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## **Regulator steps up pressure on pension schemes to eradicate conflicts of interest**

- **Recent Pension Regulator Consultation gives strong steer towards appointment of independent trustees**

Regulatory pressure is beginning to mount on pension schemes to eradicate conflicts of interest from their trustee boards, says Trustee GAAPS, the trustee search and selection firm.

Trustee GAAPS says that the Pensions Regulator's "Conflicts of Interest Consultation Document" is the strongest official steer yet towards the appointment of independent trustees as the best means of managing potentially dangerous conflicts of interest. Section 4.4 of the proposed Principles says that in some circumstances the appointment of an independent trustee may be the "only option" for resolving conflicts of interest.

There has been a growing awareness of the difficulties that a pension fund trustee, who is also a director of the company that is funding the pension scheme, has in balancing their duties to the pension fund members and to the shareholders of the company they work for.

A Finance Director who is also a pension fund trustee might, for example, decide it is in the interest of shareholders to pursue a large corporate takeover or to increase the company's debt level even though this could run contrary to the interests of the pension fund members. A common conflict might also be created by negotiations over funding levels paid by the company to the pension scheme.

David Johnson, Consulting Director, Trustee GAAPS, comments: "With this Consultation Paper, the Pensions Regulator is strongly underlining the importance for pension schemes of adopting a proactive approach to managing conflicts of interests."

Trustee GAAPS says that the Regulator notably encourages the appointment of independent trustees as they will have no conflicts of interest and yet will still bring the knowledge and expertise needed to replace those directors stepping down from trustee boards.

The Pensions Regulator says some ad hoc methods of controlling conflicts of interest, such as the relevant trustee abstaining from a particular vote, may not always be effective as their presence may still unduly influence the decision making of the other trustees. The Pensions Regulator also points out that where a trustee abstains from a decision they may still be held legally liable for that decision.

The Consultation Paper also suggests other measures for dealing with conflicts of interest, such as maintaining a register of conflicts, which David Johnson says trustees may find controversial.

Explains David Johnson: “I am not sure that a Finance Director is going to want to list down, on paper, all their possible conflicts of interest for other trustees to examine. If they were to do this properly they would in many cases have to disclose potentially price sensitive information.”

David Johnson says that while conflicts of interests are complex by their nature, appointing independent trustees would remove the majority of the problems outright at the source.

Independent trustees are usually recruited for a combination of their expertise and their skills at chairing a board. Some commentators have described independent trustees as playing a similar role to that of non-executives in a listed company. However, David Johnson explains that a good independent trustee will also take up practical and management responsibilities to assist in the day-to-day function of the trustee board and the fund.

## **ENDS**

Press enquiries:

David Johnson  
Consulting Director  
Trustee GAAPS  
Tel: 020 7645 8730

Nick Mattison or Fay Israsena  
Mattison Public Relations  
Tel: 020 7645 3636