

## **BRIEFING NOTE**

### **MOTION:**

The Council notes that:

1. it has previously discussed the need to take an ethical and sustainable approach to investment of Lancaster City Council funds to support our priorities and to ask the same of those who manage our officers' pensions through the Lancashire Pensions Fund and Local Pensions Partnership;
2. increasingly pension funds are large investors who are being asked to take an ethical and sustainable approach to investment including considerations of workers' condition in properties owned by funds, and where these funds have a geographic link, to support community wealth building;
3. many of the Sustainable Development Goals speak to the importance of investment as a driver for securing fundamental human rights, building resilience within communities and meeting the challenge of the climate emergency;
4. it is preferable to take a comprehensive approach to an ethical and sustainable investment policy rather than addressing it on a topic-by-topic basis;
5. taking the time to develop a comprehensive approach will strengthen the policy, give the council one reference point for full council's position on ethical and sustainable investment, and allow for one set of new investment instructions to be made, reducing development and implementation costs.
6. bringing together a comprehensive ethical and sustainable investment policy is a significant piece of work that should involve consultation with a range of stakeholders as well as taking expert advice;
7. undertaking this process via an overview and scrutiny task group will allow councillors to explore what are often complex ethical issues in a more discursive environment and with the benefits of expert advice and a mechanism to listen to community perspectives;
8. almost by definition ethical issues are rarely clear cut and there are often reasonable competing perspectives.
9. it is important we conduct a careful and respectful debate and reaffirm our commitment to this district being a place that supports everyone to know, claim and enjoy their human rights, and to be strong allies to everyone who faces discrimination and structural oppression in all its forms.
10. consistently with the obligation in section 149 of the Equality Act 2010, the development of the policy must have due regard to the need to foster good relations between persons of different nationalities, ethnicities and religions.

The Council hereby resolves to:

- (a) Recommend that Overview and Scrutiny Committee establish a formal task group to consult on and develop a comprehensive ethical and sustainable investment policy for consideration by Cabinet;

- (b) To amend Council's previous resolution of 23 June 2021 (in respect of the Boycott, Divestment and Sanctions movement motion) to have the effect of not making or requesting any investment changes until a comprehensive ethical and sustainability policy is agreed by Council and that any future requests be made in accordance with that policy.

**PROPOSERS:**

Cllrs Erica Lewis, Caroline Jackson, Cary Matthews, Richard Austen-Baker, Merv Evans, Anne Whitehead, Sandra Thornberry, Oliver Robinson, Jason Wood, Jean Parr, Mandy King, Tim Hamilton-Cox, Dave Brookes, Adrian De La Mare, Tricia Heath.

**OFFICER BRIEFING NOTE**

1. As set out in the Motion, it is proposed that the Council's approach to ethical and sustainable investment should be taken comprehensively through an establish policy rather than on a topic-by-topic basis. The benefits of this approach are set out in the Motion.
2. The Council and Councillors will be concerned to ensure that its actions, policies and expressed views, demonstrate, and affirm the Council's commitment to equality, diversity and human rights. Practically, this includes discharging functions in accordance with s149 Equality Act 2010 (the Act) and in doing so having regard to the need to:
  - a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
3. The creation of a task group to consult and development a comprehensive ethical and sustainable policy, will create the opportunity for officers and Councillors to carefully consider the impact of the policy on persons with protected characteristics and upon the residents of the district as whole.
4. The task group's mandate to 'consult' on the policy, should enable officers and councillors to hear from affected individuals and groups within the community. This will better inform the creation of the policy and will assist in the Council's discharge of its s149 duty.
5. Failure to comply with the Equality Act 2010, and specifically the Council's duty under s149 of the Act, may undermine public confidence and may result in legal challenge (by judicial review). A legal challenge may result in a decision being quashed and the Authority being ordered to pay considerable costs.
6. The Council's section 149 duty applies to resolutions of Full Council and to decisions of the kind made on 23 June 2021 (see *Jewish Rights Watch v Leicester City Council* [2018] EWCA Civ 1551. At is a mandatory duty and one that the Council must perform in the exercise of its duties.

7. The amendment to the resolution made on 23 June 2021, will ensure that the Council's approach to investments in the future is informed by a comprehensive policy. Moreover, it will greatly assist the Council with regards to its s149 duty under the 2010 Act.

#### **IMPACT ASSESSMENT**

**(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing):**

The creation of an ethical and sustainable investment policy can raise significant issues around human rights, equality, and diversity. These issues may impact on a wide range of persons within our communities.

The creation of a task group to consult on and develop the policy will assist the Council in ensuring that it takes an informed approach to the policy bearing in mind its duties under the Equality Act legislation. The modification of the previous resolution of 23 June 2021 will ensure that any future approach to the Lancashire Pensions Fund and Local Pensions Partnership will be taken in accordance with the comprehensive policy on ethical investment.

#### **LEGAL IMPLICATIONS**

The legal obligations concerning the Equality Act 2010 and the consequences of failing to comply with the Act are set out in the briefing note above.

#### **FINANCIAL IMPLICATIONS**

The development of an ethical and sustainable investment policy will inevitably require additional support from both officers as well as the need to engage specific external expertise. Until the task group and project scope have been established it is not possible provide a reliable estimate of cost.

#### **OTHER RESOURCE IMPLICATIONS, such as Human Resources, Information Services, Property, Open Spaces**

None identified.

#### **SECTION 151 OFFICER'S COMMENTS**

The s151 officer has been consulted and has would remind Members that there needs to be a degree of caution as failure to comply with the Equality Act 2010 may result on the Council being subject to Judicial Review proceedings. it would be potentially exposed to significant costs.

#### **MONITORING OFFICER'S COMMENTS**

Motions must be about matters for which the Council has a responsibility or which affect the area or residents, workers or visitors to the District and must not:

- (a) be potentially defamatory, vexatious, frivolous or offensive;
- (b) refer to applications for, or objections to, planning permission or any licence, notice or

order issued, served or made by the Council; or

(c) relate to individual staffing matters or the personal information of Councillors or Officers or be ruled out of order by the Chief Executive for other reasons.

Furthermore, members should note that Section 5 of the Local Government and Housing Act 1989 requires the Monitoring Officer to report to the council where it appears to them the authority has done, or is about to do, anything which would contravene the law or which would constitute maladministration.

The legal obligations are set out above. As Monitoring Officer I am satisfied that the above motion addresses the need for the Council to consider its public sector equality duty.