

Appendix D – Example of a conflicts policy/procedure document

The following policy/procedure document illustrates the sort of information which could be included to help inform trustees on conflicts related matters³³ - the contents could be tailored to schemes of varying size.

Trustee policy and procedure for managing conflicts of interest

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 the beneficiaries, but this does not preclude a trustee from having other roles or responsibilities which may result in a conflict of interest. Note 1 contains various guidance notes issued by the Pensions Regulator on this matter. Note 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 the trustees 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 and the in-house management team of the pensions department.
3. Each trustee, adviser and member of the in-house management team 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 fund secretary is to identify any potential conflicts of interest and to advise the chairman. The independent trustee should also be alerted so they could be ready to

³³ This example is based on a conflicts policy document prepared by the trustees of EDF Energy.

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. Company issues or proposals covered at trustee meetings are to be presented by a company representative who is not a trustee, for example the pensions manager.
6. Any trustee wishing to speak from the company's 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 fund secretary 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 company representatives and to advise the scheme secretary. The fund secretary will then advise the trustees, including the independent trustee, seeking a decision from them on whether this information should be withheld from the company representatives.

Note 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)**

The codes and guidance can be found on the regulator's website www.thepensionsregulator.gov.uk

Note 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'

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:

- setting investment strategy and reviewing investment choices;
- setting assumptions for actuarial valuations;
- approving discretionary benefits to a member;
- choosing different scheme advisers;
- setting contribution rates;
- negotiating funding, including the choice of actuarial assumptions (DB);
- setting a recovery plan for correction of a deficit (DB);
- dealing with bulk transfers in or out;
- discussing benefit changes proposed by the company;
- settling a death in service benefit claim; and
- dealing with the allocation of surplus.

In relation to the DB section, the principal challenges are in relation to conflicts of duty in two key areas:

1. negotiations between the trustees and the sponsoring employer; and
2. 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 company information.

With regard to trustees sharing confidential trustee information with other parties (for example the company, 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

The trustees appoint their own advisers. There may be circumstances where these advisers are asked to give advice to the company in relation to pension matters, but this can only happen where there is no conflict of interest. If there is a potential conflict of interest the company will appoint its own adviser(s).

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.

A summary of the position with regard to the trustees' main advisers is set out below.

- Legal advisers – the company obtains separate legal advice from SBS and JAS. It is also important to note that the trustee receives legal advice from separate law firms.
- Auditors – LPS are auditors of the scheme and the employer. However separate teams fulfil these roles. It is also important to remember that separate teams within VAS also provide services to other schemes sponsored by the employer as well as ad-hoc consultancy advice to their employer.
- Investment advisers – VAS provide investment consulting advice solely to the trustees. In order to provide this advice they may need to consult with the company. The company does not currently obtain separate pension investment advice.

Pensions department

The senior management team of the in-house pensions department are all employed by the company and currently comprise the:

- pensions manager;
- pensions strategy and investment manager;
- fund secretary; and
- pensions operation manager.

The team members work closely together and liaise closely with the trustees, the trustees' advisers and the company's senior management. As such they are privy to a wide range of information and it is therefore important that they are included in the procedures adopted for managing conflicts of interest.

The team has been structured so that the fund secretary provides the key support to both the trustees and the pensions operations manager.