

# Making managing conflicts of interest easier

May 2016

## Introduction

It is important for trustees and sponsoring employers to manage conflicts of interest effectively. Conflicts arise when trustees owe separate duties to another party (such as the employer or a trade union). They also occur when trustees have a personal interest in a particular matter (such as changes to benefits). Identifying and managing conflicts is a vital part of good scheme governance and key to avoiding challenges to trustee decisions.

## 10 steps to help you manage conflicts of interest

1. Ensure that a **robust conflict management protocol is in place**. This will set out how any conflicts arising in the future will be dealt with. For example, the protocol could include a register of trustees' interests, procedures for declaring any conflicts that arise and a policy setting out how the trustees will manage any conflicts.
2. Conduct **regular reviews of conflict management procedures**. Conflict management procedures will need to be regularly reviewed to ensure that they are still appropriate for the scheme.
3. Consider using **conflicts of interest questionnaires**. These are a useful tool to help identify and manage potential conflicts under both the wider trust law regime and (if the trustee is a corporate trustee) the Companies Act 2006.
4. **Liaise with advisers and in-house teams on a regular basis**. Advisers will typically have their own established conflict procedures which they will complete as soon as they are instructed. Many have a legal duty to inform trustees of any conflicts of interest and this information could be included on a conflicts register. The Pensions Regulator expects trustees to require all advisers to inform them if they become aware of any conflicts.
5. Conflicts should be **considered routinely at the start of each trustee meeting**. It is essential that conflicts are considered at every trustee meeting and that any interests are disclosed, so that everyone is aware of the conflict which will allow appropriate action to be taken. This may mean excluding conflicted trustees from relevant discussions and voting or even delegating relevant discussions and decisions to a sub-committee. The Pensions Regulator recommends **maintaining both a register of trustees' interests and a register of conflicts** which have arisen/may arise.
6. Relevant conflicts should always be **clearly detailed in the minutes** of the meeting along with details of the action taken to manage the conflict. This ensures that remaining trustees are aware of the conflict and provides a paper record in the event that any decisions or actions are questioned at a later date.
7. Consider **appointing an independent trustee to the trustee board**. This could be an independent lay trustee or an independent professional trustee. Although there are cost implications of appointing an independent professional trustee, these trust corporations/persons have considerable knowledge and expertise and have experience in dealing with matters of potential conflict.
8. Trustees should **consider taking legal advice** if a conflict is not straightforward. Furthermore, individual trustees who are in a difficult position (eg. if they obtain confidential information in another role) may wish to take legal advice about their duties.
9. **Make use of the resources available from the Pensions Regulator**. The Pensions Regulator has published guidance on its website to help trustees with conflict management.
10. If the trustee is a corporate body, **check the articles of association to ensure compliance with the Companies Act 2006**. The Companies Act 2006 conflicts of interest regime applies to trustees that are corporate trustees (as opposed to a board of individuals). Any corporate trustees' articles of association should be updated to cover the new regime and to ensure compliance.

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## Further reading

Take a look at the [guidance](#) published by the Pensions Regulator on conflicts of interest.

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The series is growing; additional copies can be downloaded from [www.pinsentmasons.com](http://www.pinsentmasons.com)

Current topics include: Using advisers; Scheme changes and Becoming a trustee

Comments and ideas for further topics are welcome...

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