

Conflicts of interest

This module forms part of our expectations for trustees of those schemes required to operate an effective system of governance, see **Systems of governance**.

1. Conflicts of interest may arise from time to time while running a pension scheme, either among members of the governing body themselves, or with service providers, sponsoring employers, advisers, and others. Conflicts can also arise for members of the governing body who for example, are members of the scheme or who represent trade unions. Conflicts of interest may be either actual conflicts or potential conflicts. Unless otherwise stated, references to 'conflicts of interest' include both actual and potential conflicts.
2. Under section 249A of the Pensions Act 2004¹, governing bodies of certain schemes must establish and operate an effective system of governance (see **Systems of governance**) including internal controls (see **Internal controls**). However, there are certain exemptions². The system of governance must be proportionate to the size, nature, scale, and complexity of the activities of the scheme.
3. Under section 249B of the Pensions Act 2004³, scheme managers of public service pension schemes⁴ are required to establish and operate internal controls, which are adequate for the purpose of securing that the scheme is administered and managed in accordance with the scheme rules⁵ and with the requirements of the law. To the extent that conflicts of interest are:
 - a. within that section: scheme managers should take that into consideration in identifying and evaluating risks (see **Identifying, evaluating and recording risks**). Our expectations of scheme managers for identifying and recording conflicts of interest are in paragraphs 6 to 8. The specific expectations that apply will vary from scheme to scheme.
 - b. not within that section: what is set out below does not form part of our expectations of scheme managers, but it is good practice for them to adopt those measures.
4. There are also additional requirements for the management of conflicts of interest in relation to pension boards of public service pension schemes (see paragraphs 22 to 24).

1 Article 226A of The Pensions (Northern Ireland) Order 2005

2 Section 249A(3) of the Pensions Act 2004 [Article 226A (3) of The Pensions (Northern Ireland) Order 2005]

3 Article 226B of The Pensions (Northern Ireland) Order 2005

4 As defined in section 318(1) of the Pensions Act 2004 [Article 2(2) of The Pensions (Northern Ireland) Order 2005]

5 As defined in section 318(2) of the Pensions Act 2004 2004 [Article 2(3) of The Pensions (Northern Ireland) Order 2005]

5. When identifying and evaluating risks (see **Identifying, evaluating and recording risks**), governing bodies should consider conflicts of interest. A conflict of interest may arise when a member of the governing body:
 - a. is obliged to act in the best interests of the members; and
 - b. at the same time has or may have either:
 - a separate personal interest or
 - another fiduciary duty or other duty owed to a different person in relation to that decision, giving rise to a possible conflict with the obligation to act in the best interests of the members⁶.

Identifying and recording conflicts

6. It is possible that members of governing bodies will have other interests and responsibilities. They therefore need to understand when actual or potential conflicts arise.
7. Certain legal and professional requirements and legislation that apply to English local authorities, set standards for conduct, conflicts of interest, and disclosure of certain interests. These may apply to members of governing bodies, advisers, and service providers.
8. When identifying and recording conflicts of interest, governing bodies should:
 - a. have a clear understanding of the importance of managing conflicts of interest and the circumstances in which they may arise
 - b. understand any requirements of the scheme's governing documentation, or regulations under which it may operate, in relation to conflicts of interest
 - c. encourage a culture of openness and transparency in relation to conflicts of interest.
 - d. maintain a written policy for managing actual and perceived conflicts of interests and consider where to publish it on the scheme's website
 - e. maintain a register of interests, which should be considered in every meeting of the governing body
 - f. ensure all members of the governing body, advisers, and service providers make declarations of interests and conflicts at their appointment, and as they arise
 - g. ensure contracts and terms of appointment require advisers and service providers to operate their own conflicts policy, and disclose all conflicts to the governing body
 - h. record conflicts of interest in relation to a decision-making process, as well as the action taken to manage them, in the written records of the meeting (see **Meetings and decision-making**)
 - i. if carrying out transactions with related parties, ensure transparency by complying with **financial reporting standard (FRS) 102 - related party disclosures**

6 Such conflicts of interest may affect not only trustees but also directors, agents, professional advisers and others

Dealing with conflicts

9. Governing bodies should have processes in place to ensure that their decision-making is not compromised by actual or potential conflicts. The processes required to manage the conflict will need to take into account the particular circumstances of the conflict, the actual, and potential risks the conflict poses, and the rules (and legislation where applicable) governing the scheme.
10. Members of governing bodies who are also directors of the sponsoring employer(s) will need to consider the requirements of section 175 of the Companies Act 2006 (duty to avoid conflicts of interest). The governing body should adopt control procedures (see **Internal controls**) to manage conflicts and mitigate the risks of tainted decision making. The governing body should therefore assess the nature of the conflict being managed and the risk or threat to decision-making⁷.
11. Different options for dealing with conflicts of interest are set out below. The effectiveness, validity, and attendant risks will vary depending on the option. Some conflicts of interest may be so acute or pervasive that it would be better to avoid them entirely – for example, an acutely conflicted member of the governing body could resign.
12. In cases where resignation is deemed appropriate, careful consideration needs to be given to the identity of any replacement member of the governing body and the conflicts that they may face. Governing bodies should consider seeking independent legal advice, to help decide whether an actual or potential conflict of interest can be eliminated (and if so, the best way of achieving it).
13. Where conflicts of interest are not eliminated, depending on the situation, the options below either singly, combined, or with other appropriate options should be put in place to manage the conflict. Governing bodies should consider seeking independent legal advice to help decide the best approach to manage an actual or potential conflict of interest.

Withdrawal from discussions and the decision-making process

14. A member of a governing body who is conflicted should consider withdrawing from decision(s) and decision-making process(es). The governing body should consider whether the presence of a conflicted individual could undermine discussions, invalidate, influence, or be perceived to influence a decision. A conflicted individual who simply abstains may still unduly influence an outcome.

7 Governing bodies should also seriously consider seeking legal advice if they are in any doubt whether a conflict is non-trivial or whether it could have the potential to be detrimental to the conduct or decisions taken by them

Establishing a sub-committee

15. Delegation to a sub-committee can help ensure that decisions are made by an independent group whose views will not be compromised by another conflicted member of the governing body.
16. Governing bodies should consider seeking legal advice, if considering delegating certain tasks to a sub-committee(s). This is because there are many scheme-specific and legal factors which need to be considered. This will include whether delegation is possible or desirable, and the extent to which the full governing body is bound by the decisions of the sub-committee.

Appointing an independent to the governing body

17. An independent member of the governing body, such as a professional independent trustee or otherwise, can help ensure that decisions are not prejudiced by a conflict of interest.

Confidentiality agreement and disclosure of information

18. Confidentiality agreements are documents under which members of governing bodies agree not to share with third parties the information they receive in order to carry out their role. Such agreements therefore:
 - a. facilitate the sharing of confidential and sensitive information with governing bodies and help to ensure that the information will not become public
 - b. provide extra comfort to sponsoring employer(s) in relation to disclosing information to governing bodies
19. Confidentiality agreements do not necessarily eliminate the conflict and there may still be a need to manage it. Governing bodies considering the use of a confidentiality agreement will need to seek independent legal advice.
20. Legislation⁸ requires sponsoring employer(s) and former sponsoring employer(s) of certain schemes to disclose to the trustees or managers:
 - a. on request, information reasonably required by the trustees or managers or the professional adviser(s)⁹ to perform their duties (the duty to disclose also extends to those who act as auditor(s) and actuary(s) to such sponsoring employer(s)).
 - b. Within one month, any event relating to the employer(s) that could be reasonably be considered to be of material significance in the exercise of any of the functions of the trustees, or managers, or their professional advisers.

8 Regulation 6 of the Occupational Pension Scheme (Scheme Administration) Regulations 1996 [Regulation 6 of the Occupational Pension Scheme (Scheme Administration) Regulations (Northern Ireland) 1997]

9 As defined in Section 47(4) of the Pensions Act 1995 [Article 47(4) of The Pensions (Northern Ireland) Order 1995]

Application to the courts

21. If one or more members of the governing body of a trust scheme have serious conflicts, which cannot be satisfactorily managed or avoided (or if there is no agreement on how to manage or avoid the conflict), the governing body can apply to the courts for approval of a decision, or to surrender their discretion to the courts.

Public service pension schemes – pension boards

22. Under section 5 of the Public Service Pensions Act 2013, scheme managers of public service pension schemes¹⁰ have to meet certain requirements relating to conflicts of interest regarding the pension board. In this situation, a conflict of interest is a financial or other interest, which is likely to prejudice the way in which someone carries out their role as a member of the pension board. It does not include a financial or other interest arising merely from them being a member of the scheme or any connected scheme.
23. The scheme manager must:
 - a. be satisfied that a prospective member of the pension board does not have a conflict of interest
 - b. remain satisfied that none of the members of the pension board has a conflict of interest
24. The scheme manager should:
 - a. circulate the register of interests and the other relevant documents to the pension board for ongoing review
 - b. publish these documents (for example, on a scheme's website)

10 As defined in section 1 of the Public Service Pensions Act 2013

Glossary

Internal controls

- Arrangements and procedures to be followed in the administration and management of the scheme,
- Systems and arrangements for monitoring that administration and management, and
- Arrangements and procedures to be followed for the safe custody and security of the assets of the scheme.

Pensions board

Board set up as required by section 5 of the Public Service Pensions Act 2013 to assist the scheme manager with the matters set out in that section.

Scheme manager

The person responsible for managing or administering:

- the scheme, and
- any statutory pension scheme that is connected with it (See section 4 of the Public Service Pensions Act 2013).

Sponsoring employer

The employer, or employers, responsible for making payments to a pension scheme (see our [Statement on identifying your statutory employer](#)).