



South Tyneside Council

Pensions Committee

Date: 6th February 2015

Approach to Managing Conflicts of Interest as Amended

Report of the Corporate Director Business and Resources

Purpose of Report

1. This report informs Pensions Committee of the approach to managing conflicts of interest that may arise from the workings of the Committee.
2. It also informs Pensions Committee of the approach to managing conflicts of interest that may arise from the workings of the Local Pension Board.

PENSIONS COMMITTEE

What is a “conflict of interest”

3. A conflict of interest may arise when a Pensions Committee Member is required to make a decision where the Committee Member has:
 - a duty to act in the interest of the Fund or the Fund’s beneficiaries;and
 - a competing personal interest or a separate duty to act in the interests of another party.
4. The main duty of Pensions Committee is to act in the best interests of the Fund and its beneficiaries. However, Pensions Committee must also recognise its responsibility to employers participating in the Fund and to local tax payers.
5. These areas are not always aligned and have the potential to create a conflict of interest for a Committee Member.

Managing Conflicts Of Interest

6. Conflicts of interest, both potential and actual, are a fact of life for Committee Members. It is therefore essential that such conflicts are recognised and effectively handled.
7. The Localism Act 2011 abolished the previous standards regime, including Standards for England which was abolished from 31st March 2012. The secondary legislation that brought the standards provisions of the Localism Act fully into force, in particular, The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 took effect from 1st July 2012.
8. Personal and prejudicial interests were abolished and were replaced with “Disclosable Pecuniary Interests”. Disclosable Pecuniary Interests are broadly equivalent to previous “prejudicial interests”, but now also extend to interests held by a Member’s spouse or civil partner.
9. Local authorities are under a statutory duty to “promote and maintain high standards of conduct” and must adopt a Code of Conduct that regulates standards of conduct.
10. Since 1st July 2012, South Tyneside Council (“the Council”) has adopted a Code of Conduct that sets out the conduct that is expected of Committee Members.
11. DCLG has issued guidance stating that it is good practice for Local Government Pension Scheme administering authorities to have a

robust risk management process and policies in place to manage conflicts of interest.

The Council's Code of Conduct

12. The Council's Code of Conduct for Members is contained in Part E of the Constitution, which is attached.
13. It is the responsibility of each Committee Member, including Members from other local authorities and the Trade Union Representatives and the Employer Representatives, to comply with the provisions of the Code.
14. The Code is summarised below and should be considered together with the general principles prescribed by the Secretary of State.
15. The Code is intended to be consistent with the Seven Principles of Public Life (formerly known as the Nolan Principles), and should be read in the light of those principles, namely that Committee Members will act with selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
16. Interests may be classified as either Disclosable Pecuniary Interests or Non Disclosable Pecuniary Interests.
17. A person's pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and assets including land and property).
18. Members must register Disclosable Pecuniary Interests within 28 days of election and must notify the Council's Monitoring Officer of any changes within 28 days.
19. You have a disclosable pecuniary interest if you, or your spouse or civil partner, have a pecuniary interest listed in the national rules. Interests or your spouse or civil partner are included to ensure that the public can have confidence that councillors are putting the public interest first and not benefiting the financial affairs of themselves or their spouse or civil partner from which the councillor would stand to gain. For this purpose your spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.
20. Copies of the register of members' interests which are available for inspection or published must not include details of a member's sensitive interest, other than stating that the member has an interest the details of which are withheld. A sensitive interest is one which the member and the monitoring officer, who is responsible for the register

of members' interests, consider that disclosure of its details could lead to the member, or a person connected to the member, being subject to violence or intimidation.

21. If you are present at a meeting of Pensions Committee, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not:

- participate in any discussion of the business at the meeting, or if you become aware of your disclosable pecuniary interest during the meeting participate further in any discussion of the business, or
- participate in any vote or further vote taken on the matter at the meeting.

22. You must leave the room if you consider your continued presence is incompatible with the Council's Code or the Seven Principles of Public Life.

23. In certain circumstances you can request a dispensation from these prohibitions. The Council, in certain circumstances, may be able to grant a dispensation to permit a member to take part in the business of the authority even if the member has a disclosable pecuniary interest relating to that business. These circumstances are where the Council considers that:

- without the dispensation so great a proportion of the Council would be prohibited from participating in that business as to impede the Council's transaction of that business;
- without the dispensation the representation of different political groups dealing with that business would be so upset as to alter the likely outcome of any vote;
- the granting of the dispensation is in the interests of people living in the Council's area;
- without the dispensation each member of the Council's executive would be prohibited from participating in the business, or
- it is otherwise appropriate to grant a dispensation.

24. It is a criminal offence if, without a reasonable excuse, you fail to tell the Monitoring Officer about your Disclosable Pecuniary Interests, either for inclusion on the register if you are a newly elected, co-opted or appointed member, or to update the register if you are re-elected or re-appointed, or when you become aware of a Disclosable Pecuniary Interest which is not recorded in the register but which relates to any matter;

- that will be or is being considered at a meeting where you are present, or
- on which you are acting alone.

25. It is also a criminal offence to knowingly or recklessly provide false or misleading information, or to participate in the business of your authority where that business involves a Disclosable Pecuniary Interest. It is also a criminal offence to continue working on a matter which can be discharged by a single member and in which you have a Disclosable Pecuniary Interest.
26. The criminal penalties available to a court on conviction are to impose a fine not exceeding £5000 and disqualification from being a Councillor for up to 5 years.
27. A description of Disclosable Pecuniary Interests is attached.
28. Under the Code Non Disclosable Pecuniary Interests must be declared at a meeting, but these will not prevent a Committee Member speaking or voting on a matter unless to do so would breach the Seven Principles of Public Life.

Members of Pensions Committee from Other Local Authorities

29. Members of Pensions Committee from other local authorities are required to observe the Council's Code of Conduct and to notify the Council of any interests which are required to be registered.
30. Such Members need to declare any Disclosable Pecuniary Interest at meetings.

Advisory Members

31. A Trade Union Member or an Employer Representative Member, as Advisory Members, does not participate in decision making and so may be asked to withdraw from a meeting where Pensions Committee considers that a conflict of interest may arise.
32. Advisory Members should also declare any Disclosable Pecuniary Interests at meetings.
33. Advisory Members are required to confirm that they will observe the requirement of confidentiality in relation to confidential material.

Decision Making

34. The way to manage conflicts can depend on the specific circumstances of the case. Due regard must be paid to the following measures during any decision making processes to provide Pensions Committee with the confidence to discharge its responsibilities to the Fund and its beneficiaries and any other party they represent:

- Fully recognise the parties to whom you owe a duty of care;

- Acknowledge the potential conflict between the needs of those parties;
- Give appropriate weight to their competing interest before reaching any decision.

OFFICERS

35. An Officer, as an Employee of the Council, is not subject to the Code of Conduct discussed above. Instead, there is a specific Employees Code of Conduct that is also contained in Part E of the Constitution.
36. The Employees Code of Conduct sets out the minimum standards which apply to Local Government employees. It aims to maintain and improve standards of conduct. Its main purpose is to protect employees from any misunderstanding or criticism and maintain the reputation of the Council.
37. An Officer cannot have a Disclosable Pecuniary Interest in the same way that a Committee Member does.
38. Instead, Officers are expected to give the highest possible standard of service to the public and, where it is part of their duties, to provide appropriate advice to other employees and Committee Members with impartiality. Employees are obliged, through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate level of management, any deficiency or irregularity in the provision of service. Employees must report any impropriety or breach of procedure in line with the Council's Financial Procedure Rules.
39. In addition, Officers will need to have regard to the statutory responsibilities they are placed under by Section 117 of the Local Government Act 1972. An Officer should declare an interest in any business of the authority. A Voluntary Register of Officers' Interests is maintained by the Monitoring Officer. Officers will, however, be able to continue to participate in meetings as they have no decision making powers, unless asked to withdraw by the Pensions Committee.
40. Therefore, if an Officer is a member of the Local Government Pension Scheme, their interest should be declared.

LOCAL PENSION BOARD

41. The Public Services Pensions Act 2013, Scheme Regulations and the Pensions Regulator's Codes of Practice contain requirements and guidance on the identification and management of conflicts of interest in relation to local pension boards.

42. In particular, the Scheme Regulations set out certain duties that fall on the Scheme Manager in relation to managing conflicts of interest that may arise in relation to the membership of the Local Pension Board.

43. The Council is the Scheme Manager for the Fund. Pensions Committee is set up to deal with all matters arising from the Scheme Manager's function and responsibilities as the administering authority of the Fund.

What is a "conflict of interest"

44. A conflict of interest is defined in the Public Services Pensions Act 2013 as a financial or other interest which is likely to prejudice a person's exercise of functions as a Member of the Local Pension Board. It does not include a financial or other interest arising merely by virtue of that person being a Member of the Local Government Pension Scheme or any connect scheme for which that Board is established.

The Duties of Pensions Committee in relation to the Local Pension Board

45. In relation to the Local Pension Board, Scheme Regulations include provision requiring Pensions Committee to

- be satisfied that a person to be appointed as a Member of the Local Pension Board does not have a conflict of interest; and
- be satisfied from time to time that none of the Members of the Local Pension Board has a conflict of interest

46. The Regulations also require each Member of the Local Pension Board, or a person proposed to be appointed as a Member of the Local Pension Board, to provide Pensions Committee with such information as it reasonably requires for the purposes of meeting the requirements referred to above.

Guidance from the Pensions Regulator

47. As noted above, there are legal requirements relating to conflicts of interest which may apply to Local Pension Board Members, to the Scheme Manager and to Pensions Committee Members.

48. The Pensions Regulator may not have specific responsibility for enforcing all such legal requirements, but it does have a particular role in relation to Local Pension Board Members and conflicts of interest.

49. Whilst Local Pension Board Members may be subject to other legal requirements, when exercising functions as a Member of the Local Pension Board, the Pensions 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 his guidance to be satisfied.

50. The Pensions Regulator has issued guidance to assist Scheme Managers in meeting their legal duty to be satisfied that Local Pension Board Members do not have any conflicts of interest.
51. Actual conflicts of interest, which are interests that are likely to prejudice a Local Pension Board Member's exercise of their functions, are prohibited by the Public Service Pensions Act 2013.
52. Actual conflicts of interest cannot be managed. Only potential conflicts of interest can be managed.
53. A conflict of interest may arise when Local Pension Board Members:
 - i. must fulfil their legal duty to assist Pensions Committee in securing compliance with the Scheme Regulations, other legislation relating to governance and administration of the Scheme and the requirements of the Pensions Regulator or any other matter for which they are responsible, and
 - ii. at the same time they have either:
 - a. a separate personal interest (financial or otherwise), or
 - b. another responsibility in relation to that decision, giving rise to a possible conflict with their first responsibility.
54. The Seven Principles of Public Life should be applied to all Local Pension Board Members in the exercise of their functions as they require the highest standards of conduct.
55. It is likely that Local Pension Board Members may have dual interests and responsibilities. Pensions Committee must be satisfied that a dual interest and responsibility would not prejudice the Local Pension Board Member in the exercise of any particular function.
56. Pensions Committee should obtain information relating to the roles, responsibilities and duties of Local Pension Board Members. This could cover, for example, whether the Local Pension Board Member has responsibility for developing or delivering governance and/or administration policies and taking or scrutinising decisions relating to governance and/or administration.
57. Regardless of their remit, potential conflicts of interest affecting Local Pension Board Members need to be identified, monitored and managed effectively.

Three-stage approach to managing potential conflicts

58. Conflicts of interest can inhibit open discussions and/or result in decisions, actions or inactions which could result in the ineffective governance and administration of the Fund. They may result in the Local Pension Board acting improperly, or lead to a perception that they have acted improperly.

59. It is therefore essential that any dual interests and responsibilities which have the potential to become conflicts of interest and/or to be perceived as conflicts of interest are identified and that potential conflicts of interest (whether perceived or otherwise) are monitored and managed effectively.

60. Broadly, when Pensions Committee are considering potential conflicts of interest with regards the Local Pensions Board, this should be done in three stages:

- i. Identification.
- ii. Monitoring.
- iii. Managing.

61. Pensions Committee should ensure the identification; monitoring and management of potential conflicts of interest with regard to the Local Pensions Board is included in its risk management process.

62. Pensions Committee should keep this under regular review.

Policy for Managing Conflicts of Interest

63. A Policy to assist Local Pension Board Members to manage conflicts of interest has been prepared.

64. This is attached as an appendix to this report.

65. Pensions Committee is recommended to adopt this Policy for the Local Pension Board.

Recommendation

66. Committee Members are recommended

- to note the information contained in this report
- to adopt the Policy for Managing Conflicts of Interest in relation to the Local Pension Board.

Tyne and Wear Pension Fund

Local Pension Board

Policy for Managing Conflicts of Interest

Conflicts of Interest

1. A conflict of interest is defined in Section 5(5) of the Public Service Pensions Act 2013 as

"In relation to a person, means a financial or other interest which is likely to prejudice the person's exercise of functions as a member of the board (but does not include a financial or other interest arising merely by virtue of membership of the scheme or any connected scheme)."

2. A conflict of interest may arise when Local Pension Board members
 - a. must fulfil their legal duty to assist the Pensions Committee in securing compliance with the Scheme regulations, other legislation relating to governance and administration of the Scheme and the requirements of the Pensions Regulator or any other matter for which they are responsible, and
 - b. at the same time they have either
 - i. a separate personal interest (financial or otherwise), or
 - ii. another responsibility in relation to that decision, giving rise to a possible conflict with their first responsibility.
3. Actual conflicts of interest, which are interests likely to prejudice a Local Pension Board member's exercise of their functions, are prohibited by the Public Service Pensions Act 2013. They cannot be managed. Only potential conflicts of interest can be managed.

Role and Responsibilities of Pensions Committee

4. In relation to the Local Pension Board, Scheme regulations include provision requiring Pensions Committee to
 - a. be satisfied that a person to be appointed as a member of the Local Pension Board does not have a conflict of interest
and
 - b. be satisfied from time to time that none of the members of the Local Pension Board has a conflict of interest.
5. The regulations require each member of the Local Pension Board, or a person proposed to be appointed as a member of the Local Pension

Board, to provide the Pensions Committee with such information as the Pensions Committee reasonably requires for the purposes of meeting the requirements referred to above.

The Pensions Regulator

6. The Pensions Regulator has a particular role in relation to Local Pension Board members and conflicts of interest. Whilst Local Pension Board members may be subject to other legal requirements, when exercising functions as a member of the Local Pension Board, the Pensions 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 the Regulator's Code of Practice to be satisfied.
7. The Pensions Regulator has issued guidance to assist Pensions Committee in meeting their legal duty to be satisfied that Local Pension Board members do not have any conflicts of interest.

Appointment to the Local Pension Board

8. As stated above, Local Pension Board members and people who are proposed to be appointed to the Local Pension Board must provide Pensions Committee with information reasonably required by Pensions Committee to enable Pensions Committee to be satisfied that Local Pension Board members and proposed members do not have a conflict of interest.
9. It is likely that Local Pension Board members will have dual interests and responsibilities.
10. Local Pension Board members will be appointed under procedures that require them to disclose any dual interests or responsibilities, which could become conflicts of interest and which may adversely affect their suitability for the role, before they are appointed.
11. All appointment letters will include a clause requiring disclosure of all dual interests and responsibilities which have the potential to become conflicts of interest, as soon as they arise. All interests and responsibilities disclosed will be recorded.

Role and Responsibilities of the Local Pensions Board

12. Although members of the Local Pension Board include representatives of specific categories of stakeholder, i.e. scheme members' representatives and employers' representatives, each member is required to have due regard to the role of the Local Pension Board as outlined in the Governance Statement.

13. Accordingly all Local Pension Board members are expected to work jointly in the best interest of the Fund, rather than solely representing the interest of any individual category. This should not prevent Local Pension Board members from sharing their knowledge on how matters might impact specific members of the Fund.
14. Conflicts of interest can inhibit open discussions and / or result in decisions, actions or inactions which could result in the ineffective governance and administration of the Fund. They may result in the Local Pension Board acting improperly, or lead to a perception that they have acted improperly.
15. A perceived conflict of interest can be as damaging to the reputation of the Fund as an actual conflict of interest. It could result in Scheme members and interested parties losing confidence in the way the Fund is managed.
16. The Local Pension Board should cultivate a culture of openness and transparency. The need for continual consideration of conflicts should be recognised. Local Pension Board members should have a clear understanding of their role and the circumstances in which they may find themselves in a position of conflict of interest and know how potential conflicts should be managed.
17. Each member of the Local Pension Board (as well as any other attendees participating in a meeting) will be expected to declare, on appointment and at each meeting, any interests which may lead to conflicts of interest in the subject area or specific agenda of the Local Pension Board.
18. Conflicts of interest should be included as an opening agenda item at Local Pension Board meetings and revisited during the meeting, where necessary. This provides an opportunity for those present, including non-board members, to declare any dual interests and responsibilities, which have the potential to become conflicts of interest and minute discussions about how they will be managed to prevent an actual conflict arising.
19. The Local Pension Board should take time to consider what key decisions are likely to be made during, for example, the year ahead and identify and consider any conflicts of interest that may arise in the future. Other Local Pension Board members should be notified as soon as practically possible and mitigations should be put in place to avoid these conflicts from materialising.
20. As part of their risk assessment process, the Local Pension Board should identify, evaluate and manage dual interests and responsibilities which have the potential to become conflicts of interest and pose a risk to the Fund and possibly members, if they are not mitigated.

21. The Local Pension Board should keep a register of interests to provide a simple and effective means of recording and monitoring dual interests and responsibilities.
22. The Local Pension Board should ensure that Pensions Committee receives
 - a. Information on the roles, responsibilities and duties of Local Pension Boards members
 - b. A copy of the register of interests
 - c. A report on potential or actual conflicts of interest.

Role and Position of the Chair of the Local Pension Board

23. The Chair of the Local Pension Board must be satisfied that the Local Pension Board is acting within:
 - a. The conflicts of interest requirements of the Public Service Pensions Act 2013, the Local Government Pension Scheme (Amendment) (Governance) Regulations 2013 and any other legislation relating to the governance and administration of the LGPS; and
 - b. In the spirit of any national guidance or code of practice in relation to conflicts of interest at the Local Pension Board; and
 - c. In accordance with any Scheme Manger or Pensions Committee Conflicts of Interest Policy or Procedures that apply to the Local Pension Board.
24. The Corporate Director Business and Resources and the Head of Legal Services will jointly adopt the role of ensuring that the Chair of the Local Pension Board does not have a conflict of interest in the same way as the Chair does in relation to all other Pension Board members.

Approach to Managing Conflicts of Interest

The following is a list of the background papers (excluding exempt papers) relied upon in the preparation of the above report:

Background Paper	File Ref:	File Location
Conflict of Interest	P/4454	Town Hall & Civic Offices
Local Pensions Board	P/5755	Town Hall & Civic Offices