

Agenda Item No. 4 (c)

**DERBYSHIRE COUNTY COUNCIL
PENSIONS AND INVESTMENTS COMMITTEE**

4 November 2020

Report of the Director of Finance and ICT

CONFLICTS OF INTEREST POLICY

1 Purpose of the Report

To seek approval for the draft Derbyshire Pension Fund Conflicts of Interest Policy (the Policy) attached as Appendix 1.

2 Background

Conflicts of interest have always existed for those with Local Government Pension Scheme (LGPS) administering authority responsibilities as well as for advisers to LGPS funds. This reflects the fact that many of those managing or advising LGPS funds will have a variety of other roles and responsibilities, for example as an elected member of an employer participating in the LGPS or as an adviser to more than one LGPS administering authority. Further, any of those persons may have an individual personal, business or other interest which might conflict, or be perceived to conflict, with their role managing or advising LGPS funds.

Whilst the current legislative background largely relates to managing conflicts of interest with respect to members of Local Pension Boards, in the interests of best practice, this Policy will relate to:

- All members of Derbyshire Pension Board (the Board)
- All members of the Pensions and Investments Committee (the Committee), including trade union observers
- Senior officers involved in the governance and management of the Pension Fund (the Director of Finance & ICT, the Head of Pension Fund, the members of the Pension Officers' Management Group, senior officers from Legal Services)
- All advisers and suppliers to the Fund, whether providing advice or supplies to the Board, the Committee or Fund officers

The Policy is intended to aid good governance, in conjunction with the Fund's other governing policies, encouraging transparency and minimising the risk of any matter prejudicing decision making or management of the Fund.

The Policy will be reviewed annually and will be revised if the conflict of interest management arrangements or other matters included within it merit reconsideration, including if there are any changes to the LGPS or other relevant regulations or guidance which need to be taken into account.

3 Financial Considerations

All costs related to the operation and implementation of this Policy will be met directly by Derbyshire Pension Fund.

4 Other Considerations

In preparing this report the relevance of the following further factors has been considered: legal, human rights, human resources, equality and diversity, health, environmental, transport, property, and prevention of crime and disorder.

5 Background Papers

Background papers are held by the Head of Pension Fund.

6 Officer's Recommendation

That the Committee approves the draft Derbyshire Pension Fund Conflicts of Interest Policy attached as Appendix 1.

Peter Handford

Director of Finance & ICT

DERBYSHIRE PENSION FUND

CONFLICTS OF INTEREST POLICY

Introduction

This is the Conflicts of Interest Policy (the Policy) of Derbyshire Pension Fund (the Fund), administered by Derbyshire County Council. The Policy sets out the process for identifying, monitoring and managing conflicts of interest in the governance and management of the Fund.

Conflicts of interest have always existed for those with Local Government Pension Scheme (LGPS) administering authority responsibilities as well as for advisers to LGPS funds. This reflects the fact that many of those managing or advising LGPS funds will have a variety of other roles and responsibilities, for example, as an elected member of an employer participating in the LGPS or as an adviser to more than one LGPS administering authority. Further, any of those persons may have an individual personal, business or other interest which might conflict, or be perceived to conflict, with their role managing or advising LGPS funds.

LGPS administering authorities have both fiduciary and public law duties to act in the best interest of both the LGPS beneficiaries and participating employers. This, however, does not preclude those involved in the management of the LGPS fund from having other roles or responsibilities which may result in an actual or potential conflict of interest.

This Conflicts of Interest Policy is an aid to good governance, in conjunction with the Fund's other governance documents, encouraging transparency and minimising the risk of any matter prejudicing decision making or the management of the Fund.

The legislative background currently largely relates to managing conflicts of interest with respect to members of Local Pension Boards. In the interests of best practice, this Policy will relate to all individuals involved in the management and governance of Derbyshire Pension Fund. Further information on the legislative background and related guidance is attached as Appendix 1.

Purpose and objectives

The aim of the Policy is to provide guidance to members of the Pensions and Investments Committee and the Pension Board, officers, advisers and suppliers on how to manage conflicts when undertaking their roles and in relation to Derbyshire Pension Fund. It is also intended to provide assurance to the Fund's members, employers and wider stakeholders that conflicts are managed appropriately.

Along with the County Council's other constitutional documents, including Codes of Conduct for members and for officers, it aims to ensure that individuals involved in the governance and management of the Fund do not act improperly or create a perception that they may have acted improperly.

The Pension Fund's governance objectives are to:

- Meet the highest standards of good governance through the application of the key principles of openness and transparency, accountability, integrity, clarity of purpose and effectiveness.
- Ensure robust governance arrangements are in place to facilitate informed decision making supported by appropriate advice, policies and strategies, which do not unreasonably favour one group of stakeholders over another.
- Ensure the Pension Fund is managed and its services delivered by people who have the appropriate knowledge and expertise.
- Comply with all appropriate legislation and statutory guidance, and to act in the spirit of other relevant guidelines and best practice guidance.

The identification and management of conflicts of interest is integral to the Fund achieving its governance objectives.

To whom this Policy applies

This Conflicts of Interest Policy is established for the guidance of:

- All members of Derbyshire Pension Board (the Board)
- All members of the Pensions and Investments Committee (the Committee), including trade union observers and any other representatives
- Senior officers involved in the governance and management of the Pension Fund (the Director of Finance & ICT, the Head of Pension Fund, the members of the Pension Officers' Management Group, senior officers from Legal Services)
- All advisers and suppliers to the Fund, whether providing advice or supplies to the Board, the Committee or Fund officers

Derbyshire County Council's (the Council) Constitution includes Codes of Conduct for both elected members and for officers, together with a Member and Officer Relationships Protocol (the Protocol); in addition to the requirements of this Policy, elected members and officers are required to adhere to the relevant Council Code of Conduct and to the Protocol.

The Code of Conduct for Members includes requirements in relation to the disclosure and management of personal and pecuniary interests. The Council's Governance, Ethics and Standards Committee, supported by the County Council's Monitoring Officer (the Monitoring Officer), is responsible for the Council's register of elected members' interests.

The Head of Pension Fund will monitor potential conflicts for less senior officers involved in the daily management of the Fund and highlight this Policy to them as he or she considers appropriate. The Council's Code of Conduct for Officers includes expected standards of conduct with respect to: accountability; personal interests; relationships with contractors; and hospitality and gifts.

In this Policy, reference to advisers includes all advisers, suppliers and other parties providing advice and services to the Pension Fund, including but not limited to: the asset pool operator; dispute adjudicators; actuaries; investment consultants; independent advisers; benefits consultants; third party administrators; fund managers; lawyers; custodians; and AVC providers.

Where an advisory appointment is with a firm rather than an individual, reference to 'advisers' is to the lead adviser(s) responsible for the delivery of advice and services to the Pension Fund rather than the firm as a whole.

In accepting any role covered by this Policy, individuals agree that they must:

- acknowledge any potential conflict of interest they may have
- be open with the Pension Fund on any conflicts of interest they may have
- adopt practical solutions to managing those conflicts (seeking advice from a relevant officer, as required)
- plan ahead and agree with the Pension Fund how any conflicts of interest may be managed.

Principles of Public Life

The Seven Principles of Public Life, otherwise known as the 'Nolan Principles' and specified in the Localism Act 2011, apply to anyone who works as a public office-holder. This includes people who are elected or appointed to public office, nationally and locally. All of the individuals to whom this Policy applies are expected to comply with these principles which are integral to the successful implementation of this Policy.

The principles are:

- selflessness
- integrity
- objectivity
- accountability
- openness
- honesty
- leadership

What is a conflict or potential conflict?

The Public Service Pensions Act 2013 defines a conflict of interest as a financial or other interest which is likely to prejudice a person's exercise of functions (but does not include a financial or other interest arising merely by virtue of membership of the scheme or any connected scheme). Therefore, a conflict of interest may arise when an individual:

- has a responsibility or duty in relation to the management of or advice on the LGPS administered by Derbyshire County Council; and
- at the same time has a separate personal interest (financial or otherwise) or another responsibility in relation to that matter giving rise to a possible conflict with the first responsibility

An interest could also arise due to a family member having a specific responsibility or interest in a matter.

Managing Conflicts

The Fund takes a three stage approach to managing conflicts:

- Identifying
- Managing
- Monitoring

To assist members of the Committee, members of the Board, officers, advisers and suppliers to identify when a conflict may arise, some examples of potential conflicts are attached as Appendix 2.

Derbyshire Pension Fund encourages a culture of openness and transparency and encourages individuals to be vigilant, have a clear understanding of their role and the circumstances in which they may find themselves in a position of conflict of interest, and of how potential conflicts should be managed.

The Head of Pension Fund, or his/her nominee, in conjunction with the Monitoring Officer, or his/her nominee, will evaluate the nature of any dual interests or responsibilities that are highlighted and assess the impact on operations and good governance were an actual conflict of interest to materialise.

Ways in which the Fund will deal with actual conflicts of interest may include:

- the individual concerned abstaining from discussion, decision-making or providing advice relating to the relevant issue
- the individual excluding themselves from the meeting(s) and any related correspondence or material in connection with the relevant issue
- a working group or sub-committee being established, excluding the individual concerned, to consider the matter outside of the formal meeting (where the terms of reference allow this happen)

Provided that the Monitoring Officer is satisfied that the method of management is satisfactory, Derbyshire Pension Fund will endeavour to avoid the need for an individual to have to resign due to a conflict of interest.

Responsibility

Derbyshire County Council as the Scheme Manager (as defined in the Public Service Pensions Act 2013) for Derbyshire Pension Fund must be satisfied that conflicts of interest are appropriately managed. The day to day management of the Pension Fund is delegated to the Director of Finance & ICT. For this purpose, the Head of Pension Fund is the designated individual for ensuring the procedures outlined below are adhered to.

However, it is the responsibility of each individual covered by this Policy to identify any potential instances where his/her personal, financial, business or other interests might come into conflict with his/her LGPS Pension Fund duties.

Operational procedures

Identifying Conflicts	<p>On appointment to their role, or on the commencement of this Policy if later, all individuals to whom this Policy applies will be provided with a copy of this Policy.</p> <p>It is the responsibility of the individual to identify if a conflict exists and to seek advice from the Head of Pension Fund or Council's Monitoring Officer (or their representative) if required.</p>
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	<p>Members of the Pensions & Investments Committee (the Committee), members of Derbyshire Pension Board (the Board) and senior officers involved in the governance and management of the Fund will be required to complete a Declaration Form, as attached at Appendix 3, on their appointment to the Committee, Board or role, or on the commencement of this Policy if later.</p> <p>It is the responsibility of members of the Committee, the Board, and relevant senior officers to keep their declarations of interest up to date.</p> <p>In advance of any formal meeting, any individual who considers they may have a conflict of interest related to an item of business on the agenda should advise the Chair of the meeting and the Head of Pension Fund as soon as possible.</p> <p>At the start of any meetings of the Pensions and Investments Committee meetings, Derbyshire Pension Board, or any other formal Pension Fund meetings, the Chair will ask all individuals present who are covered by this Policy to declare any interests.</p>
Managing Conflicts	<p>Where an actual conflict of interest on an agenda item is identified, an individual will be expected to exclude themselves from participating in the discussion and from voting on the relevant matter.</p> <p>Where a potential conflict of interest on an agenda item is identified, advice will be sought from the Monitoring Officer (or their representative) who will provide guidance regarding the individual's participation in the relevant discussion and vote based on all the available information.</p> <p>If an actual or potential conflict of interest is identified outside of a meeting, the Head of Pensions will consult with the Monitoring Officer (or their representative) to consider any necessary action.</p>

Monitoring Conflicts	<p>All interests declared in meetings of the Committee, the Board and any other formal Pension Fund meetings, will be recorded in the minutes of the meeting and noted in the Pension Fund's Register of Interests (the Register) as attached at Appendix 4.</p> <p>All actual or potential conflicts of interest identified outside of meetings will also be recorded in the Fund's Register of Interests.</p> <p>The Register will be kept under review by the Head of Pension Fund and the Monitoring Officer (or their representative).</p> <p>All relevant individuals will be required to confirm in writing to the Head of Pension Fund that the information held in respect to them is correct.</p> <p>The Fund's Register of Conflicts of Interest may be viewed by any interested party at any point in time. It will be made available to view by the Head of Pension Fund on request.</p>
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Potentially sensitive interests should be discussed with the Monitoring Officer (or their representative) who may agree that merely the disclosure of the existence of the interest rather than the detail may be sufficient.

The above operational procedures relate to members of the Committee, members of the Board and senior officers. All advisers and major suppliers to the Fund, including the asset pool operator, must:

- be provided with a copy of this Policy on appointment, or on commencement of this Policy if later
- be provided with any updated Conflicts of Interest Policy
- provide, on request, information to the Head of Pension Fund in relation to how they will manage actual or potential conflicts of interest relating to the provision of advice or services to Derbyshire Pension Fund
- notify the Head of Pension Fund immediately should an actual or potential conflict of interest arise

Review

The Policy was approved by the Pensions and Investments Committee on []. The Policy will be kept under review and will be revised if the conflict

management arrangements or other matters included within it merit reconsideration, including if there are any changes to the LGPS or other relevant regulations or guidance which need to be taken into account.

Legislative background and related guidance

The Public Service Pensions Act 2013

Section 4 of this Act requires that the scheme manager (in the case of the LGPS, this is the Administering Authority) must be satisfied that a local pension board member does not have a conflict of interest at the point of appointment and from time to time thereafter. It also requires local pension board members (or nominated members) to provide reasonable information to the scheme manager for this purpose.

The Act defines a conflict of interest as “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).”

Further, the Act requires that scheme managers must have regard to any such guidance that the national scheme advisory board issue (see below).

LGPS Scheme Advisory Board (SAB)

The LGPS national scheme advisory board has issued guidance relating to the creation of local pension boards including a section on conflicts of interest. This Conflicts of Interest Policy has been developed having regard to that guidance.

A November 2019 Phase II report from the working groups of the SAB **Good Governance in the LGPS Project** proposed that administering authorities must evidence that conflicts, and in particular, potential and perceived conflicts, as well as actual conflicts are being identified, monitored and managed. The report noted that some administering authorities only follow the conflicts of interest requirements of the host authority which are typically focused on the elected member register of interest and code of conduct.

The report proposed that all administering authorities should be required to publish a specific LGPS conflicts of interest policy and should stipulate the areas that policy should address. In addition to registering interests, this would include information on how conflicts are identified, monitored and managed, including areas of potential conflict that are specific to the LGPS as listed in the report.

Implementation of the Good Governance proposals was delayed due to Covid-19 pandemic, however the proposals have been taken into consideration in the development of this Conflicts of Interest Policy.

The Local Government Pension Scheme Regulations 2013

Regulation 108 of these Regulations applies the requirements of the Public Service Pensions Act (as outlined above) to the LGPS, placing a duty on each administering authority to satisfy itself that local pension board members do not have conflicts of interest on appointment or whilst they are members of the board. It also requires those local pension board members to provide reasonable information to the administering authority in this regard.

Regulation 109 states that each administering authority must have regard to guidance issued by the Secretary of State in relation to local pension boards. Further, regulation

110 provides that the national scheme advisory board has a function of providing advice to administering authorities and local pension boards.

The Pensions Act 2004

The Public Service Pensions Act 2013 also added a number of provisions to the Pensions Act 2004 related to the governance of public service pension schemes and, in particular, conflicts of interest.

Section 90A of the Pensions Act 2004 now requires the Pensions Regulator to issue a code of practice relating to conflicts of interest for local pension board members. The Pensions Regulator has issued such a code and this Conflicts of Interest Policy has been developed having regard to that code.

Further, under section 13 of the Pensions Act 2004, the Pensions Regulator can issue an improvement notice (i.e. a notice requiring steps to be taken to rectify a situation) where it is considered that the requirements relating to conflicts of interest for local pension board members are not being adhered to.

The Localism Act 2011

Chapter 7 of this Act requires councillors to comply with the code of conduct of their local authority and that code of conduct must be consistent with the Seven Principles of Public Life (noted above). In addition the Act requires that the code of conduct must include provisions requiring the disclosure and registration of pecuniary interests and interests other than pecuniary interests.

Advisers' professional standards

Many advisers will be required to meet professional standards relating to the management of conflicts of interest, for example, the Fund's Actuary will be bound by the requirements of the Institute and Faculty of Actuaries. Any contract, protocol or other document entered into between an adviser and the Administering Authority which includes any requirement relating to conflicts of interest, whether as a professional body or otherwise, should be read in conjunction with this Policy.

CIPFA Investment Pooling Governance Principles for LGPS Administering Authorities Guidance

The CIPFA governance principles guidance states "*the establishment of investment pooling arrangements creates a range of additional roles that committee members, representatives, officers and advisors might have.*" It includes some examples of how conflicts of interest could arise in these new roles. It highlights the need for Administering Authorities to:

- update their conflicts policies to have regard to asset pooling
- remind all those involved with the management of the Fund of the policy requirements and the potential for conflicts to arise in respect of asset pooling responsibilities
- ensure declarations are updated appropriately.

This Conflicts of Interest Policy takes into account of the possibility of conflicts arising in relation to asset pooling in accordance with the CIPFA governance principles guidance.

Appendix 2

Examples of potential conflicts of interest (not exhaustive)

1. An employer representative on Derbyshire Local Pension Board is employed by a company contracted to provide goods or services to the Pension Fund, and Derbyshire Pension Board is reviewing the standards of service provided by that company.
2. The person appointed to consider internal disputes is asked to review a case relating to a close friend or relative.
3. The administering authority is considering buying its own payroll system for paying pensions, rather than using the payroll system used for all employees of the Council. The Chief Financial Officer, who is responsible for the budget of the Council, is expected to approve the report to go to the Pensions and Investments Committee which, if agreed, would result in a material reduction in the recharges to the Council from the Fund.
4. An employer representative on the Derbyshire Pension Board to represent employers generally could be conflicted if he or she only serves to act in the interests of the employing authority, rather than those of all participating employers. Equally, a member representative, who is also a trade union representative, appointed to Derbyshire Pension Board to represent the entire scheme membership could be conflicted if he or she only acts in the interests of his/her union and union membership, rather than all scheme members.
5. An officer of the Fund is asked to provide guidance to the Pensions and Investments Committee or Derbyshire Pension Board on a matter which might affect his/her role and either consciously or sub-consciously avoids providing full details/a balanced view.
6. An employer representative has access to information by virtue of his or her employment, which could influence or inform the considerations or decisions of Derbyshire Pension Board. He or she has to consider whether to share this information in the light of his/her duty of confidentiality to his/her employer. His/her knowledge of this information will put him/her in a position of conflict if it is likely to prejudice his/her ability to carry out their functions as a member of Derbyshire Pension Board.
7. An officer or member of the Pensions and Investments Committee accepting hospitality or gifts from a potential adviser or supplier could be perceived as a potential or actual conflict of interest, particularly where a procurement exercise relating to those services is imminent.
8. A Fund adviser is party to the development of a strategy which could result in additional work for his/her firm, for example delegating due diligence on fund investments.
9. A Fund officer applying to the pool operator for employment may give misleading advice to the Pensions and Investments Committee to further the aims of a prospective employer.

10. A member of the Pensions and Investments Committee serving on the LGPS Central Joint Committee or an officer serving on the LGPS Central Shareholders' Forum or an LGPS Central officer group may be required to consider a matter that would disproportionately benefit or disadvantage Derbyshire Pension Fund.

Appendix 3

Declaration of Interests - Relating to the Governance and Management of Derbyshire Pension Fund administered by Derbyshire County Council

This form must be completed by each member of the Pensions and Investments Committee (the Committee), each member of Derbyshire Pension Board (the Board) and senior officers involved in the governance and management of Derbyshire Pension Fund. It must be returned to the Head of Pension Fund within 28 days of an individual's appointment to the Committee, the Board, or senior officer role, or within 28 days of the commencement of the Fund's Conflicts of Interest Policy, if later.

I, [insert full name], am

▪ A member of the Pensions and Investments Committee

Tick as appropriate

☐

▪ A member of the Pension Board

☐

▪ An officer involved in the governance and management of the Fund

☐

I set out below, under the appropriate headings, my interests, which I am required to declare under the Derbyshire Pension Fund Conflicts of Interest Policy. I have put 'none' where I have no such interests under any heading.

Responsibilities or other interests that could result in a conflict of interest (please list and continue overleaf if necessary):

A) Relating to me

B) Relating to family members

Undertaking:

I declare that I understand my responsibilities under the Derbyshire Pension Fund Conflicts of Interest Policy. I undertake to notify the Head of Pensions of any changes in the information set out above.

Signed _____ **Date** _____

Name (CAPITAL LETTERS)

A member of the Committee or the Board must, within 28 days of becoming aware of any change (including additional interests) to the interests specified in this form provide written notification to the Head of the Pension Fund of that change.

Appendix 4

Register of Potential and Actual Conflicts of Interest

Date identified	Name of Individual	Role	Details	Actual or potential conflict	How notified	Action taken	Follow up required	Date resolved