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Ethical investment and the challenges for trustees

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Impact investing, ethical investing and climate change concerns are increasingly part of the conversation when considering investments and, as investment trends, they are now having an impact on trustee decision-making.

Requests by beneficiaries that factors such as climate change be taken into consideration, or that certain industries be excluded because of their environmental impact, when investing a trust's assets can bring challenges for trustees.

While it is relatively straight forward to include investment parameters when establishing a trust, the issues are more difficult when the trust is already established and trustees have full investment powers.

Trustees have a duty to act prudently, with appropriate skill and care and in the interests of beneficiaries when considering investments. They need to ensure that they are not influenced by their own moral considerations; but how should they deal with beneficiaries' moral considerations?

Trustees are sometimes able to take into account beneficiaries' moral wellbeing when considering whether a distribution is for the 'benefit' of that beneficiary, so could a similar analysis be applied to investments?

Could it be argued that a loss of investment return can be offset by an increase in 'social wealth'? This would seem difficult, but could this be an area for challenge in the future? Consideration also needs to be given to how beneficiaries' wishes might change. Concern over the impact of investments on climate change, for example, may alter with developments in technology. The considerations are also highly subjective factors and it is unlikely that all beneficiaries will have the same view about which investments are acceptable from a moral or social perspective.

Trustees can make ‘ethical’ investments, but the usual considerations would still apply. Such investments, for example, may be considered good long-term investments, with some more traditional industries viewed as having a reputational risk or diminishing value as environmental laws change. Depending on the type of investment, it could be viewed as more speculative, and a limited proportion of the trust fund invested. However, beneficiaries may not be happy with the larger proportion still being invested in a way they consider morally unacceptable.

There are no easy solutions, and trustees’ jobs will be complicated further if individual beneficiaries disagree about investment priorities. If a trustee is faced with only a few beneficiaries wishing to make certain types of investment, should they then be looking to split the trust? Again, this is difficult for trustees as it may well not be considered as being in the beneficiaries’ interests to do so.

This area is likely to become increasingly difficult for trustees as the profile of such issues increases. The law in this area may develop. However, at present, trustees do need to consider investment performance and not just ‘moral’ considerations.

There may be alternative mechanisms to consider, such as shareholder pressure to change the environmental profile of certain industries. Trustees may need to keep adapting and be prepared to listen to their beneficiaries in order for both parties to understand the issues facing the other.

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