

Pension Fund Investment & the Council's Public Health Responsibilities

ITEM 9

Contact Officers

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Papers with this report

nil

SUMMARY

From 1 April 2013 responsibility for Public Health will transfer from the NHS to local authorities. As a result of this change, leading public health bodies are encouraging local authorities to review their investments, particularly in tobacco, claiming there is a conflict of interest. Pensions Committee, by way of this report, is being asked to consider investment allocations to sectors where there could be a potential conflict with the Council's new Public Health duties. This report contains detailed legal advice from the Borough Solicitor to enable Committee to reconsider their approach to these investments.

RECOMMENDATIONS

The Committee is asked to consider the advice of the Borough Solicitor in relation to any potential conflict of interest between the fiduciary responsibilities of Pensions Committee and the Council's new public health responsibilities and to agree whether they wish to restrict investments in any sector as a result.

INFORMATION

Background

From 1 April 2013, responsibility for Public Health transfers from the NHS to local authorities. Within Hillingdon, responsibility, funding and staff will transfer over to the Council. Leading health bodies have been campaigning for some time against government investing in the tobacco industry and, with the transfer of responsibility for public health, are now increasing the pressure on local authority pension funds. Part of their argument relies on central government being party to the World Health Organisation's Framework Convention on Tobacco control. The legal advice detailed below explains the Council's responsibility with regards to this Convention.

Pensions Committee have previously taken the view that it is their fiduciary duty to obtain the best financial return from the Fund's investments regardless of ethics. However, as a result of the Council taken on public health responsibilities this report is being brought to Committee to ask them to give consideration to this stance in light of the Council's new responsibilities.

Legal Advice

PART I - MEMBERS, PRESS & PUBLIC

Public health responsibilities are being transferred to local government with effect from 1st April 2013. The governing legislation is the Health and Social Care Act 2012 and a number of Regulations and Government Guidance are also being issued under this Act. Section 12 of the Act imposes a duty on local authorities to take appropriate steps to improve the health of people in their areas and there are a number of public health commissioning responsibilities which authorities will assume including, inter alia, alcohol and drug misuse services and smoking cessation services.

As Members of the Committee may be aware, local authorities' pension funds have been criticised in the past for investing in the tobacco industry but they have defended making such investments on the basis that they have a fiduciary duty to maximise returns on their funds. Although local authority pension funds are governed by different laws to other types of pensions, members of their pensions committees have similar duties to pension fund trustees to invest in the best interests of members and beneficiaries although the interests of Council Tax payers must also be taken into account.

Given the Council's duty to its Council Tax payers, it is a relevant consideration for Members of the Committee to take into account the cost to the Tax payers of measures in dealing with the prevention of smoking and with the public health impacts when evaluating their tobacco investments. This consideration becomes much more significant in light of the public health responsibilities which the Council will acquire. The perception will be that if the pension fund continues to invest in tobacco, the very organisation which is supposed to be taking the lead in terms of protecting the health of the people in Hillingdon, and is effectively the guardian of public health, is using public money to invest in tobacco. It is the view of the Borough Solicitor that although this would not be unlawful as such, it would nevertheless have the effect of creating a conflict of interest which could undermine the public's trust in the health services which they receive.

Two further relevant considerations for Members to take into account in making their decision are firstly that the pension fund does not have a statutory duty to invest in the tobacco industry and secondly that, as is stated in the body of the report, if Members decide that it would be inappropriate for the fund to continue to invest in tobacco, this would not adversely affect the returns on the fund

Current Investments in Tobacco

As at the end of January the London Borough of Hillingdon Pension Fund held £3.48m of investments in tobacco, which equates to just over 0.5% of the total Fund assets. Of this £0.38m was held in the Fund's transition account and so could be easily reinvested elsewhere. The remaining £3.1m is all invested through SSgA Funds, so only one of the Fund's managers has any holdings in tobacco investments. Should Committee agree that it would now be appropriate to not invest in tobacco, then that would be a relatively easy decision to implement and would not adversely affect the returns on the Fund.

FINANCIAL IMPLICATIONS

The financial implications are detailed within the report.

LEGAL IMPLICATIONS

The legal implications are detailed within the report.