

**Pension Fund Committee**

**Date: 26 February 2015**

**Agenda item 9**

<b>Committee:</b>	Pension Fund Committee
<b>Meeting Date:</b>	26 February 2015
<b>Lead Councillor/s:</b>	Cllr Peter Bellfield
<b>Local Councillor/s:</b>	None
<b>Director:</b>	Geoff Dobson, Director of Resource Management 01473 264347
<b>Assistant Director or Head of Service:</b>	Geoff Dobson, Director of Resource Management 01473 264347
<b>Author:</b>	Paul Finbow, Corporate Finance Specialist Tel. 01473 265288

**TOBACCO INVESTMENTS**

**BRIEF SUMMARY OF REPORT**

- 1 This report sets out the Fund's current holdings of tobacco stocks, and sets out the legal advice that the Suffolk Pension Fund has received from Mr Nigel Giffin QC regarding the Committee's consideration of disinvesting from Tobacco.

**FOR DECISION BY THE COMMITTEE**

The Committee is recommended to agree:

That taking into account the legal opinion that has been received, no change to the Fund's investment strategy to exclude Tobacco investments can be made, in order to ensure that the Committee's fiduciary duty is not compromised.

## **SOURCES OF FURTHER INFORMATION**

Agenda Item 11 – Report on tobacco investments (29 September 2014)

Agenda Item 7 – Report on tobacco investments (27 November 2014)

## **MAIN BODY OF REPORT**

### **Background**

- 2 At the County Council meeting on 17 July 2014, the following motion was debated and agreed:-

*“The Council hereby resolves to be a signatory to the Local Government Declaration on Tobacco Control, as endorsed by the Public Health Minister Jane Ellison MP and asks the Pension Fund Committee, having regard to its fiduciary duty and with the necessary agreement of the other employers of the Pension Fund, to replace investments in tobacco with other holdings, which are considered comparable in terms of the balance of risk and return”.*

- 3 The Pension Fund has a fiduciary duty to invest assets in the best interests of members and beneficiaries and exercised in a manner to ensure the profitability of the portfolio as a whole.
- 4 The Pension Fund Committee in November 2014 received a further report on the Fund’s Tobacco investments which set out the issues around disinvesting, what alternative investments managers might hold, the likely costs of the change, and the potential effect on investment returns.
- 5 The Pension Fund Committee asked that legal advice should be obtained to ensure that should it decide to disinvest, this would be a legal decision, and if it is, what consultation is required before any decision could be made.

### **Current Investment in Tobacco Companies**

- 6 The Fund’s active Equity Managers all have investments in Tobacco companies. The current holdings are set out in the table below and show total holdings of £33.5 million, which is about 1.6% of the Fund.

Investment Manager	Tobacco Company	Oct-14			Jan-15		
		Holding Shares	Unit Price	Holding £'m	Holding Shares	Unit Price	Holding £'m
Alliance Bernstein	British American Tobacco	229,000	35.47	8.1	Nil	-	0.0
	Imperial Tobacco Group	203,280	27.11	5.5	Nil	-	0.0
BlackRock	British American Tobacco	319,550	35.47	11.3	319,550	37.87	12.1
	Imperial Tobacco Group	Nil	-	-	155,048	31.60	4.9
Newton	British American Tobacco	121,900	35.47	4.3	125,031	37.34	4.7
	Japan Tobacco	219,200	21.53	4.8	253,200	18.17	4.6
	Altria Group	194,015	31.16	6.0	198,998	36.23	7.2
	<b>Total Investment</b>			<b>40.0</b>			<b>33.5</b>

- 7 The total direct holding in tobacco stocks has reduced due to the termination of Alliance Bernstein's equity mandate during January 2015.
- 8 BlackRock and Newton have both increased their holdings in tobacco companies during the last three months. BlackRock has added Imperial Tobacco Group to their portfolio, and Newton has increased their holdings in British American Tobacco, Japan Tobacco and Altria Group. This is due to their continued belief that the stocks will outperform.
- 9 As at 31 January 2015 the Pension Fund also had indirect investments in Tobacco stocks, through the following Pooled funds: These have increased due to the transfer of Alliance Bernstein assets into Legal & General passive UK equity Fund.

Investment Manager	Holding - £'m
Legal & General	8.0
Pyrford	2.3
Bluecrest	0.2
Winton	0.1
<b>Total Investment</b>	<b>10.6</b>

## Legal Advice

- 10 The Pension Fund Committee at its meeting in November 2014 requested that legal advice should be obtained to assist the Committee in its decision whether to disinvest from tobacco investments.
- 11 The September Committee paper on tobacco (paragraph 22) included a reference to legal advice obtained for the Local Government Association from

Mr Nigel Giffin, QC. This advice was specifically about fiduciary duty and the wider functions of an administering authority.

- 12 Suffolk Legal Services contacted the chambers of Mr Nigel Giffin QC, to obtain an opinion for the Suffolk Pension Fund. A copy of the brief is included in Appendix A.
- 13 The brief specifically asked for advice on:-
  - whether, given the information which the Fund Committee has received so far, the Fund Committee may lawfully determine in line with its fiduciary duties that it is appropriate to disinvest from tobacco holdings;
  - whether there is more information and if so, the nature of that information, which it would be advisable to obtain prior to making any decision on this issue;
  - if the Fund is minded to make a decision to disinvest, what consultation is required with employers and the structure this should take to ensure that it is undertaken in an appropriate manner;
  - whether there is any requirement to consult with scheme members in relation to any proposed decision;
  - any other factors that you consider material to the Fund Committee's considerations.
- 14 Copies of both the September and November Committee reports on tobacco were provided as evidence to the QC, along with the material supplied by the Fund's investment managers.
- 15 The QC's opinion was received on 23 January 2015 and is set out in full in Appendix B.
- 16 In Nigel Giffin QC's opinion, the tobacco sector is material to the returns of the Pension fund and that based on the evidence presented a disinvestment decision would alter the risk / return profile of the fund.
- 17 His conclusion is that the Council can lawfully take a decision about the issue of tobacco disinvestment on the basis of information already obtained. As that information stands, it would in his view be unlawful for the Pension Fund Committee to adopt a policy of disinvestment.
- 18 The County Council's Monitoring Officer, who has a duty to report if the Council is proposing to contravene the law, has confirmed that on the basis of the Counsel's opinion the Committee should not adopt a policy of disinvestment from tobacco investments.