

## SCENARIO 2

## OVE2

### TOPIC: CONFLICTS OF INTEREST (Providers)

It is late on a Friday afternoon and the Chairman of the board of the Happy Retirement Fund is contemplating calling the meeting to a close and postponing the decision on the choice of a new service provider. All the trustees are tired and concentration levels are not what they should be. Mr Kunene decides to raise his concerns as Chairman. The trustees agree to postpone the decision to a special meeting to be held in a month's time to finalise the choice of service provider: much to the relief of most of the trustees.

The current service provider to the fund who's contract may or may not be renewed decides to take advantage of the weekend by inviting three trustees to dinner that evening before they depart from their hotels the next morning. One of the topics discussed at the dinner in a very casual manner is how long and stressful the afternoon's meeting was. It comes to the attention of the current service provider the reasons for the protracted discussions and debates. The current service provider suggests a "beauty parade" where the board of the fund can listen to several presentations from five different service providers to compare the current service provider to. "We understand your position and we are in no way suggesting that we be re-appointed. We therefore have no problem in competing for the business and will present our updated portfolio as well".

#### Questions:

- A: What is wrong with this picture, if anything?
- B: Why were only the three employer-appointed trustees invited to the dinner?
- C: Does it matter that the three employer-appointed trustees happen to be the CEO, CFO and COO of the employer participating in the fund?
- D: Does it matter that the employee-elected trustees are junior staff within the company?
- E: Does it matter what the venue and costs of the dinner was and how late the guests departed (whether there were drinks served until late into the night?) Or is this information even relevant?
- F: Does it matter whether the costs of the dinner was indirectly passed onto the fund by way of consultation fees, etc.?
- G: Is the code of conduct of the fund clear on how trustees should conduct themselves inside as well as outside of meetings?

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- H: What does the code of conduct say about the receipt and declaration of financial and non financial gifts such as payment in kind or benefiting financially from your association of the fund?
- I: What does the code of conduct say about non-specific cost allocations passed onto members share of fund?
- J: Have members been informed of trustee entertainment, travel allowances, pendiums, etc. and have they objected to these? Have these objections been withdrawn or resolved and how?
- K: Is it fine to for the current service provider to assume that they can compete and include their portfolio?
- L: Will the current service provider be responsible for making the arrangements and selecting the short-list for the “beauty parade”?
- M: Will the trustee be accepting gifts from the applicants? e.g. pens, golf shirts, flowers, lunch vouchers, shopping vouchers, suite tickets to sporting events or concerts, boat cruises or study assistance, test driving of cars for a weekend, a month, a year.... where does the buck stop or does it have a snowball effect?

Let us now consider the various outcomes of undisclosed, reckless and irresponsible spending by trustees and service providers to the fund:

Outcome A:

1. Statistically it has been proven by actuaries that an increase in costs of 2% can result in a 20% to 30% reduction in the final pension received over a period of 30 to 40 years; and /or
2. Where member are not informed of not only the financial position of funds but third party interest and how these were remedied and to structures put it place to prevent it – this leads to lengthy litigation, financial loss and more importantly a break-down of trust; and/or
3. The wrong behaviour and poor governance becomes entrenched within the fund, the service providers and the trustees; and/or
4. The Registrar unearths these issues during routine visits or as a result of member complaints regarding conflicts of interest
5. Theft, misconduct or fraud.

Lessons to be learned:

1. Stay open and honest;
2. Be fair, transparent and loyal to the members of the fund as outlined in the duties of the board of fund in legislation;
3. Declare any conflict;
4. Exercise due care and diligence in all dealings with the fund;
5. Apply the prudent-man rule to take greater care of public funds that you would your own;

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6. Don't place yourself in a compromising position – don't be afraid to say no – the gift does not belong to you if you say no;
7. Don't do it just because everyone else is doing it – you may be the only one who gets caught;
8. Stop making the wrong decisions – the chickens will come home to roast and you will lose everything you obtained from the proceeds of crime; you may even be putting your family at risk of losing their home, etc.;
9. Even a perceived conflict of interest must be addressed to maintain trust and a healthy working relationship between trustees, service providers and members;
10. Hold errant members accountable for their decisions and actions by following the disciplinary procedures as set out in the adopted code of conduct or in the rules of the fund;
11. Comply or explain non-compliance
12. Cooperate with the authorities;
13. If you don't know – don't be afraid to say so instead of making an un-informed or wrong decision; and finally
14. If your heart is not in it – give notice and make way for someone who is willing and able.

**IT CONSULTANTS TO INSERT VOICE-OVERS AND PICTURES TO EACH OF THE ABOVE-MENTIONED OUTCOMES AND LESSONS**