THE THOUGHTFUL INVESTOR

Charity Investing and the impact of climate change science - the growing legal case to divest from fossil fuels

Major charities operate in a more complex legal area than individual private investors because a charity trustee is often responsible for investing money for the benefit of another party; that is for the beneficiaries of the Charity. This duty is often referred to as a trustee's "fiduciary duty" and is an important concept in investment management for charities.

UK Charities earn around £3.6bn from the active management of investment portfolios according to ACEVO research[i] which suggests that charities as a whole have significant sums invested into global equity/stock markets.

Of course this means that charity Trustees have to consider all aspects of the investment process very carefully and this has led many charities to take the relatively simple approach of seeking to maximise the financial return on investments ahead of other considerations.

However there are clear signs that the legal position is changing as more charities look to harmonise their investment policies with their charitable objectives.

In a potentially very significant legal opinion published on 25th November 2015, Christopher McCall QC (a specialist in the fiduciary duties of Charity trustees) raises the prospect that a significant number of charities may be legally bound to reassess their approach to highly polluting, carbon intensive industries. This is as a result of the overwhelming support within the scientific community for arguments to suggest that climate change, brought about by carbon and other gas emissions, is potentially the greatest single threat to natural habitats and also to human prosperity.

This builds on the 1991 Bishop of Oxford Case, which was a challenge to the Church Commissioners brought by the Bishop of Oxford over investments into companies supporting apartheid in South-Africa. This was an important legal ruling which connected where a charity chooses to put its money with its mission.

According to Christopher McCall QC, charities must divest from industries which contribute to climate change where that "might reasonably be expected to be inconsistent with the objects of the charity…..regardless of the financial consequences". It may also be the case that charities with objectives extending beyond environmental protection are impacted; McCall describes carbon intensive investments as potentially "irreconcilable" with charities active in poverty alleviation and health.

Luke Fletcher (Partner, Bates Well and Braithwaite) states: “In the light of the opinion, we will be asking the Charity Commission to revise its guidance to say that charities must divest from fossil fuels where this conflict with mission exists”.

In McCall’s view there are other risks to consider beyond the point about mission conflict and there is also a powerful financial case for divestment. This is a reference to the possibility that fossil fuel assets will become “stranded”. Richard Macrory, Professor of Environmental Law at UCL, comments: “This is a highly significant opinion. It is likely to require many trustees and charities to re-evaluate their policies on investing in industries engaged in fossil fuels and other carbon intensive industries”.

John Ditchfield

02/12/2015

---

[i] http://www.thirdsector.co.uk/charities-transparent-investments-acevo-report-concludes/finance/article/1326052