

**REPORT TO: SUPERANNUATION INVESTMENT SUB-COMMITTEE  
OF THE FINANCE COMMITTEE - 16 NOVEMBER 2005**

**REPORT ON: INVESTMENT IN TOBACCO**

**REPORT BY: DEPUTE CHIEF EXECUTIVE (FINANCE)**

**REPORT NO: 672-2005**

## **1 PURPOSE OF REPORT**

This report reviews the opinion of Senior Counsel regarding whether the Sub-Committee has the power to withdraw its investments in Tobacco Companies. This was requested on 18 May (AN218-2005).

## **2 RECOMMENDATIONS**

The Sub-Committee is asked to

- a note the Counsel opinion.
- b continue to comply with the over-riding objective of preserving the Funds 'in financial best interests' of the members.
- c agree that the Depute Chief Executive (Finance) writes to the appropriate Scottish Executive Minister asking for new or clearer legislation enabling administering authorities to take social, environmental and ethical issues into account.

## **3 FINANCIAL IMPLICATIONS**

None

## **4 LOCAL AGENDA 21 IMPLICATIONS**

The Fund will continue to require its investment managers to engage with companies on matters of social responsibility including Sustainability and the Environment.

## **5 EQUAL OPPORTUNITIES IMPLICATIONS**

The Fund will continue to require investment managers to engage with companies regarding their performance in relation to Employee Care and Human Rights.

## **6 BACKGROUND**

Report 75-2005 to the Sub-Committee on 23 February 2005 reviewed the Funds current exposure to tobacco products, with a view to the likely impact of withdrawing from these investments.

The Funds investment consultants, Hymans Robertson, produced an opinion that investment decisions should be made on financial interest only.

It was agreed that the Sub-Committee should seek Counsel opinion on this matter to ensure the correct legal decision was made.

**7 COUNSEL OPINION**

The Counsel opinion was received from S Neil Brailsford QC. It confirms Hymans Robertson's view that under the current regulations only financial interest should be taken into account in investment decisions. Reference is made to Regulation 2 - Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998. Counsel is clear that this is consistent only with a duty to preserve the Funds in the financial best interests of those entitled to the Funds.

The view is that investment needs to be aimed at achieving the best return. Therefore, the only reason for disinvesting from tobacco companies would be if it was in the Funds' best financial interests. This would represent a normal investment decision by the Fund Managers rather than a directive from the Sub-Committee.

**8 CONCLUSION**

It is accepted that the current regulations have an over-riding objective of financial interest. If the Sub-Committee wished to take social, environmental and ethical issues (which did not impact on financial values) into account the regulations would need to be amended. Accordingly, the Depute Chief Executive (Finance) will write to the Scottish Executive seeking such an amendment.

**9 BACKGROUND PAPERS**

None

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**9 NOVEMBER 2005**