

## MUNICIPAL YEAR 2019/2020 REPORT NO. 223

### MEETING TITLE AND DATE:

Pension Investment & Policy Committee  
27<sup>th</sup> February 2020

### REPORT OF:

Director of Finance

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**Agenda – Part: 1**

**Item: 10**

**Subject: Enfield of Pension Fund  
Conflict of Interest Policy**

**Wards: All**

**Key Decision No:**

**Cabinet Member consulted:**

### 1. EXECUTIVE SUMMARY

1. The Public Service Pensions Act 2013 requires that Administering Authorities ensure that members of the Pension Board do not have conflicts of interest, this is further enshrined in the Local Government Pension Scheme (Amendment) (Governance) Regulations 2015.
2. Furthermore, the Pensions Regulator (TPR) Code of Practice for Public Service Pension Schemes covers conflicts of interest and provides guidance on how these might be identified.
3. In order to ensure compliance with both the Regulations and the Code, members of the Pension Board are asked to note the Conflicts of Interest Policy.

### 2. RECOMMENDATIONS

The Committee members are asked to:

- i) note the contents of this report and the attached Appendix 1;
- ii) note and approve the Enfield Pension Fund Conflict of Interest Policy attached to this report as Appendix 2; and
- iii) agree to complete declaration of interest in respect of their position as members of the Enfield Pension Fund Committee as set out in Appendix B of the Enfield Pension Fund Conflict of Interest Policy.

### **3 BACKGROUND**

- 3.1 In accordance with the Public Service Pensions Act 2013 (PSPA) all Board members are required to have knowledge and understanding of pension scheme matters at a level that will allow them to properly exercise the functions of their role.
- 3.2 The Public Service Pensions Act 2013, the LGPS Governance Amendment Regulations and TPR Code of Practice lay down that members of the Pensions Board should not have a conflict of interest in respect of their duties as members of the Board. In addition the TPR guidance provides for how such conflicts can be identified, monitored and managed. Appendix 1 to this report shows the relevant extracts from the LGPS Regulations and TPR Code of Practice.
- 3.3 Although following the code itself is not a regulatory requirement, should TPR identify a situation where the legal requirements are being breached, it will use the code as a core reference document when deciding appropriate action.
- 3.4 Whilst the Act specifically relates to conflicts of interest declarations for members of the Pension Board, the attached Conflicts of Interest Policy was widened to encompass both the Committee and senior officers involved in the management of the Fund. The Policy is attached as Appendix 2 to this report.
- 3.5 The Policy details how actual and potential conflicts of interest are identified and managed by those involved in the management and governance of the Pension Fund whether directly or in advisory capacity. A conflict of interest is defined as a financial or other interest which is likely to prejudice a person's exercise of functions and appendix C of the Policy document sets out some examples of how conflicts of interest might arise.
- 3.6 The Policy document also contains an example (appendix B) of a declaration form for completion by those involved in the Pension Fund with an annual register (appendix C) for recording potential and actual conflicts of interest to be reviewed annually by the Board. Members of the Board and the Committee will be provided with individual declarations for completion at each of their Committee or Board meeting.
- 3.7 The Conflicts of Interest Policy helps to ensure that the London Borough of Enfield as Scheme Manager of the Pension Fund understands its responsibilities and the potential conflicts of interest that could arise, how these are identified, managed and monitored. This will ensure that it is compliant with both the regulatory requirements and TPR Code of Practice.

### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 No alternative, although following the code itself is not a regulatory requirement, should TPR identify a situation where the legal requirements are being breached, he will use the code as a core reference document when deciding appropriate action.

## **5. REASONS FOR RECOMMENDATIONS**

- 5.1 Regulation 106(1) of the Local Government Pension Scheme Regulations 2013 provides for each Administering Authority to establish its own Local Pension Board with responsibility for assisting the Administering Authority to secure compliance with the Regulations, other legislation relating to the governance and administration of the LGPS and the requirements imposed by the Pensions Regulator in relation to the LGPS. The Board must also ensure the effective and efficient governance and administration of the LGPS.
- 5.2 The Policy coming before Pensions Board for noting helps to demonstrate compliance with both regulation and guidance provided by TPR.

## **6. COMMENTS FROM OTHER DEPARTMENTS**

### **6.1 Financial Implications**

- i) Members of the Pensions Board are required to disclose at the start of Pensions Board meetings if they have any conflicts of interest regarding their role as Board members.
- ii) A good standard of governance is crucial in minimising the key risks involved in managing the Pension Fund. The Regulations cover requirements for the Pensions Board in terms of managing conflicts of interest, the policy has been broadened to cover Members of the Pension Policy & Investments Committee as well as officers involved in managing the Pension Fund.
- iii) Any costs associated with meeting the conflicts of interest policy and related legal changes are immaterial in the context of the Pension Fund and any such costs are recharged to the Pension Fund. The costs of not adhering to either the legislation or indeed applying best practice in regard to conflicts of interest could be significantly higher and pose risks to the financial management of the Pension Fund.

### **6.2 Legal Implications**

- i) The responsibilities given to the Pension Policy & Investments Committee, Pension Board members and senior officers in respect of the management of the Pension Fund are both broad and onerous. The responsibilities are exercised in a legal framework that is both complex and changing.
- ii) The Public Service Pensions Act 2013 (Regulation 5(4) and the Local Government Pension Scheme (Amendment) (Governance) Regulations 2015 (Regulation 108 – Local Pension Board – Conflicts of Interest) require that the Administering Authority is satisfied that Pension Board members do not have conflicts of interest with their roles as Board Members and that Board members must supply such information as is necessary for the authority to make that determination. In addition TPR Code of Practice for Public Service Pension Schemes sets out the legal requirements in respect of conflicts of interest,

practical guidance and sets out standards of conduct and practice expected of those who exercise functions in relation to those legal requirements.

- iii) Not adhering to the overriding legal requirements could impact on meeting the ongoing objectives of the Pension Fund. In addition, where scheme managers or pension boards fail to address poor standards and non-compliance with the law, TPR will consider undertaking further investigations and taking regulatory action, including enforcement action.
- iv) The responsible authority for local government pension schemes is the Department for Communities and Local Government and it consulted on the regulations comprising the legislative framework of the current LGPS. The key regulations governing the scheme are:
  - a) The Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (LGPS Regulations 2013). These cover eligibility requirements, the payment of contributions and the benefit structure in the new career-average scheme, along with provisions regarding the scheme's administration and management. They replaced the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI 2007/1166) and the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239).
  - b) The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525). These regulations provide information on the requirements of the admission agreement and bond regime, used on outsourcing transactions. They also provide more detail on the "statutory underpin", which provides protection for scheme members who were within ten years of their normal retirement age on 1 April 2012.
  - c) Until 1 November 2016 the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 (SI 2009/3093) governed the operation of the LGPS investment function. They were replaced on 1 November 2016 by the Local Government Pensions Scheme (Management and Investment Funds) Regulations 2016 (SI 2016/946) (Investment Regulations 2016).

## 7. **KEY RISKS**

Although following the code itself is not a regulatory requirement, should TPR identify a situation where the legal requirements are being breached, he will use the code as a core reference document when deciding appropriate action.

## **Background Papers**

None

## **Appendices**

Appendix 1 – LGPS Scheme Regulations and TPR Code Practice (Extracts in relation to conflicts of interest)

Appendix 2 – Enfield Pension Fund Conflicts of Interest Policy

## **The Local Government Pension Scheme (Amendment) (Governance) Regulations 2015**

### **Local pension boards: conflict of interest**

#### **Regulation 108.**

- 1) Each administering authority must be satisfied that any person to be appointed as a member of a local pension board does not have a conflict of interest (a).
- 2) An administering authority must be satisfied from time to time that none of the members of a local pension board has a conflict of interest.
- 3) A person who is to be appointed as a member of a local pension board by an administering authority must provide that authority with such information as the authority reasonably requires for the purposes of paragraph (1).
- 4) A person who is a member of a local pension board must provide the administering authority which made the appointment with such information as that authority reasonably requires for the purposes of paragraph (2).

### **The Pensions Regulator –Code of Practice – Governance and Administration of Public Service Pension Schemes**

## **Conflicts of interest and representation**

### **Legal requirements**

61. A conflict of interest is a financial or other interest which is likely to prejudice a person's exercise of functions as a member of the pension board. It does not include a financial or other interest arising merely by virtue of that person being a member of the scheme or any connected scheme for which the board is established.

62. In relation to the pension board, scheme regulations must include provision requiring the scheme manager to be satisfied:

- that a person to be appointed as a member of the pension board does not have a conflict of interest and
- from time to time, that none of the members of the pension board has a conflict of interest.

63. Scheme regulations must require each member or proposed member of a pension board to provide the scheme manager with such information as the scheme manager reasonably requires for the purposes of meeting the requirements referred to above

64. Scheme regulations must include provision requiring the pension board to include employer representatives and member representatives in equal numbers.

65. In relation to the scheme advisory board, the regulations must also include provision requiring the responsible authority to be satisfied:

- that a person to be appointed as a member of the scheme advisory board does not have a conflict of interest and
- from time to time, that none of the members of the scheme advisory board has a conflict of interest.

66. Scheme regulations must require each member of a scheme advisory board to provide the responsible authority with such information as the responsible authority reasonably requires for the purposes of meeting the requirements referred to above.

## Practical guidance

67. This guidance is to help scheme managers to meet the legal requirement to be satisfied that pension board members do not have any conflicts of interest. The same requirements apply to responsible authorities in relation to scheme advisory boards, (apart from the requirement regarding employer and member representatives), but the regulator does not have specific responsibility for oversight of scheme advisory boards.

68. Actual conflicts of interest are prohibited by the 2013 Act and cannot, therefore, be managed. Only potential conflicts of interest can be managed.

69. A conflict of interest may arise when pension board members:

- must fulfil their statutory role<sup>38</sup> of assisting the scheme manager in securing compliance with the scheme regulations, other legislation relating to the governance and administration of the scheme and any requirements imposed by the regulator or with any other matter for which they are responsible, whilst
- having a separate personal interest (financial or otherwise), the nature of which gives rise to a possible conflict with their statutory role.

70. Some, if not all, of the 'Seven principles of public life' (formerly known as the 'Nolan principles') will already apply to people carrying out roles in public service pension schemes, for example through the Ministerial code, Civil Service code or other codes of conduct. These principles should be applied to all pension board members in the exercise of their functions as they require the highest standards of conduct. Schemes should incorporate the principles into any codes of conduct (and across their policies and processes) and other internal standards for pension boards.

71. Other legal requirements to conflicts of interest may apply to pension board members and/or scheme advisory board members. The regulator may not have specific responsibility for enforcing all such legal requirements, but it does have a particular role in relation to pension board members and conflicts of interest. While pension board members may be subject to other legal requirements, when exercising functions as a member of a pension board they must meet the specific requirements of the 2013 Act and are expected to satisfy the standards of conduct and practice set out in this code.

72. It is likely that some pension board members will have dual interests, which may include other responsibilities. Scheme managers and pension board members will need to consider all other interests, financial or otherwise, when considering interests which may give rise to a potential or actual conflict. For example, a finance officer appointed as a pension board member can offer their knowledge and make substantial contributions to the operational effectiveness of the scheme, but from time to time they

may be involved in a decision or matter which may be, or appear to be, in opposition to another interest. For instance, the pension board may be required to take or scrutinise a decision which involves the use of departmental resources to improve scheme administration, while the finance officer is at the same time tasked, by virtue of their employment, with reducing departmental spending. A finance officer might not be prevented from being a member of a pension board, but the scheme manager must be satisfied that their dual interests are not likely to prejudice the pension board member in the exercise of any particular function.

73. Scheme regulations will set out matters for which the pension board is responsible schemes should set out clear guidance on the roles, responsibilities and duties of pension boards and the members of those boards in scheme documentation. This should cover, for example, whether they have responsibility for administering or monitoring the administration of the scheme; developing, delivering or overseeing compliance with requirements for governance and/or administration policies; and taking or scrutinising decisions relating to governance and/or administration. Regardless of their remit, potential conflicts of interest affecting pension board members need to be identified, monitored and managed effectively.

74. Schemes should consider potential conflicts of interest in relation to the full scope of roles, responsibilities and duties of pension board members. It is recommended that all those involved in the management or administration of public service pension schemes take professional legal advice when considering issues to do with conflicts of interest.

### **A three-stage approach to managing potential conflicts of interest**

75. Conflicts of interest can inhibit open discussions and result in decisions, actions or inactions which could lead to ineffective governance and administration of the scheme. They may result in pension boards acting improperly or lead to a perception that they have acted improperly. It is therefore essential that any interests, which have the potential to become conflicts of interest or be perceived as conflicts of interest, are identified and that potential conflicts of interest (including perceived conflicts) are monitored and managed effectively.

76. Schemes should ensure that there is an agreed and documented conflicts policy and procedure, which includes identifying, monitoring and managing potential conflicts of interest. They should keep this under regular review. Policies and procedures should include examples of scenarios giving rise to conflicts of interest, how a conflict might arise specifically in relation to a pension board member and the process that pension board members and scheme managers should follow to address a situation where board members are subject to a potential or actual conflict of interest.

77. Broadly, schemes should consider potential conflicts of interest in three stages:

- i. identifying;
- ii. monitoring; and
- iii. managing.

## Identifying potential conflicts

78. Schemes should cultivate a culture of openness and transparency. They should recognise the need for continual consideration of potential conflicts. Disclosure of interests which have the potential to become conflicts of interest should not be ignored. 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. They should know how to manage potential conflicts.

79. Pension board members, and people who are proposed to be appointed to a pension board, must provide scheme managers with information that they reasonably require to be satisfied that pension board members and proposed members do not have a conflict of interest.

80. Schemes should ensure that pension board members are appointed under procedures that require them to disclose any interests, including other responsibilities, which could become conflicts of interest and which may adversely affect their suitability for the role, before they are appointed.

81. All terms of engagement, for example appointment letters, should include a clause requiring disclosure of all interests, including any other responsibilities, which have the potential to become conflicts of interest, as soon as they arise. All interests disclosed should be recorded. See the section of this code on 'Monitoring potential conflicts'.

82. Schemes should take time to consider what important matters or decisions are likely to be considered during, for example, the year ahead and identify and consider any potential or actual conflicts of interest that may arise in the future. Pension board members should be notified as soon as practically possible and mitigations should be put in place to prevent these conflicts from materialising.

## Monitoring potential conflicts

83. As part of their risk assessment process, schemes should identify, evaluate and manage dual interests which have the potential to become conflicts of interest and pose a risk to the scheme and possibly members, if they are not mitigated. Schemes should evaluate the nature of any dual interests and assess the likely consequences were a conflict of interest to materialise.

84. A register of interests should provide a simple and effective means of recording and monitoring dual interests and responsibilities. Schemes should also capture decisions about how to manage potential conflicts of interest in their risk registers or elsewhere. The register of interests and other relevant documents should be circulated to the pension board for ongoing review and published, for example on a scheme's website.

85. Conflicts of interest should be included as an opening agenda item at board meetings and revisited during the meeting, where necessary. This provides an opportunity for those present to declare any interests, including other responsibilities, which have the potential to become conflicts of interest, and to minute discussions about how they will be managed to prevent an actual conflict arising.



## Managing potential conflicts

86. Schemes should establish and operate procedures which ensure that pension boards are not compromised by potentially conflicted members. They should consider and determine the roles and responsibilities of pension boards and individual board members carefully to ensure that conflicts of interest do not arise, nor are perceived to have arisen.

87. A perceived conflict of interest can be as damaging to the reputation of a scheme as an actual conflict of interest. It could result in scheme members and interested parties losing confidence in the way a scheme is governed and administered. Schemes should be open and transparent about the way they manage potential conflicts of interest.

88. When seeking to prevent a potential conflict of interest becoming detrimental to the conduct or decisions of the pension board, schemes should consider obtaining professional legal advice when assessing any option.

## Examples of conflicts of interest

89. Below are some examples of potential or actual conflicts of interest which could arise, or be perceived to arise, in relation to public service pension schemes. These will depend on the precise role, responsibilities and duties of a pension board. The examples provided are for illustrative purposes only and are not exhaustive. They should not be relied upon as a substitute for the exercise of judgement based on the principles set out in this code and any legal advice considered appropriate, on a case by case basis.

### **a. Investing to improve scheme administration versus saving money**

An employer representative, who may be a Permanent Secretary, finance officer or local councillor, is aware that system X would help to improve standards of record-keeping in the scheme, but it would be costly to implement. The scheme manager, for instance a central government department or local administering authority, would need to meet the costs of the new system at a time when there is internal and external pressure to keep costs down.

In order to meet the costs of the new system, the scheme manager would need to find money, perhaps by using a budget that was intended for another purpose. This decision could prove unpopular with taxpayers. A conflict of interest could arise where the employer representative was likely to be prejudiced in the exercise of their functions by virtue of their dual interests.

### **b. Outsourcing an activity versus keeping an activity in-house**

In an extension of the previous example, a member representative, who is also an employee of a participating employer, is aware that system X would help to improve standards of record-keeping in the scheme, but it would mean outsourcing an activity that is currently being undertaken in-house by their employer. The member representative could be conflicted if they were likely to be prejudiced in the exercise of their functions by virtue of their employment.

**c. Representing the breadth of employers or membership versus representing narrow interests**

An employer representative who happens to be employed by the administering authority and is appointed to the pension board to represent employers generally could be conflicted if they only serve to act in the interests of the administering authority, rather than those of all participating employers. Equally, a member representative, who is also a trade union representative, appointed to the pension board to represent the entire scheme membership could be conflicted if they only act in the interests of their union and union membership, rather than all scheme members.

**d. Assisting the scheme manager versus furthering personal interests**

i. A pension board member, who is also a scheme adviser, may recommend the services or products of a related party, for which they might derive some form of benefit, resulting in them not providing, or not being seen to provide, independent advice or services

ii. A pension board member who is involved in procuring or tendering for services for a scheme administrator, and who can influence the award of a contract, may be conflicted where they have an interest in a particular supplier, for example, a family member works there.

**e. Sharing information with the pension board versus a duty of confidentiality to an employer**

An employer representative has access to information by virtue of their employment, which could influence or inform the considerations or decisions of the pension board. They have to consider whether to share this information with the pension board in light of their duty of confidentiality to their employer. Their knowledge of this information will put them in a position of conflict if it is likely to prejudice their ability to carry out their functions as a member of the pension board.