

The Trustee toolkit downloadable

The trustee's role

Tutorial three: Conflicts of interest

By the end of this tutorial you will better understand:

- ▶ what a 'conflict of interest' is and different types of conflict
- ▶ declaring, recording and managing conflicts of interest
- ▶ what a robust conflicts of interest policy is
- ▶ what the implications of not declaring a conflict of interest might be

This tutorial is part of Scenario two.

Glossary

A detailed glossary of technical terms can be downloaded from the Resources tab when you log in at www.trusteetoolkit.com

What is a conflict of interest?

Imagine you are working at an organisation and a trainee job with good prospects is advertised in your department. You are part of the shortlisting team and know what tests the applicants will have to take.

Your friend's son is looking for his first job so you wonder if you should tell him about the role and help him to apply by taking him through the tests. On the other hand, you are expected to help the company get the best applicant. This could be a conflict of interest.

You want to tell him about the job but think that if you avoid mentioning the tests, then there wouldn't be a conflict of interest.

But you are also part of the shortlisting team. You may still be conflicted, so what could you do next to manage the conflict? You could:

- ▶ explain to your colleagues that you know him so that they can make the decision about whether to shortlist him
- ▶ withdraw from the shortlisting

Trustee conflict of interest

You are likely to be dealing with conflicts of interest on a regular basis in both your personal and professional life.

Why are conflicts of interest important?

If a trustee has a conflict of interests, it is possible that the trustee's other responsibilities could influence the decisions that the trustee makes. As a result, the conflicted trustee may breach their legal obligation to act in the best interests of the scheme's beneficiaries, or result in the trustee failing to properly consider a decision.

Even if there is no real conflict of interest, others may perceive that there is a conflict. Trustees should disclose any potential conflicts if in any doubt.

Failure to manage conflicts of interest

Trustees have a fiduciary duty to act in the best interests of beneficiaries. They should exercise independent judgement and need to be perceived to be doing so.

Failing to properly manage conflicts of interest can result in serious consequences. In particular, members could challenge decisions made by the trustees, if there is insufficient evidence of the trustees acting impartially.

Conflict of interest types

Trustee conflicts with other responsibilities or interests

For a trustee, a conflict of interest occurs when the trustee's duties as a trustee conflict with his or her other responsibilities or interests. The other responsibilities or interests may include:

- ▶ a duty to the trustee's employer (for example, an employee may have financial or managerial responsibilities to the employer)
- ▶ responsibility to particular beneficiaries of the scheme (eg family and friends)
- ▶ duty to disclose information to other parties. In particular, trustees should not usually disclose confidential information to other parties, whatever other responsibilities you may have towards them

Trustee conflicts with scheme advisers or investment managers

There are also possible conflicts of interests for trustees in their relationship with the scheme's advisers and investment managers. This could be for a number of reasons. For example if the trustee has:

- ▶ previously worked for an organisation that now provides services to the scheme
- ▶ accepted hospitality from an organisation that provides services to the scheme
- ▶ personal financial interest in an organisation that provides services to the scheme

Adviser and service provider conflict of interest

Conflicts of interest can also arise for the trustees' advisers, for example if they act for both the trustees and the employer on an ongoing basis, or as a result of specific one-off pieces of work. For example, if they are acting for both the trustees of the transferring and receiving schemes in a merger or for the trustees and the employer in an acquisition involving the sponsoring employer.

Other professional firms may also have a conflict of interests if they provide multiple services to the scheme, eg an investment manager may also provide an investment platform for a DC scheme.

When could a conflict of interest become a problem?

Here are a few examples.

- ▶ Appointment of advisers.
- ▶ Appointment of investment managers.
- ▶ Decisions regarding investment strategy (defined benefit – DB) or default arrangement (defined contribution – DC).
- ▶ Funding negotiations with the sponsoring employer (DB).
- ▶ Decisions made affecting one specific group of beneficiaries to which you belong.
- ▶ Payment of benefits at the trustees' discretion, such as death benefits.
- ▶ When deciding whether the scheme should incur an administrative cost which is not legally required (eg where the cost of the communication with members could be significant to the employer, either directly or indirectly).

Whilst some of these causes of conflicts of interest are specific to DB schemes, many are a risk for all types of scheme.

Conflict of interest policy

It is essential that all trustees understand how to identify a conflict of interest and how to deal with it. A documented conflict of interest policy should be drawn up. It should be a practical document, setting out the scheme's approach to dealing with conflicts.

This should cover:

- ▶ identifying
- ▶ monitoring
- ▶ managing conflicts of interest

In drawing up a conflict of interest policy the trustees should refer to TPR's guidance on conflicts of interest.

You can view the conflict of interest guidance at www.tpr.gov.uk/conflicts-guidance.

Identify conflicts

The policy should include a description of what a conflict is and how it might arise in relation to a trustee of the scheme in question.

Types of conflict

This includes understanding conflicts that:

- ▶ exist already
- ▶ may arise in the future
- ▶ are perceived by others whether or not that is actually the case

Conflict register

Trustees have a duty to act in the best interests of the scheme's beneficiaries. They are required to exercise independent judgement, and should be seen to be doing so.

In order to demonstrate that they have fulfilled their obligations, trustees need to identify and declare all conflicts of interest, and trustee bodies need to have a means of recording them. Trustee boards should therefore maintain a register of conflicts of interest.

What should be included on the register?

It should include details of all obligations owed by trustees to other parties, where these could give rise to conflicts of interests. It should also include details of:

- ▶ all corporate hospitality offered (whether or not it has been accepted)
- ▶ personal financial interests (such as significant investments in particular organisations)
- ▶ other employment (for example where a trustee works with more than one employer or where the spouse of a trustee works for an organisation which is bidding to provide services to the trustee board)

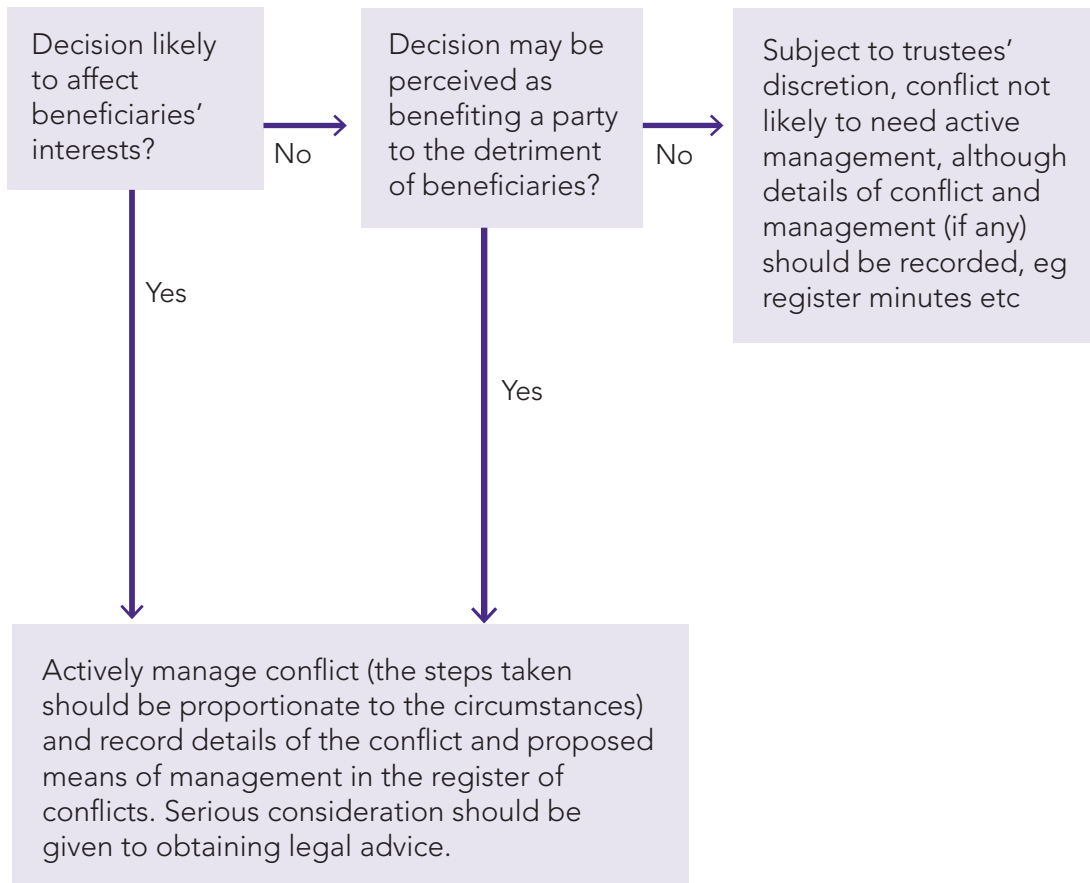
Monitor conflicts

At the start of all trustee meetings it is good practice for trustees to declare whether they have any new conflicts of interest, either due to a change in circumstances, or because of a particular item that is to be considered at the meeting.

If a conflict of interests arises unexpectedly during a meeting it needs to be declared then. Trustee minutes should record details of any conflicts reported, and actions taken regarding the conflict. However, recording a conflict, although necessary, will not in itself be sufficient to deal with it.

Manage conflicts

In order to be able to manage a conflict, trustees first of all need to evaluate it. This decision tree may help trustees evaluate how to manage a particular conflict of interest.



Possible actions

The action to be taken will depend on the severity of the conflict. If in doubt, trustees should always err on the side of caution in their response to a conflict and where appropriate, take legal advice. Possible courses of action will depend on the nature and severity of the conflict, but could include:

- ▶ the conflicted trustee taking no part in the discussion of the matter giving rise to the conflict
- ▶ the conflicted trustee leaving the meeting for some or part of the time
- ▶ the trustees seeking independent legal advice as to the way in which to manage the conflict
- ▶ the trustees seeking independent advice from other professionals, for example an accountant or actuary on the matter in question

What about significant conflicts?

In some cases, it will become apparent that the conflict is so significant that a trustee may be obliged to resign. This may be preferable to having a trustee who is regularly unable to play a full part in the work of the trustee body.

What about sub-committees?

Another method for managing conflicts is to establish one or more sub-committees, which would exclude a trustee who faces a conflict on certain matters. Sub-committees may be used to deal with matters such as investment, administration, communications, or funding.

The terms of reference of sub-committees need to be clearly defined, and understood by all trustees, as any decisions made by a sub-committee will still be the responsibility of all the trustees, including those who are not members of the sub-committee.

What about appointing an independent trustee?

Appointing an independent trustee, whether professional or otherwise, could help to ensure that trustees' decisions are not prejudiced by a conflict of interest. An experienced independent trustee will also be able to assist the other trustees in identifying and managing conflicts of interest.