Do pension fund trustees hold money or the future in trust?

Socially Responsible Investment, has for the past decade, been gaining a steady foothold both within domestic corporations and global corporations. Greater transparency in companies combined with public awareness on social and environmental issues has made social and ethical investment a hot topic. Naturally then people start drawing parallels between company's corporate responsibility policies and the investment approach of pension schemes.

Pension scheme trustees have, in addition to their statutory duties, a fiduciary duty to act in the best interests of the members of the scheme. Generally the terms and conditions under which they will invest the pension funds are established in a written document. They invest these funds in order to accumulate money to pay pension benefits when they become due. While the term 'socially responsible' has no formal definition, the Charity Commission for England and Wales defined the term 'ethical investment'. Such an investment policy "may involve looking for companies which demonstrate best practice in the areas like environmental protection, employment and human rights and companies whose businesses contribute directly to a cleaner environment or a healthier society".

Decisions taken by companies can have a substantial effect of the welfare of communities and countries. It seems valid that the trustees of pension schemes must examine the idea of socially responsible investment. Due to the current economic downturn, it seems plausible that the concept of socially responsible investment could also encompass a review and examination of corporate governance and ethical standards of business. Amidst the numerous banking and financial scandals of late, a company with a good set of governance standards and corporate responsible policies will generally be viewed as a better run company and should, in theory, perform better in the long run.

The potential difficulty in respect of ethical investments is the potential that it will result in negative financial repercussions for the fund. It is accepted that the primary purpose of business is to maximise profits for shareholders. The debate over the shifting responsibilities of business is therefore also a debate over the responsibility of fund trustees to evaluate the social, environmental and economic dimensions, implications and impacts of their investment strategies and decisions.

While there has been no Irish case law on this issue, there is precedence in the UK courts. In *Cowan v Scargill [1985] Ch 270* the UK courts confirmed the extent to which trustees may allow non-financial considerations affect their investment decisions. Trustees, in considering what investments to make, must put their personal interests to one side and not let any social or political views that they hold affect the investment decisions for the pension fund they manage.

In this case it was accepted that an ethical investment policy was suitable provided the beneficiaries would receive financial returns that were equally as advantageous as another investment strategy.

The Law Reform Commission has commented that there are practical concerns to be considered. It appears there is a "lack of widely accepted and appropriate benchmarks for socially responsible investment" and that this remains the biggest stumbling block when attempting to analyse the performance of these funds. The Commission examined the appropriateness of legislative reform being introduced to regulate such social investment. They concluded that legislative intervention was inappropriate and that such powers, if any, should be governed by the terms of the trust settlement.

Interestingly some of the largest UK pension funds are participating in consultative forums examining the costs, benefits and risks associated with socially responsible investment. There is the argument that any commitment to long-term rates of return must be mindful of the sustainability of the chosen investment strategies. The BT pension fund in the UK has a strong and outspoken stance on corporate governance issues, which incorporates an ethical element. Their fund trustees, Hermes, operate a set of guiding principles, which govern their investment activity. They believe that companies they invest in should effectively manage their relationships with their employees, suppliers, customers and those who have a legitimate interest with the company's activities. They should behave ethically and have regard to the environment and society as a whole. By following these guiding principles, they hope to avoid any scandal such as the one that emerged when the UK Environment

Agency's pension fund was caught investing money in oil firms that had been highlighted as major contributors to climate change.

As environmental issues become big business and with companies taking on a greater social and environmental role it is arguable that pension funds should do the same.