

## **WILTSHIRE COUNCIL**

### **WILTSHIRE PENSION FUND COMMITTEE**

15 December 2016

---

### **Code of Conduct and Conflict of Interest Policy for the Local Pension Board**

#### **Purpose of the Report**

1. The purpose of this report is to request the Wiltshire Pension Fund Committee review the attached Code of Conduct and Conflict of Interest Policy guidelines for the Local Pension Board (LPB).

#### **Background**

2. To ensure sound governance of the LPB, there are certain principles that LPB Members must follow, particularly in relation to code of conduct and conflicts of interest.
3. The Regulations, along with the Pension Regulators Code of Practice (no14), and the Scheme Advisory Board's guidance, outline a duty on Wiltshire Council to satisfy itself that LPB Members don't have conflicts of interest on appointment or whilst they are Members of the LPB. LPB Members need to be made aware of their duties under a code of conduct.
4. To fulfil this obligation officers, with assistance from Wiltshire Council legal services and Hymans Robertson, developed a Code of Conduct and Conflicts of Interest Policy which was endorsed by the Local Pension Board in October 2015 and agreed by this Committee in December 2015.
5. Training was provided to Board members as to its purpose and application of the policy document. In essence the guidelines place a requirement on all LPB Members to act in accordance with the Seven Principles of Public Life and to notify Democratic Services of any potential conflict of interest arising as a result of their position on the Board.
6. It is stated in the Code of Conduct and Conflict of Interest Policy that the document will be reviewed at least annually by this Committee. Prior to this meeting the Local Pension Board was provided the opportunity to comment upon any updates to the document that may be required. The comments of the Local Pension Board are summarised below and available in full [here](#).

#### **Considerations for the Committee**

7. The LPB recommended that references in the Policy Guidelines be updated to reflect the new status of the Scheme Advisory Board. The attached document presented to this Committee is updated with track changes to reflect that the SAB is now an established body. The SAB has not yet formally adopted the Shadow SAB Guidelines.
8. Questions were raised at the LPB as to the following:
  - (i) whether the scope of the Policy Guidelines is in excess of the statutory requirements;
  - (ii) whether the Policy Guidelines specify what constitutes a conflict of interest;
  - (iii) the requirement to report interests during a meeting of the Board;

- (iv) the requirement for the Register of Interest form in its current format, including need for a date, signature and separated interests of the member and their spouse.
9. The Council's legal team have provided further advice as to the above questions which is summarised as follows:
- i. The Policy Guidelines reflect:
- Protocol 2 of Wiltshire Council's constitution (the Terms of Reference of the LPB), as adopted by full council at its meeting of 24 February 2015 (minute 22). In particular, Term of Reference 56 requires the administering authority to ensure that any potential conflict is effectively managed in line with the internal procedures of the administering authority and the requirements of relevant legislation and guidance. Once the Policy Guidelines are approved, they become the internal procedure referred to in Term of Reference 56 and must be complied with by all LPB members. Furthermore, LPB members must follow Term of Reference 7 which states that "The Board should at all times act in a reasonable manner in the conduct of its purpose. In support of this duty Board members should be subject to and abide by the code of conduct for Board members."
  - Section 5 of the Public Service Pensions Act 2013 and regulation 108 of the LGPS Regulations 2013 which includes the requirement for each member of the Board to provide the administering authority with "such information as the authority reasonably requires" to satisfy itself that he or she does not have a conflict of interest at any time during office on the Board.
  - Paragraphs 61 to 89 of the Pensions Regulator's Code of Practice No 14; and
  - Section 7 of the Shadow Scheme Advisory Board Guidance on the code of conduct for LPB members and conflicts of interest.
  - The administering authority considered all the above elements when drafting the Policy Guidelines and deciding what information it reasonably requires for the purposes of the LGPS Regulations 2013.
- ii. As stated in Section 2 of the Policy Guidelines: Section 5(5) of the 2013 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)*. Examples are provided within the Policy as to possible conflicts of interest. In addition to this, under Section 2.1 of the guidelines, members may seek advice from Democratic Services if they are uncertain about a potential or perceived interest.
- iii. As stated in Section 2.1 of the Policy Guidelines, interests should normally be declared to Democratic Services in advance of a meeting unless an interest comes to light during a meeting, at which point the interest would be declared to the Board (or Chairman as appropriate) in the presence of Democratic Services. There is a standing item on all agendas for members to declare interests.
- iv. Regulations 108(3) and 108(4) of the LGPS Regulations 2013 require each member of the Board to provide the administering authority with "such information as the authority reasonably requires" to satisfy itself that he or she does not have a conflict of interest at any time during office on the Board. The administering authority

considered the legislation and statutory guidance when deciding what information it reasonably requires for the purposes of the LGPS Regulations 2013. In view of the wide definition of conflict of interest, the information required by the Declaration of Interest Form is proportionate and reasonable for the purposes of satisfying the administering authority that there is no actual or perceived conflict of interest.

A date on the Register of Interest form is reasonable to assist the administering authority in ensuring that the register of interests is current. Signature is reasonable to ensure that the information can be verified as correct. Separating the interests of member and spouse assists the administering authority in determining whether any conflict is actual or perceived, and the most appropriate and proportionate way to deal with it. All of these elements are reasonably required for openness and transparency, so that the public can be assured that the LPB is acting properly.

10. At the LPB in October 2016 it was questioned how Wiltshire's policies compared to those of other Boards, in response to this a benchmarking exercise was undertaken against six similar funds which revealed that the funds (with the exception of one) overall had similar, or the same, requirements in their Code of Conduct and Conflict of Interest Policy, and similar or the same format for a Register of Interest Form. Key differences between the funds were the guidance on potential conflicts of interest in respect of advisors and officers, and the guidance/restrictions on gifts and hospitality. Wiltshire's policies on both issues were towards the higher end of the scale in terms of guidance/restrictions. Oxfordshire was the only Local Pension Board contacted which did not have a Code of Conduct or Conflict of Interest Policy in place to support the guidance in its Terms of Reference. Further information is available at Appendix A.
11. This Committee is requested to approve the attached Code of Conduct and Conflict of Interest Policy Guidelines in relation to the LPB as updated to reflect the status of the Scheme Advisory Board.

### **Environmental Impact of the Proposal**

12. There are no known environment implications from this report.

### **Financial Considerations & Risk Assessment**

13. There are no significant financial implications from this report.
14. The Code of Conduct and Conflict of Interest Policy Guidelines will assist in mitigating the reputational risk should an issue arise which hasn't been identified or managed.

### **Legal Implications**

15. There are no material legal implications arising from this report. Legal Services have been consulted regarding the legislation referred to in this report and have assisted with drafting.
16. As explained in the body of this report, the Policy Guidelines in the form attached have been drafted to reflect the requirements of Wiltshire Council's constitution, legislation and the guidance of regulatory bodies including the Pension Regulator's Code of Practice No 14 and the Shadow Scheme Advisory Board guidance.
17. If the administering authority fails to ensure that each LPB member follows Policy Guidelines which fulfil the requirements of the constitution, legislation and guidance, the following risks may apply:

- a) the LPB may actually act improperly or be perceived to have acted improperly;
- b) there may be a challenge to the work carried out by the LPB, for instance, challenge by judicial review as a result of failure to comply with statutory obligations;
- c) there may be intervention by the Regulator;
- d) there may be adverse comment by the Scheme Advisory Board, and associated reputational harm.

18. Any individual LPB member who fails to follow Policy Guidelines adopted by the administering authority may be in breach of:

- a) regulations 108(3) and (4) of the LGPS Regulations 2013; and
- b) Protocol 2 of Wiltshire Council's constitution,

which may also lead to the risks set out at paragraph 17 above.

### **Safeguarding Considerations/Public Health Implications/Equalities Impact**

19. There are no known implications at this time.

### **Reasons for Proposals**

20. To ensure the LPB has an up to date policy to direct members' conduct and to address any conflicts of interest.

### **Proposals**

21. The Committee is requested to approve the attached Code of Conduct and Conflict of Interest Policy Guidelines in relation to the LPB , as updated to reflect the status of the Scheme Advisory Board.

MICHAEL HUDSON  
Treasurer to the Pension Fund

Report Author: Libby Beale, Senior Democratic Services Officer

---

Unpublished documents relied upon in the production of this report: NONE