



## CAPITAL CRANFIELD TRUSTEES

THE BALANCED VIEW

### Trustees' and conflicts of interest - addressing the key concerns



Judith Maguire summarises the key concerns for trustees based on guidance by the Mencap Pension Plan Trustees

Judith Maguire:  
Formerly a Senior  
Consultant at Mercer, Judith  
is a Client Director with  
Scottish Pension Trustees -  
the Scottish arm of Capital  
Cranfield Trustees.

#### What's the legal position?

- Trustees have a duty of care to act in the best interests of the members of the pension fund.
- Trustees must not act in any way to restrict their own discretion. They must not, therefore, allow private commitments to restrict their ability to make independent decisions in the best interests of the members.

---

#### What is a conflict of interest?

- A personal interest or interest in any other organisation which might clash with a trustee's duty to the pension fund.
- Trustees must not put themselves in a position where they might personally benefit, financially or otherwise - or be perceived as personally benefiting - from their role as trustees.
- Nor must they allow their personal interests to influence or be seen to influence their duties as trustees.



*The appointment of Capital Cranfield - the Independent pension fund trustees - avoids all these and other conflicts. Capital Cranfield always offers an Independent, balanced view*

#### When might a conflict arise?

- If a trustee could gain either directly or indirectly, perhaps through a family member, a financial benefit as a result of acting in their capacity as a trustee this would be seen as a conflict of interest.
- If a trustee was a trustee of the employer's board of directors and was also a trustee of the pension fund.
- If a trustee was a director or a member of the senior management team of the employer, similar conflicts might arise.
- If a trustee was a member or pensioner of the fund, there might be a conflict where benefits or contributions etc are being discussed.
- If a trustee had a family member who was a member of the fund, this could give rise to a conflict of interest as well.
- If a trustee was a fund member who also paid additional voluntary contributions (AVCs), conflict could arise when AVCs were being discussed

---

#### If there is a conflict of interest what should a trustee do?

- If it is a conflict which is likely to be ongoing, complete a "conflict of interest form" which Capital Cranfield would recommend is issued to trustees annually. A register of these conflicts should be kept by the secretary to the trustees. Where a permanent potential conflict arises, such trustees need to always be mindful of, and alert to, the fact that they are acting in their capacity as a pension trustee when sitting on the trustee board. As far as possible, they should put the considerations of any other roles which they may have to one side.

If you are faced with a conflict which would appear to be short term, the following actions may help and should be documented in the minutes of the relevant meeting:-

- Disclose your interest and leave the room and not take part in the discussion or vote on the matter which gives rise to the conflict of interest.
- If the conflict of interest is minor it is possible for you to remain in the room for the discussion, provided the other trustees allow it, but not take part in the discussion or vote.
- If the matter which gave rise to a conflict of interest requires further action following the trustees decision, it would be prudent for you to distance yourself from the follow up work as it may appear that you may be seeking to influence the matter. This is likely to be a matter of judgement in the individual situation.

- If in doubt err on the side of caution and disclose the interest, even if it is minor or indirect.
- 

### What is the effect if a conflict of interest is not disclosed?

- Non disclosure could result in the decision being invalid and it may expose the trustee board to a risk of challenge in respect of the decision to which the conflict related.
- If a financial gain results for the trustee as a result of the decision it will potentially expose the trustee to an allegation of obtaining a pecuniary advantage by deception, which is a criminal offence.
- If the financial gain has not been authorised then the trustee is at risk of liability for breach of trust, and may have to repay the value of the benefit to the pension fund.

## Pension trustees' duties and conflicts of interest

