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# **Pensions: Conflicts of Interest and legal update**

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# Agenda

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- Conflict of Interest
- Auto – enrolment
- Lehman Brothers / Nortel
- Insurance companies and sexism

## Conflicts of Interest

Trustees must not place themselves in positions or enter into transactions where there is or may be a conflict between their duty as fiduciary and their personal interests (no conflict of interest) or other duties (no conflict of duties)

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## Conflicts of Interest - “manifestly there are wives and wives “

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- Cases tended to revolve around employers who were also trustees;
- Specific statutory exclusion for conflict of interest (but not conflict of duty) for members who are trustees in relation to benefits;
- Burden on conflicted person to show behaviour reasonable and proper

# Conflicts of interest – Pension Regulator’s guidance

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Five principles:

1. Understanding the importance of conflicts of interest
2. Identifying conflicts of interest
3. Evaluation, management or avoidance of conflicts of interest
4. Managing adviser conflicts
5. Conflicts of interest policy

# Auto-enrolment

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## Copying the Kiwis

## Auto – enrolment - timeline

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- **Dec 02** Pensions Commission asked to examine case for moving beyond voluntary pension saving
- **Nov 05** Recommends auto-enrolment into pensions with compulsory employer contributions + new national DC scheme (now NEST)
- **Nov 08** Pensions Act 2008 imposes future duty on employers
- **Spring 10** Labour Government publishes detailed regulations
- **Oct 10** Results of Coalition Government Review published and recommendations accepted
- **Jan 11** New Pensions Act
- **Oct 12** Duties apply to first employers
- **Oct 17** Reforms fully phased in

## Auto – enrolment

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- Employers must auto-enrol ‘relevant’ employees
- Into a “Qualifying” pension scheme.....
  - Existing scheme or new arrangement
  - NEST is just an alternative
- Waiting period of up to 3 months
- Employees can opt out

## Auto – enrolment - scope

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- Who must be auto-enrolled?
  - Jobholders aged between 22 and SPA
  - Expected earnings over £7,475 (2011/2012 terms)
  - Others can opt in
- Employee opt-outs
  - Opt-out forms only from the scheme
  - Inducements to opt out prohibited
  - Deemed never to have joined if within one month opt-out
- Re-enrolment
  - About every 3 years after employer's staging date
  - Not within 12 months of opting out

## Auto – enrolment

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- Timetable for staging of auto-enrolment based size of employer group
  - Employers with >120,000 employees - 1 Oct 2012
  - Employers with >500 employees by Nov 2013
  - All employers by Sept 2016
- BAE Systems staging date early 2013

### DB scheme test

- Contracted out or
- Benefits at age 65 of at least “Test Scheme Standard”

## Auto – enrolment - contributions

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- Individual contribution approach
- Minimum contributions being phased in

	Min. employer conts	Min. total conts
October 2012 to September 2016	1%	2%
From October 2016 to September 2017	2%	5%
From October 2017 onwards	3%	8%

- Employee contribution must make up the difference
- Based on “qualifying earnings”
  - All earnings (gross)
  - Between £5,715 to £38,185 (2010/2011 terms)

## Auto – enrolment - NEST

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- Trust based occupational scheme
- Development was overseen by Personal Accounts Delivery Authority (PADA)
- Run by NEST Corporation
- Will be largest scheme in UK
- Limited range of funds



## The Pensions Regulator's bark terrifies insolvency world

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- TPR moral hazard claims enjoy super –priority status in insolvency
- Only if imposed after insolvency
- Otherwise unsecured creditor
- Appeal almost inevitable
  - Statutory change called for

## Insurance and gender – Test -Achats

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- Gender based factors contrary to equal treatment principle
- Must be phased out by 20 December 2012
- Annuities from insurers will then have to be the same for men and women
- Judgment on insurance products not occupational pension schemes
- Principle is clear and change can be expected