

2nd Code of Conduct.

How Partnerships UK will manage its business activities to ensure that conflicts of interest are identified and appropriately managed.

This is the 2nd code in a series produced by Partnerships UK for its stakeholders, employees and shareholders. The code is also available publicly on the PUK website. The code addresses issues arising from Partnerships UK's status as a PPP and its public sector mission.

Summary

Partnerships UK (PUK) engages with the public sector in a variety of ways. Usually PUK will be acting in a single capacity and conflict of interest issues do not arise. On some occasions where PUK, either through a Development Partnership Agreement (DPA) or joint venture with a public sector body, generates a new PPP it might be beneficial to all parties if PUK also makes an equity investment in the new PPP. PUK will only make an equity investment with the support of the other public and private sector shareholders. This code describes the measures in place to ensure that any conflicts of interest which may arise are managed appropriately. Appendix A summarises the code.

PUK's corporate governance, internal working practices and external scrutiny will ensure that the public sector can work with PUK confident that the public sector's interests are always put first by PUK.

Partnerships UK is a private sector organisation with a public sector mission.

1. Partnerships UK has public sector and private sector objectives.

Partnerships UK is a Public Private Partnership, majority owned (51%) by private sector shareholders. PUK aims to play a major role in developing PPPs and PPP style models of service delivery to meet Government service priorities. It is PUK's role to deliver better, stronger and sometimes novel PPPs more efficiently. At the same time PUK is expected to make an appropriate return for its shareholders. PUK's public sector mission is emphasised by PUK working exclusively with and for the public sector. This public sector mission is set out in PUK's Memorandum and Articles of Association and clearly stated in PUK's Values Statement: "Our commitment is to put the interests of our public sector client first." The public sector mission is also represented in PUK's corporate governance structure at the apex of which is the Advisory Council.

2. Partnerships UK works with the public sector in a variety of ways

There are a number of ways in which PUK and the public sector engage in activities. They include a simple one-off call to the PUK help desk or a larger advisory mandate under a framework agreement. Where PUK is acting as a joint sponsor to a project a public body and PUK will usually sign a DPA, where PUK shares the risks and rewards of the procurement. Where the DPA role involves developing a new PPP particularly if the PPP involves a new model of procurement or service delivery, possibly creating a joint venture organisation, PUK may wish to invest an equity stake in the project.

3. There are good reasons for PUK investing equity in some projects.

It will not always be appropriate for PUK to take an equity stake in projects where it is working as a joint project sponsor. However, in some circumstances, particularly where a new model of PPP is being developed, it may be entirely appropriate for PUK to consider investing equity in the project. There are good reasons for this:

- It demonstrates PUK's long term commitment to a project. It may encourage further private sector investment, thus expanding new markets. PUK's equity investment will aid the long term growth of the venture. Putting PUK's capital at risk shows its confidence in the delivery model, and will encourage all parties to support such an initiative
- Many new initiatives fail for want of the capital that can be put at risk, at a stage before the private sector investor would consider investing. PUK's capital, allied with its public mission, may meet such a need.
- Where a public body is itself investing in an initiative, it may welcome PUK's participation as a co-investor because of PUK's public sector remit coupled with commercial experience.

4. Partnerships UK must demonstrate good management of actual or perceived conflicts of interest.

Even where there are good reasons for PUK taking an equity investment in a project, by acting as a project co-sponsor (in the DPA or joint venture) as well as an equity investor there is the potential for conflicts of interests to develop. In this dual role PUK may be perceived to be structuring a PPP deal in such a way as to benefit the equity investment rather than ensuring the best VFM deal for the public authority. Therefore it is imperative that PUK always acts with the utmost probity and is always seen to act in such a way. This requires the development and governance of transparent internal and external working processes.

There are mechanisms in place to manage conflicts of interest that do arise.

1. No unmanageable conflicts of interest should occur.

PUK does not believe that any unmanageable conflicts of interest will occur as a result of its work with and for the public sector. To ensure that this is the case PUK has developed a number of mechanisms and working practices to meet the challenges raised by potential conflicts of interest. These mechanisms are both internal and external to the organisation.

It should be noted that an obvious area for potential conflicts of interest lies in the relationship of PUK with its private sector shareholders. The relationship between PUK and its shareholders was the subject of the first code of conduct adopted by PUK, and approved by the Advisory Council, and as such this risk is not specifically addressed in this code of conduct.

2. There are internal mechanisms in place to manage conflicts.

PUK has a strong corporate governance structure.

For PUK to work effectively the public sector must have total confidence that PUK will always act in its clients' best interests. This approach to PUK's work is enshrined in PUK's Values Statement. It is also demonstrated in the strong corporate governance ethos of the organisation that reflects the public sector mission of PUK. The corporate governance structure works to mitigate conflicts of interest in the following ways:

- a. **The Advisory Council.** The Advisory Council consists of representatives of Government departments, the devolved administrations, local authorities and other public bodies and represents many of PUK's most significant clients. It is currently chaired by Sir Andrew Turnbull, The Secretary of the Cabinet and Head of the Home Civil Service. The Advisory Council does not have executive authority over PUK but its role is to ensure that PUK fulfils its public sector mission. It does this by meeting (currently twice a year) to review the activities of PUK and question its Board and management. The Board of PUK must take into account the conclusions and recommendations of the Advisory Council.
- b. **The Board of PUK.** The Board consists of 12 Directors. 8 of the Directors are non-executive charged with ensuring that PUK fulfils its public sector mission in its day to day activities. Two of the non-executives are nominated by HM Treasury ensuring that the public sector is represented at board level.
- c. **Audit Committee.** The Audit Committee, comprised of non-executive directors, has responsibility for oversight of internal management controls, including those relating to the management of potential conflicts of interest. The Audit Committee must also consider external risks which include the perception of conflicts of interests.

Internal working practices limit the potential for a conflict to develop.

PUK has developed a set of working practices that alleviate the potential for a conflict of interest to develop.

- a. **The Role of the Investment Committee.** The Investment Committee approves all investments that PUK enters into. These include both DPA work and any subsequent equity investment. When reviewing an application to enter into a DPA it will not be known whether PUK will ultimately be making an equity investment. Therefore the Investment Committee will be judging the DPA application on the basis that the project meets PUK's public sector mission and return requirements, in the assumed absence of equity investment.

As part of the Investment Committee process all applications are reviewed by PUK's head of risk management. The Risk Manager may request that an application also goes through a peer review process. The Investment Committee is chaired by the Chairman of PUK and 2 non-executive directors sit on the Investment Committee. There is no opportunity for a single individual to exert undue influence on the decision to enter into a DPA agreement.

Several of PUK's Investment Criteria also reduce any potential for conflicts of interest to adversely affect a public sector body. These criteria include:

- i) Consistency with PUK's public sector mission.
 - ii) PUK will only invest equity in projects when both the public and private sector shareholders of the joint venture company support PUK taking a shareholding.
 - iii) The interests of PUK, the public sector and private sector shareholders must be aligned.
- b. **PUK has separate working teams.** When PUK is working in either a DPA or commercialisation role and might make an investment in the project, separate DPA/commercialisation and equity teams are established with separate internal reporting lines.

Members of the equity or commercialisation team may however provide assistance on DPA work provided that no equity investment would be made in any DPA project unless: (i) the project company requested it (ii) the project company had independent professional corporate finance advice on the matter (iii) the investment was offered in the market first (iv) PUK merely "tagged along" behind a principal independent 3rd party investor who was responsible for the terms of investment and (v) both the equity or commercialisation and DPA teams foresaw no reasonable prospect of conflict arising.

Similar criteria apply to the making of any equity investment in any project on which the PUK commercialisation team is working.

c. **Individual Responsibility.** Within PUK individuals are asked to:

- Comply with the general requirement to disclose information on a "need to know basis" and may be asked to sign a project specific confidentiality undertaking.
- Make a declaration of any shareholding in an interested party.
- The staff incentive structure within PUK emphasises adherence to the public mission and public sector objectives, and does not encourage the creation of investment opportunities on the back of advisory or support work. One of the criteria used to appraise the performance of PUK staff is adherence to PUK's public sector mission. The practical impact of this for those staff who are involved in PUK activities other than equity investment is that:

No such member of PUK will be appraised on the basis of the terms and conditions achieved within an individual investment and no such member of PUK will have any part of their salary, including any potential bonus, based on the terms and conditions of an individual equity investment.

Within PUK there is a small number of staff whose activities are exclusively focused on equity investments. Their performance objectives will be linked to making equity investments and their remuneration linked to the making and realization of value from their investments.

External approvals and scrutiny provide comfort for the public sector

The decision for PUK to make an equity investment in a project will be taken after negotiations between PUK and the relevant public and private sector organisations. An investment will only be made with the agreement of all parties. Therefore there are several levels of approval by the public sector body to protect them against a PUK conflict of interest. These include:

- The public body will, on a statutory basis, have an officer responsible for the proper use of its resources and protection of the public purse from poor value for money. The officer concerned will have to be satisfied that PUK's investment represents good VFM, and does not adversely affect achievement of the public body's objectives. PUK will only make an investment when the public sector also intends to make an investment in the project. The terms and conditions of these investments will be similar, thus ensuring that the interests of PUK and the public sector are aligned. In circumstances where the public body already has an investment which it wishes to retain, in whole or in part, PUK's investment will be on similar terms to those of the principal independent private sector investor. The public sector has the right to stop PUK taking an equity stake in a project.
- The public sector has the right to approve the terms and conditions of the equity investment. PUK will, except where there are good reasons to the contrary, usually have a minority stake in a joint venture, or be an equal partner with the public sector, and therefore cannot control the joint venture for its own interests.

A further measure to instil confidence in the public sector is the potential for the National Audit Office (or the Supreme Audit Institutions of Scotland, Wales or Northern Ireland if appropriate) to examine the role of PUK in any PFI/PPP project. The NAO might choose to do this either by looking at an individual project to ensure that public funds have been spent wisely or as a more general review through an examination of the public sector shareholding in PUK.

An Investigation and Reporting Protocol has been established.

PUK has established a protocol for investigating allegations of inappropriate or unethical behaviour by PUK, either corporately or individually. This protocol covers all aspects of PUK's work including issues raised by third parties regarding potential or perceived conflicts of interest. The Protocol provides that:

- An issue should be raised first with the Chief Executive Officer (CEO).
- The CEO will respond to the matter raised. If the party raising the grievance is not satisfied, the matter will be passed to the Chairman of PUK.
- The Chairman of PUK together with the PUK Board will conduct an investigation into the matter raised. The Chairman will respond to the party raising the grievance. If the matter is still not resolved the Advisory Council Chairman will be notified.
- The Chairman of the Advisory Council will take whatever steps he thinks necessary to investigate the matter.
- The Chairman may appoint an independent party to conduct the inquiry should he wish to do so. Any person conducting an inquiry will have unrestricted access to PUK people and records.
- The Chairman of the Advisory Council shall report to the Advisory Council.
- The Council will determine the validity of the issue raised and the Chairman will respond to the party that has raised the matter.
- The Advisory Council may choose to notify the PUK Board of their findings and make any recommendations as they see fit (including any remedies should they find any substance in the matter raised) with regards to the particular issue raised and the practices and policies of PUK in general.
- The Council may direct the Board to inform PUK's shareholders of its determination on the matter.
- If applicable the PUK Board will report to the Advisory Council on how any recommendations have been implemented.

Appendix A.

Corporate governance, working practices, policies and oversight in place to ensure potential conflicts of interest do not adversely affect the public sector.

The vast majority of the work undertaken by Partnerships UK (PUK) will involve PUK acting in a single capacity. In these cases the possibility of a conflict of interest arising is negligible. In a small number of cases PUK can find itself in the position of developing a PPP, often a new model of PPP, with the public sector and also investing in the same PPP. In this situation a potential for a conflict of interests arises. It is important that PUK identifies the situations where a conflict of interest arises and ensures that the conflict is well managed to avoid actual or perceived impropriety.

PUK has a public sector mission and will always put the interests of its public sector clients first. It is of the utmost importance that the public sector retains confidence in PUK to always act in the public sector's best interests. PUK believes that its strong corporate governance structure and the working policies and practices that it has in place will ensure that PUK will always act in the best interests of the public sector.

The practical effects of the corporate governance structure and working practices in place to manage conflicts are detailed below. Finally, should any party consider that PUK has acted improperly and raise an issue regarding PUK's conduct or propriety, PUK has adopted an Investigation and Reporting Protocol to ensure such issues are dealt with in an open and transparent manner.

Corporate Governance

The Advisory Council

- The Advisory Council represents the public sector to ensure PUK's policies and work are consistent with PUK's public sector mission.
- The Advisory Council reviews PUK's business activities to monitor their compatibility with the public sector mission. The Advisory Council meets with the directors of PUK from time to time to examine past and future business activity.
- The Advisory Council holds the directors of PUK to account with regards to the Company's public sector mission and makes recommendations as to the running of the business as they see fit.
- The Advisory Council approves PUK's selection criteria for choosing which projects to work on with the public sector. The Advisory Council publishes an annual report detailing how PUK has fulfilled its public sector mission.

The Audit Committee

- The Audit Committee is chaired by and consists of non-executive directors.
- The Audit Committee identifies areas where potential conflicts of interest may occur.
- The Audit Committee examines the internal controls and procedures of PUK to ensure processes are in place to manage potential conflicts of interest.
- The Audit Committee makes recommendations as to how internal controls can be improved to effectively manage conflicts of interest.

The Board of PUK

- The Board of PUK manages the business so that PUK fulfils its public sector mission.
- The non-executive directors on the Board are charged with ensuring that the executive directors are always mindful of PUK's public sector mission.
- HM Treasury will always appoint at least two non-executive directors ensuring that the public sector is represented at Board level.

Internal Working Practices

Role of the Investment Committee in managing conflicts of interest.

- The Investment Committee examines all applications for PUK to enter into DPAs, joint ventures and equity investments with public sector bodies.
- The Investment Committee assesses projects on the basis of the investment criteria approved by the Advisory Council.
- The PUK risk manager may ask for applications to be peer reviewed. At least three non-executive directors sit on the Investment Committee. The primary investment criteria is whether the investment is consistent with PUK's public sector mission. PUK only makes an equity investment when the public sector is also investing in the project or joint venture. PUK is not a profit maximising organisation.
- PUK seeks to make a return on its investments that is consistent with PUK's objective to make a "reasonable rate of return" for PUK's shareholders. PUK will not make an equity investment when either the public or private sector party to the project/joint venture objects to PUK's investment.

Internal working structures

- PUK ensures that there are clearly identifiable and separate project and equity investment teams.
- The project and equity investment teams report to different directors.
- Members of the equity or commercialisation team may however provide assistance on DPA work provided that no equity investment would be made in any DPA project unless: (i) the project company requested it (ii) the project company had independent professional corporate finance advice on the matter (iii) the investment was offered in the market first (iv) PUK merely "tagged along" behind a principal independent 3rd party investor who was responsible for the terms of investment and (v) both the equity or commercialisation and DPA teams foresaw no reasonable prospect of conflict arising. Similar criteria apply to the making of any equity investment in any project on which the PUK commercialisation team is working.
- All staff, including secondees, sign confidentiality clauses when joining PUK.
- If appropriate staff will be asked to sign project specific confidentiality undertakings.
- PUK staff make an annual declaration of shareholdings in any of PUK's shareholders. PUK staff will declare any shareholdings in any company involved in projects on which they work.

External Approvals

- The Accounting Officer (or similar responsible public sector officer) will have to approve the DPA signed between PUK and the public sector body.
- The Accounting Officer (or similar responsible public sector officer) will have to approve the public sector's equity investment in a project on the basis that it is a good use of public funds and represents VFM. This provides assurance to the public sector that any investment made by PUK is not to the detriment of the public sector.
- The National Audit Office (or the relevant Supreme Audit Institution of Scotland, Wales or Northern Ireland) can choose to conduct a review. This could be looking at PUK's role in a particular PFI/PPP project where the use of public money is involved or through an examination of the public sector shareholding in PUK.
- The public sector body has the right to object to PUK taking an equity stake in a project and can stop PUK from doing so.
- The public sector has the right to approve the terms and conditions under which PUK takes an equity stake in a project or joint venture.
- The public sector can expect to receive similar terms and conditions to PUK for any investment that it takes, or where the terms and conditions are different understand the reasons why.
- PUK will, except where there are good reasons to the contrary, usually have a minority interest in the PPP/joint venture and will not be able to unduly influence the operation of the project to PUK's sole benefit.

An open and transparent investigation and reporting protocol has been adopted to examine issues regarding conduct and propriety.

- The Chief Executive Officer (CEO) of PUK to be the first point of contact should an organisation or individual wish to raise an issue regarding PUK's conduct. The first response will be from the CEO of PUK. If this response is not considered adequate the matter will be passed to the Chairman of PUK.
- The Chairman and Board of PUK will address the matter and respond to the party that has raised the issue. If the response again fails to satisfy the matter will be passed to the Chairman of the Advisory Council.
- The Chairman of the Advisory Council will instigate an investigation. This may include the appointment of an independent party to conduct the investigation who shall have unrestricted access to the people and papers of PUK.
- The Chairman of the Advisory Council shall report to the Advisory Council. The Advisory Council will determine the validity of the matter and respond to the party raising the issue.
- The Advisory Council may choose to notify the PUK Board of conclusions and recommendations. This may include a requirement to inform PUK's shareholders of the Council's determination. If appropriate the PUK Board shall report back to the Advisory Council regarding what action has been taken to implement the recommendations made.

This code is stated as amended in May 2005.