



30 May 2008

Our ref: ICAEW Rep 72/08

Your ref:

The Pensions Regulator
Napier House
Trafalgar Place
Brighton
BN1 4DW

By email: conflictsguidance@thepensionsregulator.gov.uk

Dear Sirs

CONFLICTS OF INTEREST – TPR GUIDANCE

The Institute of Chartered Accountants in England and Wales (the Institute) welcomes the opportunity to comment on the consultation paper *Conflicts of Interest* published by the Pensions Regulator in February 2008.

The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 130,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.

We are very supportive of the Pensions Regulator's decision to issue guidance on conflicts of interest. The ICAEW has also issued guidance in this area, and we are grateful for the acknowledgement in tPR's references section on p39 (the ICAEW guidance is available at: <http://www.icaew.com/index.cfm?route=152167>).

We have reviewed tPR's guidance, which seems generally sensible and broadly in line with the ICAEW guidance. However, we believe one aspect is missing from the TPR guidance; the use of information sharing agreements. Whilst such agreements cannot be universally applied to all situations, they provide a useful tool to manage conflicts and particularly the involvement of trustees whose different roles and responsibilities may on the face of it give rise to conflict.

Reference to these agreements and the extent to which they may usefully be implemented is included in the ICAEW guidance. We suggest issues can be mitigated by setting out that contributions can be made in conflict situations where the parties agree the information will be mechanical/technical, coupled with the conflicted party abstaining from voting. Our guidance might therefore be a little more practical and recognise the difficulties where conflicted trustees (particularly FDs) do not contribute at all in conflict situations - suggesting a way that they can on a fact providing basis and withdrawing from voting. TPR seems to be a little more tough on this area. We would recommend their inclusion in the Pensions Regulator's conflict guidance with a clear statement that people should use them with caution and including guidance to raise awareness of the danger of inadvertently being drawn into giving an opinion rather than giving info under the agreement.

TPR appear to be against agreeing to "contract out" of conflicts, and say that they don't think that good governance is maintained where a conflict of interest is "permitted by the scheme". We think the use of information sharing agreements is not tantamount to "contracting out" of conflicts when used appropriately and can be a very practical solution where otherwise expert input might be withdrawn from the scheme and its trustees.

We also think that tPR's recommendations and requirements to obtain independent legal advice are a little too prolific. Perhaps at least some of these references could be removed, and also the guidance should instead recommend that trustees should consider whether it is appropriate - the reason being that we recognise that frequent legal advice would be a huge drain on resources particularly for small schemes.

Principle 5 deals with managing third party conflicts, citing an example as being when the employer auditor also audits the scheme. We do not agree that there is a conflict when the employer's auditor audits the scheme. An audit is an independent review of the financial statements and the auditor does not give advice in the way actuaries, lawyers and investment advisers do. Auditors are bound by their ethical guidance to maintain client confidentiality and where the scheme auditor is the same firm as that of the employer, the audit teams will comprise different people.

Please contact me should you wish to discuss any of the points raised in this response.

Yours faithfully



Liz Cole
Manager, Business Law
T +44 (0)20 7920 8746
F +44 (0)20 7638 6009
E liz.cole@icaew.com