper influence. Those providing information must be confident that it will be properly handled and conflicts of interest must be identified immediately they arise and be properly managed.

Board members must take steps to ensure that any conflict of interest which they may be subject to does not affect a decision taken by the Pensions Regulator.

The chair and other board members are therefore expected to declare any personal or business interests which may conflict with their responsibilities as board members.

There are three key requirements:

- to declare any potential conflict of interest which arises in the course of their work as a board member, whenever it becomes relevant;
- to seek permission from the corporate secretary before dealing in shares and related investments, and;
- to complete a declaration of interests.

Guidance on these requirements is set out in **Appendix B**.

The declaration form for the register of board members' interests is at **Appendix C**.

9 Personal liability of board members

The Government has indicated that individual members of the boards of public bodies who have acted honestly and in good faith will not have to meet out of their own personal resources any personal civil liability which is incurred in execution or purported execution of their board functions, save where the person has acted recklessly.

As agreed by Government, and as for staff, the Pensions Regulator indemnifies members against liability incurred in connection with claims or proceedings brought against them in relation to anything done or omitted to be done in the discharge or purported discharge of duties undertaken for TPR. The indemnity applies in respect of proceedings whether brought in the UK or overseas. The indemnity covers any liabilities incurred in connection with such claims or proceedings, including any costs reasonably incurred in defending them, whether or not judgement is given in favour of the board member concerned. TPR will normally (see below for exceptions) provide legal representation for members who are sued as a result of actions carried out in the course of their board membership. This representation will be by the lawyer acting for TPR. Any damages and/or liability for the other sides' costs will also be met from TPR funds.

The indemnity will not extend to any liability incurred where the member's acts or omissions are:

- clearly done or omitted to be done in bad faith; or
- clearly outside or inconsistent with the scope of their responsibilities under their Terms and Conditions.

And members will not be covered for willful default or gross negligence.

The indemnity is conditional with all of the following requirements. Failure to comply may invalidate or otherwise affect the indemnity. The conditions are that members should:

- inform the TPR Corporate Secretary immediately they become aware of the possibility of a claim against them or TPR;
- avoid any discussion of the matter with the potential claimant, but if this is impossible, keep a written note of the conversation;
- under no circumstances admit liability for themselves or TPR;
- not try to settle or compromise or reduce the potential claim;
- not seek separate outside legal advice except with the authority of TPR's Corporate Secretary;

- inform the TPR Corporate Secretary of any discovery or suspicion of fraud or dishonesty by a past or present employee of TPR or anyone purporting to act on its behalf, in connection with the claim or potential claim;
- give TPR all reasonable co-operation and assistance, and comply with all TPR's reasonable requests, in the handling of the claim or potential claim.

In addition, members and staff of the Pensions Regulator are exempt from liability in damages, to the extent set out in Schedule 1 paragraph 35 of the Pensions Act 2004.

10 Openness and responsiveness

The Regulator is subject to a number of legal requirements in relation to the information it holds, including the Pensions Act 2004, the Freedom of Information Act 2000³, and the Data Protection Act 1998⁴. The terms and conditions of appointment of board members also refer to the need to protect any confidential information made available to board members in the course of their duties.

Subject to these requirements, board members and staff of the Regulator are expected to conduct all their dealings with the public in an open and responsible way. This should include:

- making publicly available annual reports;
- where practical and appropriate, holding open meetings;
- releasing minutes or summary reports of meetings;
- inviting evidence from members of the public on matters of public concern;
- following best practice in making available information to the public, particularly through the world wide web, and co-operating with other bodies as appropriate to place relevant information in the public domain;
- maintaining well publicised and easy-to-use complaints procedures which cover both maladministration and failure to provide access to information.

³ 'Freedom of Information Act 2000' gives individuals the general right of access to information held by public authorities.

⁴ 'Data Protection Act 1998' regulates the processing of 'personal data' relating to individuals, including the obtaining, holding, use or disclosure of such information.

11 Accountability for public funds

Board members have a duty to ensure the safeguarding of public funds, and the proper custody of assets which have been publicly funded. They must carry out their fiduciary responsibilities responsibly and take appropriate measures to ensure that the Pensions Regulator at all times conducts its operations as economically, efficiently and effectively as possible, with full regard to the relevant statutory provisions and to relevant guidance in HM Treasury's *Managing Public Money*.

The board should ensure it can demonstrate that the Regulator's resources are used to good effect, with propriety, and without grounds for criticism that public funds are being used for private, partisan or party political purposes. It will always be an improper use of public funds for a public body such as the Regulator to employ consultants or other companies to lobby Parliament, Government or political parties. They will need to act consistently with the nature of the Regulator's business and the possible need for confidentiality on commercial or other grounds, always subject to the rights of Parliament and the Comptroller and Auditor General to obtain information.

Members of the board are responsible for ensuring that the Regulator does not exceed its powers or functions, whether defined in statute or otherwise, or through any limitations on its authority to incur expenditure.

12 The role of the chief executive

The chief executive has responsibility, under the board, for the overall organisation, management, and staffing of the Regulator, and for its procedures in financial and other matters, including conduct and discipline. This involves the promotion by leadership and example of the values embodied in the *Seven Principles of Public Life* (set out in Appendix A). Board members should support the chief executive in undertaking this responsibility.

The chief executive is designated as the Accounting Officer for the Regulator, and is responsible to Parliament and the Accounting Officer of the DWP for the resources under his control.

The chief executive will endeavour to act in accordance with all relevant and current government guidance on the role of an Accounting Officer.

13 The board as employer

The board will ensure:

- that the Regulator complies with all relevant legislation and that it employs suitably qualified staff who will discharge their responsibilities in accordance with the high standards expected of staff employed by such bodies. All staff should be familiar with the Regulator's main aims and objectives;
- that the organisation adopts management practices which use resources in the most economical, efficient and effective manner;
- that the Regulator's rules for the recruitment and management of staff provide for appointment and advancement on merit on the basis of equal opportunity for all applicants and staff;
- that it is satisfied, in filling senior staff appointments, that an adequate field of qualified candidates is considered, and should always consider the merits of full and open competition in recruiting external candidates, and;
- that its staff, and the board's own members, have appropriate access to expert advice and training opportunities in order to enable them to exercise their responsibilities effectively.

Members will treat the staff of the Regulator with courtesy and respect: it is expected that staff will show members the same consideration in return; members will not ask or encourage staff to act in any way which would conflict with their own code of conduct.

The board has a responsibility to monitor the performance of the chief executive and other senior staff. It will carry out this responsibility through the advice of a remuneration committee whose membership shall not include any executive members of the board.

Where the terms and conditions of employment of the chief executive and other senior staff include an entitlement to be considered for performance-related pay, and where such payments are assessed by board members, the board should ensure that they have access to the information and advice required to make the necessary judgements.

Appendix A – The seven principles of public life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

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 merits.

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.

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.

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.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Appendix B - Managing conflicts of interest

This appendix provides guidance as follows:

1. What is a conflict of interest?
2. Requirement to seek permission before dealing in shares or related investments
3. The register of board members' interests
4. Definition of terms used in this appendix
5. Definition of terms used in the register of interests declaration form

1 What is a conflict of interest?

A conflict of interest arises when the work for the Pensions Regulator could be affected by a personal interest or personal association. It becomes significant if an independent third party might reasonably take the view that there is a risk that a board member's resultant actions (or those of a personal associate) might be affected, whether or not they are affected.

Conflicts of interest may arise for example as a result of:

- a direct or indirect financial interest;
- a direct or indirect financial interest held by a commercial undertaking with which you have connections;
- a significant relationship⁵ with those affected or likely to be affected by the matter;
- the interests of a connected person⁶;
- an expectation of a future interest (for example, future employment);
- in some cases, a previous association on the matter;
- an interest arising from a common interest grouping, such as a trade association or other private society.

In the absence of specific statutory provisions, the common law requires:

- that members of public bodies should not participate in the discussion or determination of matters in which they have a direct pecuniary interest, and;

⁵ See definition of 'significant relationship' – section 4 of this appendix.

⁶ See definition of 'connected persons' – section 4 of this appendix.

- that when an interest is not of a direct pecuniary kind, members should consider whether participation in the discussion or determination of a matter would suggest a real danger of bias. This should be interpreted in the sense that members might either unwittingly or otherwise unfairly regard with favour or disfavour, the case of a party to the matter under consideration. In considering whether a real danger of bias exists in relation to a particular decision, members should assess whether they, or connected persons⁷, are likely to be affected more than the generality of those affected by the decision in question.

Where, in accordance with the above, members do not participate in the discussion or determination of a matter, they should withdraw from the meeting, even if held in public, when requested to do so by the chair of the meeting. This is because the continued presence of someone who has declared an interest might be thought likely to influence the judgement of other members present.

Whether or not board members are able, in the light of the consideration above, to participate in the discussion or determination of a matter, they should declare as soon as practicable after a meeting begins if they have an interest, pecuniary or other, in a matter being considered. They should also disclose any interests in it of which they are aware on the part of connected persons and persons living in the same households as the board member. In addition, board members should consider whether they need to disclose relevant interests of other persons or organisations which members of the public might reasonably think could influence the member's judgement.

In addition to the disclosures in the register of interests, board members also have a duty to declare to the chair, corporate secretary, and others as appropriate, any potential conflict of interest which arises in the course of their work whenever it becomes relevant.

2 Personal dealings in shares and related investments⁸

The Pensions Act 2004 gives the Pensions Regulator a wide range of powers in relation to pension schemes and employers. The Regulator therefore holds market sensitive information⁹ not just in relation to schemes, but also on employers and corporate transactions. This information is not public and could be used for insider dealing¹⁰ which is a criminal offence.

It is an offence both to deal on the basis of such information and to require or encourage someone else to deal. One factor to be considered when assessing whether behaviour amounts to market abuse is whether the person concerned has acted in accordance with the standards expected of them given their position in relation to the market. Board members of the Pensions Regulator are expected to observe the highest standards in relation to their personal dealings.

⁷ See definitions – section 4 of this appendix.

⁸ See definition of 'shares and related investments' – section 4 of this appendix.

⁹ See definition of 'market sensitive information' – section 4 of this appendix.

¹⁰ See definition of 'insider dealing' – section 4 of this appendix.

The market abuse regime is a civil regime and in cases where market abuse has occurred the FSA can impose an unlimited financial penalty in line with the Financial Services and Markets Act.¹¹

Subject to exceptions¹², all board members are expected to seek permission from the corporate secretary before dealing in shares or related investments in relevant organisations.¹³ Board members are asked not to deal before clearance has been given, or if clearance is refused.

Following receipt of a request for permission to deal, the corporate secretary will make enquiries (within the Pensions Regulator) before deciding if the request should be approved or refused. Permission to deal will not be given where there is a current regulatory interest in the company concerned and that interest is market sensitive. Once approval has been given, the board member is free to deal but should do so within two working days, failing which they must apply for clearance again.

All information relating to these requests will be treated as confidential. Board members will be expected to amend their register of interests declaration accordingly.

3 The register of board members' interests

The purpose of the register is to ensure the Pensions Regulator has a record of board members' declarations of interest. It has been compiled in accordance with a requirement of the Cabinet Office *Model Code of Practice for Board Members of Public Bodies*, to provide a mechanism whereby possible conflicts of interest can be identified.

The existence of the register does not remove the obligation on members to declare interests as they arise in the course of the board's work.

The register will list all interests that members of the public might reasonably think could influence board members' judgement:

- direct pecuniary interests;
- indirect pecuniary interests (indirect pecuniary interests arise from connections with bodies which have a direct pecuniary interest or from being a partner of, or being employed by, a person with such interests);
- non-pecuniary interests that relate closely to the Regulator's activities, (non-pecuniary interests include those arising from membership of clubs and other organisations).

¹¹ The UK also has a criminal insider dealing regime which is set out in the Criminal Justice Act 1993. This makes it a criminal offence for an individual who has information as an insider to deal in securities (including shares, debentures, warrants and options) on a regulated market. The Pensions Regulator may decide, in concluding investigations into a potential misuse of information or insider dealing case, that the behaviour is sufficiently serious to justify a criminal prosecution. An offence under the Act is punishable by up to 7 years imprisonment and/or fine of up to £5,000. The Act also makes it a criminal offence for anyone to disclose market sensitive information to someone or encourage someone else to deal.

¹² Permission to deal is not required for reinvestment of dividends, nor in other situations where the board member does not have direct influence on the management of the investment, including dealing by connected persons.

¹³ See definition of 'relevant organisation' – section 4 of this appendix

The register will be held by the chief executive's office. A summary of the register ¹⁴ will be published, and the register may be disclosed to the chief executive, the chair, the internal auditor, the Pensions Regulator's independent complaints adjudicator, or the Secretary of State, in the event that a complaint is raised concerning the conduct or judgement of a board member.

Board members are expected to ensure their register of interests declaration is kept up to date.

4 Definitions

4.1 Terms used in Appendix B

'dealings' includes purchase, sales, subscriptions, acceptance of take-over and other offers and all other methods of acquiring or disposing of shares and related investments or any rights or interests in shares and related investments.

'significant relationship' means a relationship which an independent third party might reasonably consider could affect your actions or those of a personal associate (whether or not it does affect your conduct).

'connected persons' means spouses and partners, children and step-children under the age of 18, persons for whom board members take significant financial decisions and trusts of which a board member is a trustee.

'shares and related investments' includes shares (including individual company shares held in PEPs or ISAs), bonds, debentures and any other financial investments, including futures, options, financial spread bets and other financial derivatives.

There is no requirement to seek permission to deal or to declare an interest in relation to collective investments schemes (such as unit trusts and OEICS including any held in a general PEP or ISA), and other investments where the board member has no direct influence on the management of the investment ;

Pensions are declarable in the board register of interests, and to the chair or corporate secretary as appropriate if potential conflicts arise in the course of your board duties.

'market sensitive information' relates to information held by the Pensions Regulator, not yet available to the market, relating to a significant 'event' which, if made public, could enable others to benefit from and/or cause them to take action that they would not otherwise have taken (in the majority of cases, but not all, this would relate to information that is likely to lead to a substantial movement in market prices).

'insider dealing' involving the purchase or sale of shares by someone who possesses inside information about a company's performance and prospects

¹⁴ Excluding shareholdings and personal or stakeholder pensions.

which is not yet available to the market as a whole, and which, if available, might affect the share price.

‘relevant organisation’ means those companies or any company within the same group of companies, either seeking to be or currently listed in the UK and/or quoted and/or regulated in the UK as appropriate, and includes those seeking clearance, or the subject of monitoring, enforcement or any other regulatory intervention by the Pensions Regulator.

4.2 Terms used in the register of interests declaration form

‘**Current Employment or office**’ refers to any post, other employment or fiduciary positions which you hold, or have held in the past five years in connection with a relevant organisation.

‘**Directorships**’ means remunerated directorships of companies, public or private, other remunerated posts, and public appointments currently held by the board member or connected persons, and which could come within the Pensions Regulator’s sphere of operations.

‘**Non- profit organisations**’ refers to offices held by the board member in non-profit making organisations or trade associations or bodies whose activities could come within the Pensions Regulator’s sphere of operations and responsibilities.

‘**Consultancies and sponsorships**’ refers to any current professional clients of the board member whose business interests could come within the sphere or the Pensions Regulator’s work.

‘**Declarable shareholdings**’ means the names of companies or other bodies in which the board member has a beneficial interest or shareholdings. This does not include shareholdings through collective investment schemes (e.g. unit trusts) or other arrangements where the member has no influence on financial management of the investment.

‘**Occupational pension schemes**’ means the names of any occupational pension schemes of which a board member or connected person is a scheme member or trustee or in which s/he holds office.

‘**Personal or stakeholder pensions**’ refers to the names of providers of personal or stakeholder pensions held by a board member or connected person.

Appendix C - The Pensions Regulator: register of board members' interests

Declaration Form	
Name	
Education/Professional Qualifications/Decorations	
Trade or Profession	
Current Employment or office	
Directorships	
Non-profit organisations	
Consultancies and sponsorships	
Declarable shareholdings	
Occupational pension schemes	
Personal or stakeholder pensions	

Signed:

Date: