

Croydon Council

REPORT TO:	Pension Committee 19 September 2023
SUBJECT:	Conflicts of Interest Policy
LEAD OFFICER:	Matthew Hallett, Acting Head of Pensions and Treasury

1. RECOMMENDATION

- 1.1 The Committee are asked to agree to the recommended Conflicts of Interest Policy.

CORPORATE PRIORITY / POLICY CONTEXT

Sound Financial Management: This report asks the Committee to agree a whole Fund Conflicts of Interest Policy required for the proper administration of the Fund.

The decision supports the Council priority of OUTCOME 1 “Balances the books, listens to residents and delivers good, sustainable services.”

FINANCIAL SUMMARY:

There are no direct financial implications associated with this Report but it assists in the efficient management of the Fund and could have an impact on the General Fund of the Council.

2. EXECUTIVE SUMMARY

- 2.1 This report advises the Committee of the arguments for adopting a whole Fund Conflicts of Interest Policy and recommends that they agree the draft attached as Appendix B.

3 DETAIL

- 3.1. In accordance with LGPS Regulations 2013 (S108) and Scheme Advisory Board Guidance, in July 2015, the Fund adopted a Conflicts of Interest Policy for the Pension Board.

3.2 Conflicts are currently more broadly managed as follows:

- Committee members and co-opted members are required to adhere to the “Constitution of the London Borough of Croydon” [as at 14 April 2023] Part 5.1 Section 9 and Appendix B accessible via:

<https://democracy.croydon.gov.uk/documents/s46562/Part%205I%20MEMBERS%20CODE%20OF%20CONDUCT.pdf>

and must have proper operational procedures in place under Regulation 55 of The Local Government Pension Scheme Regulations 2013.

- Officers of the Council are required to adhere to the Staff Code of Conduct Section 4, the first paragraph of which states as follows:

You have an obligation to act in the best interests of the council and to avoid situations where there may be a potential conflict of interest e.g. where your personal loyalties could lead you to act in a way that is not in keeping with your loyalty to the council. You must take steps to resolve any conflicts arising in a way that protects the public interest, including declaring private interests as below [in Code of Conduct].

3.3 In their Governance Review of the Fund, Aon go into some detail as to how conflicts of interest are currently managed and, whilst they acknowledge that current practices meet current legal requirements, they argue that they could be improved to meet good practice and national guidance. As regards a Policy to cover the whole of the Fund’s management they comment as follows:

Clearly this is not a legal requirement but, as mentioned earlier in the report, we would encourage the Administering Authority to develop a Fund specific policy outlining how conflicts of interest will be managed and dealt with at a Fund level. This could include reference to:

- *the Council’s Code of Conduct*
- *how it relates to co-optees and observers*
- *examples of Fund specific potential conflicts of interest*
- *how conflicts of interest (and potential conflicts of interest) will be managed*
- *guidance for officers and advisers of the Fund to also adhere to*

3.4 In the Action Plan Aon further comment:

This [Conflict of Interest declarations and approach for implementing Fund wide policy] should involve implementing the requirements of the Fund wide Conflict of Interest Policy including:

- *it should clearly set out who conflicts should be reported to*
- *require all parties to complete a declaration and allow for an annual exercise to reaffirm declarations*
- *implement conflict register*

3.5 During 2019, working groups acting on behalf of the Scheme Advisory Board made a number of proposals in their “Good Governance Review” and, on 3 February 2020, these were accepted by the Board. Amongst these proposals was the following:

B.1 Each fund must produce and publish a conflicts of interest policy which includes details of how actual, potential and perceived conflicts are addressed within the governance of the fund, with specific reference to key conflicts identified in the Guidance.

The Board requested that the working groups provide further detail on the implementation of this proposal.

In their report dated February 2021 the working groups reported on this matter as detailed in Appendix A. It is expected that these recommendations will be reflected in legislation and / or statutory guidance and this Policy aims to reflect many of the recommendations within the “Good Governance Review.” It will be reviewed once the recommendations are enacted in legislation and statutory guidance as necessary to ensure compliance.

3.6 The Pensions Regulator’s new single Code of Practice relating to Conflicts of Interest (TGB039) states:

“Scheme managers should consider conflicts of interest in identifying and evaluating risks (see Identifying and assessing risks). Where relevant, our expectations on scheme managers for identifying and recording conflicts of interest are the same as the list above’. Those requirements are as follows:

Identifying and recording conflicts of interest

- Have a clear understanding of the importance of managing conflicts of interest and the circumstances in which they may arise;
- Understand any requirements of the scheme’s governing documentation, or regulations under which it may operate, in relation to conflicts of interest; and
- Encourage a culture of openness and transparency in relation to conflicts of interest.

Maintain a written policy for managing actual and perceived conflicts of interests

- Maintain a register of interests which should be considered in every meeting of the governing body;
- Consider whether the register of interests should be published (for example on the scheme’s website) redacted to the extent that it contains confidential information and/or personal data;
- Ensure all members of the governing body, advisers and service providers make declarations of interests and conflicts at their appointment, and as they arise;

- Ensure contracts and terms of appointment require advisers and service providers to operate their own conflicts policy and disclose all conflicts to the governing body;
 - Record conflicts of interest in relation to a decision-making process, as well as the action taken to manage them, in the written records of the meeting (see Meetings and decision-making);
 - If carrying out transactions with related parties, governing bodies should ensure transparency by complying with 'Financial Reporting Standard (FRS) 102 – Related Party Disclosures;' and
 - Consider seeking independent legal advice to help decide the best approach to manage or avoid an actual or potential conflict of interest.
- 3.7 At their meeting on 20 June 2023 the Committee were asked to agree a draft Conflicts of Interest Policy. In addition to the justification contained in this report, the Acting Head of Pensions and Treasury explained that members of the Committee and officers had two roles, working both on the behalf of the Council and on behalf of the Administering Authority as the Scheme manager. He stated that the Council's Constitution did not address this issue sufficiently and that the Fund needed a Conflict of interests Policy which covered the Committee, the Board, advisers and officers.
- 3.8 Member concern was expressed as to the length, content and some of the wording of the draft and the Committee resolved to "Note the draft conflict of interest policy as a work in progress."
- 3.9 At their meeting on 27 July 2023 the Pension Board received the Policy and made no significant critical comment.
- 3.10 In light of member comment officers have amended the previous draft and now re-present it as Appendix B.
- 3.11 The Committee are asked to agree the draft Conflicts of Interest Policy attached as Appendix B.

CONSULTATION

- 4.1 Officers have prepared the Conflicts of Interest Policy in consultation with Aon, the Fund's Governance Adviser and the Monitoring Officer.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 5.1 There are no direct financial implications arising from this report
Approved by: Allister Bannin on behalf of Jane West, Corporate Director of Resources (Section 151 Officer). Date 08/09/2023.

6. LEGAL CONSIDERATIONS

- 6.1 Burges Salmon LLP (a legal advisor appointed to the Pension Fund) comments that there are no direct legal implications arising from the content of this report although managing conflicts of interest is an important ongoing requirement and it will be important to maintain robust and appropriate procedures to manage conflicts of interest that will arise from time to time. The Committee should note that the Pension Regulator's new code of practice (now known as the General Code) is likely to be formally published this year, and demonstrating compliance with it will be important.

7. HUMAN RESOURCES IMPACT

- 7.1 There are no immediate workforce impacts arising from the content of this report. Should any arise, these will be managed under Council policies and procedures

Approved by: Gillian Bevan, Head of HR, Resources and Assistant Chief Executives directorates on behalf of the Chief People Officer. Date 5.9.23

8. EQUALITIES IMPACT

- 8.1 The Council has a statutory duty to comply with the provisions set out in Sec 149 of the Equality Act 2010. The Council must therefore have due regard to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 8.2 There are no equality implications arising from this report

Approved by: Naseer Ahmad for Equality Programme Manager, (08/09/2023)

9. ENVIRONMENTAL IMPACT

- 9.1 There are no environmental impacts arising from this report.

10. CRIME AND DISORDER REDUCTION IMPACT

- 10.1 There are no crime and disorder impacts arising from this report.

11. DATA PROTECTION IMPLICATIONS

- 11.1 Will the subject of the report involve the processing of 'personal data'?

No.

Has a data protection impact assessment (DPIA) been completed?

No. This report relates to matters relating to the administration of the LGPS and the Croydon Pension Fund.

Approved by: : Allister Bannin on behalf of Jane West, Corporate Director of Resources (Section 151 Officer)

CONTACT OFFICER:

BACKGROUND DOCUMENTS:

None.

APPENDICES:

Appendix A: Extract from "Good Governance: Phase 3 Report to SAB" February 2021

Appendix B: Conflicts of Interest Policy

Extract from “Good Governance: Phase 3 Report to SAB” February 2021

Conflicts of Interest

B.1 Each fund must produce and publish a conflicts of interest policy which includes details of how actual, potential and perceived conflicts are addressed within the governance of the fund, including reference to key conflicts identified in the Guidance.

One of the key objectives of the Good Governance Review was to consider how potential conflicts of interest manifest themselves within current LGPS set up and to suggest how those potential conflicts can be managed to ensure that they do not become actual conflicts. In doing so, the SAB was of the view that the democratically accountable nature of the LGPS be maintained.

Since almost all LGPS funds are rooted in local authority law and practice, those elected members who serving on pension committees are subject to local authority member codes of conduct. These will require members to register existing conflicts and to recognise when conflicts arise during the course of their duties and how to deal with them. Elected members must also comply with the Seven Principles of Public Life (often referred to as the Nolan Principles). Non-elected members sitting on committees and local pension boards should be subject to the same codes and principles.

There are, however, specific conflicts that can arise as a result of managing a pension fund within the local authority environment. The intention of this recommendation is that all administering authorities publish a specific LGPS conflicts of interest policy. This should include information on how it identifies, monitors and manages conflicts, including areas of potential conflict that are specific to the LGPS and will be listed in The Guidance. The expectation is that the areas covered will include:

- Any commercial relationships between the administering authority or host authority and other employers in the fund/or other parties which may impact decisions made in the best interests of the fund. These may include shared service arrangements which impact the fund operations directly but will also include outsourcing relationship and companies related to or wholly owned by the Council, which do not relate to pension fund operations;
- Contribution setting for the administering and other employers;
- Cross charging for services or shared resourcing between the administering authority and the fund and ensuring the service quality is appropriate for the fund;
- Dual role of the administering authority as an owner and client of a pool;
- Investment decisions about local infrastructure; and

- How the pension fund appropriately responds to Council decisions or policies on global issues such as climate change.
- Any other roles within the Council being carried out by committee members or officers which may result in a conflict either in the time available to dedicate to the fund or in decision making or oversight. For example, some roles on other finance committees, audit or health committees or cabinet should be disclosed.

Each administering authority's policy should address:

- How potential conflicts of interest are identified and managed;
- How officers, employer and scheme member representatives, elected members, members of the local pension board and advisers and contractors understand their responsibilities in respect of ensuring that conflicts of interest are properly managed;
- Systems, controls and processes, including maintaining records, for managing and mitigating potential conflicts of interest effectively such that they never become actual conflicts;
- How the effectiveness of its conflict of interest policy is reviewed and updated as required;
- How a culture which supports transparency and the management and mitigation of conflicts of interest is embedded; and
- How the specific conflicts that arise from its dual role as both an employer participating in the Fund and the administering authority responsible for delivering the LGPS for that fund are managed.

In putting together such a policy it is recognised that membership of the LGPS is not, in and of itself, a conflict of interest.

The Guidance should require each fund to make public its conflicts of interest policy.