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Responsible Investment and Its Place in Development: Challenges for the Irish National Pensions Reserve Fund[1]

Mark Cumming

There is increasing international attention by the UN system, civil society and business to the impacts of business on human rights and the environment with particular attention to developing countries. This paper examines this with particular reference to the place of the Irish state as an investor through its pension fund. It examines the attempts of the fund to satisfy public concerns over the ethical management of the fund. The paper finds that the fund is legislatively prevented from developing a meaningful and responsible investment policy. The paper contrasts this with the internationally recognised best practice undertaken by the Norwegian State Pension Fund. It analyses the particular mechanisms the Norwegian state has put in place to ensure the twin policy objectives of securing a satisfactory return for future generations and ensuring respect for human rights and the environment. The paper places a particular focus on the appropriateness and applicability of the process of excluding investments that entail complicity in rights abuses. It considers also how these could be successfully transposed onto the Irish fund.

Introduction

Business plays a pivotal role in the fight against poverty and has a crucial role to play in the development process through much needed investment, job creation and training. However not all such investments are uniformly positive. In countries with weaker governance systems, business actors, in particular transnational corporations (TNCs) may play an unconstructive role, where they contribute to environmental degradation and human rights abuses. A key factor underpinning such behaviour is the funding for TNC investments secured through the global financial marketplace. It is in this context that the responsible management and oversight of investments are essential.

Sovereign wealth funds, such as the National Pensions Reserve Fund (NPRF), are an increasingly significant player in the global financial marketplace. The NPRF was established in 2001 with the aim of meeting the cumulative costs of Ireland's social welfare and public service pensions from 2025 onwards. In announcing the establishment of an Inter-Departmental Committee tasked with advising the Minister for Finance on the appropriateness and possible nature of an ethical investment policy for the NPRF earlier this year, the Minister noted that "there has been significant debate on the issue [of responsible investment] within institutional and sovereign investors as to how they should be expected to invest the funds they manage on behalf of the ultimate owners of those funds".[2] There is a critical need to address how funds, such as the NPRF, can develop a socially responsible investment policy (SRI), which can be defined as: "a set of approaches which include social or ethical goals or constraints as well as more conventional financial criteria in decisions over whether to acquire, hold or dispose of a particular investment".[3]

In addressing what might be the possible and appropriate nature of a responsible investment policy for the NPRF, one question is whether within its current operational mandate the NPRF is able to systematically address ethical concerns that emerge from its investment portfolio. This paper aims to address this and related questions through assessing the current mandate and processes related to tackling ethical issues in the NPRF and how these have dealt with ethical issues to date.[4] Another question is what other countries, in particular Norway, have done to ensure ethical oversight of their pension policy. This paper begins to explore this through looking at the Norwegian Government Pension Fund (GPFG)[5] and pulling out some initial arguments on whether this fund is a model on which the NPRF can develop its strategy for responsible investment. In doing so the paper hopes to demonstrate how it is both appropriate and feasible to develop a suitable policy whereby the beneficial owners, i.e. Irish citizens, can be assured of profitable returns on their investments, and that these are not gained at the expense of respect for human rights or the environment.

The case for responsible investment

The global context

In the last few years we have witnessed heightened international engagement on the role of business in society[6] and related rapid growth in SRI funds.[7] It is estimated that in Europe alone over €2.6 trillion are channelled through such funds.[8] The issue of ethical investment is firmly rooted in the current debate on business and human rights in the UN. In 2005 the UN Secretary General appointed John Ruggie as UN Special Representative of the Secretary General (SRSG) on Business and Human Rights. Ireland, in its position as President of the EU in 2004, played an important and supportive role in the creation of this mandate.[9]

To frame and regulate the relationship between businesses, the state and communities, the SRSG proposes three broad principles. Firstly, there is the need to ensure that states fulfil their duty to protect citizens against human rights abuses by companies. Secondly, there is the need for corporations to respect human rights by including human rights perspectives in their policies, in particular developing and conducting human rights due diligence. Finally, the SRSG proposed more effective access to remedies through various judicial and non-judicial grievance mechanisms to provide redress to those negatively impacted by TNCs.

The state's duty to protect

The first element of the SRSG framework – the state's duty to protect citizens – is the most salient for the challenges faced by state managed funds in creating a responsible investment policy. The state's duty to protect is an obligation of conduct, not result. States are not automatically responsible for abuse by a corporation that is not acting under their control. But they do have a responsibility to implement systems of due diligence to prevent, investigate, punish and redress interference with rights by all types of corporations.[10] A key aspect of an effective due diligence process is the avoidance of complicity.[11] In the business and human rights context complicity refers to the indirect involvement of companies in human rights abuses. Supporting this, the Graver Committee, established by the Government of Norway to develop ethical guidelines for the Norwegian Pension Fund, found that "owning shares in a company that can be expected to commit grossly unethical actions may be regarded as complicity in these actions".[12] The SRSG identifies that the "fostering of a corporate culture respectful of human rights at home and abroad should be viewed as an urgent policy priority for governments – necessitated by the escalating exposure of people and communities to corporate-related abuses".[13]

Referencing state sovereign wealth funds, the SRSG notes that any human rights harms caused through, acting on behalf of, or under orders from the state reflects directly on that state's reputation. There is, he asserts, an incentive in the national interest to exercise greater oversight.[14] Additionally, governments should not assume they are helping business by failing to provide adequate guidance for, or regulation of, the human rights impact of corporate activities. On the contrary, the less governments do the more they increase reputational and other potential risks to business such as litigation and loss of investors. The SRSG identifies "the growing exposure of companies to social risks they clearly cannot manage adequately on their own".[15]

Pressure for ethical criteria

A key issue at stake is the growing pressure for ethical criteria to be factored into investments, whilst at the same time defining an acceptable level of risk to achieve long term returns. This exacting of a social price has drawn a number of different responses.[16] There is increasing demand that ethical criteria be factored into investment decisions. The growth of SRI funds is partly attributed to a consumer driven phenomenon.[17] This is based on a growing consumer preference for "ethical" goods, and increased activism by civil society groups such as private shareholder engagement to influence companies' ethical and environmental performance.[18] There is also however within the business mainstream increasing recognition of the business case for responsible investment. The Global Corporate Citizen Initiative of the World Economic Forum identifies that increasingly the beneficial owners of the world's largest companies are now the huge majority of working people who have their pensions and other life savings invested in these companies. For these people, the short-term perspectives of companies outlined earlier and the neglect of environmental and social concerns is not in their long-term interests.[19] As a result, the responsibility of investment managers will "increasingly be to meet the intrinsic interests of pension plan participants and insurance policyholders in not only competitive near-term returns, but also the long-term vitality of their countries' economies, societies and environments".[20] This will require the deliberate incorporation of social and environmental aspects of corporate performance in investment analysis and decision making.

Historically socially responsible investment has been presented as being in conflict with the fiduciary responsibility of managers.[21] Funds have a mandate to achieve the maximum return on their investments, and it was considered that SRI may impede the achievement of maximum return. Furthermore, this return should only be acquired in the context of "acceptable" risk. Increasingly though, it is being argued that an accurate calculation of acceptable risk needs to factor in social, environmental and governance issues. Without factoring in these components, one is not getting the correct value of risk associated with that investment and therefore cannot deem if that risk is acceptable. A survey conducted by Mercer found 75% believed environmental, social and governance factors to be central in investment performance. [22] This is upheld by Pearce and Ganzi who found that social and environmental issues have become more closely associated with financial performance amongst asset managers.[23]

A central principle for pension funds is that current decisions should not undermine the returns for future beneficiaries. Supporters for responsible investment argue that unless ethical criteria are included in the decisions, the long term return of investments could be undermined. Mercer[24] believes that the calls for fiduciary responsibilities to include an examination of ethical issues are central to the performance of an investment. The coalition for environmentally responsible economies (CERES) provides a very concrete example from the threats posed by climate change. They argue that as global climate change adversely affects the value of assets, those company directors and investment managers who do not include its impacts as part of their fiduciary responsibilities will face growing financial and legal risks.[25] The Norwegian Government Pension

Fund is a concrete example of a pension fund that is incorporating ethical criteria into its risk calculation. It argues that if companies generate externalities from their activities, such as pollution, human rights violations, over the long-term, the companies can increase the risk associated with their returns.[26] This then could undermine the return for future beneficiaries.

Ireland: the National Pensions Reserve Fund

As a result of changing demographics and ageing of the population, social welfare and public service pensions will increase dramatically in Ireland over the next few decades. In order to help meet these financial commitments, in 2001 the Irish Government established a pension fund, the National Pensions Reserve Fund (NPRF), under the National Pensions Reserve Fund Act, 2000. This represented a move away from complete reliance on a "pay as you go"[27] pensions to a partially pre-funded public pension system. It was envisaged that this would facilitate the sustainability of the Irish pensions system into the future. No money is to be drawn from the fund before 2025.

The Fund was initially financed with the €6 billion proceeds from the sale of Eircom. Each year, by law, 1% of GDP (€1.6 billion in 2007) must be contributed to the fund. This funding along with the investment returns resulted in the fund being valued at €21 billion by the end of 2007. Following the global financial crisis, the fund was worth €18 billion by October 2008[28] and €15.5 billion by March 2009.[29]

The fund is managed and controlled by the National Pensions Reserve Fund Commission which functions through the National Treasury Management Agency (NTMA), appointed manager of the fund for an initial period of 10 years. The fund is operated on a strictly commercial basis to secure the best possible financial return subject to prudent risk management. This statutory investment policy required amending legislation in 2009 to facilitate the recapitalisation of the Irish banks.[30] The legislation provides for ministerial directed investments into credit institutions.[31] The only other non-commercial decision the fund has taken has been to divest from 7 manufacturers of cluster munitions and anti-personnel mines and to exclude 4 other known manufacturers from any possible future investment.

The NPRF has stated it was obliged to do this by virtue of the passing into law of the Cluster Munitions and Anti-Personnel Mines Act, 2008.

Ethics and the NRPF

In framing the legislation to guide the NPRF, there was debate concerning the question of ethics. The government decided that a purely commercial mandate was appropriate.[32] Later in 2006, the Minister of State for Development Cooperation and Human Rights stated that the NPRF Commission "has ambitious plans to provide greater scrutiny and oversight of companies in which it invests, from an environmental, ethical and human rights perspective".[33] His statement came in response to NGO (non-governmental organisation) advocacy and the resulting strong media interest in the role of TNCs and the conflict in Darfur. The NPRF had recently signed up to the newly developed UN Principles for Responsible Investment (UNPRI).[34] These promote a policy of engaging with business where shareholders see themselves as the long-term owners of companies and of raising concerns directly with company management. According to the NPRF, the Principles reflect the fiduciary duty of investors to their stakeholders as their first responsibility and deliberately do not call for screening or avoiding stocks.[35] Later the NPRF engaged Hermes Equity Ownership Services[36] to conduct the active ownership on the NPRF's behalf.

The UNPRI: A voluntary learning and sharing mechanism

The UNPRI is a code of conduct sponsored by the investment community in a process convened by the UN Secretary General. The Principles are voluntary and aspirational, with a focus on innovation, collaboration and learning by doing.[37] Through signing and upholding the Principles the NPRF would "integrate consideration of environmental, social and governance issues into investment decision-making and ownership practices and thereby improve long-term returns".[38] The UNPRI needs to be assessed and understood in the context of its role and function, as it is a voluntary mechanism and has inherent limitations. There is no enforcement of the commitments which signatories undertake. Its major value is in creating a learning and sharing network for considering environmental, social and governance issues. Equally as with many company and industry codes of conduct it does create greater awareness and sensitivity to new challenges facing institutional investors. It advocates active ownership whereby shareholders engage and monitor companies on their conduct.

In 2007 to commence fulfilment of its commitments to the UNPRI, the NPRF Commission engaged Hermes Equity Ownership Services to conduct on the NPRF's behalf the role of active ownership, i.e. proxy voting at company AGMs and engaging with companies on ethical issues. Hermes has based its voting and engagement programme on what it has named the Hermes Principles[39] which the NPRF believes represent the essential elements of good governance.[40] The Hermes Principles are focused on issues of good corporate governance and an approach to investment that encourages long-term shareholder value as opposed to a culture of short-term profit maximisation.

Hermes stated that the overriding concerns are that companies should be run in the long-term interest of shareholders and, amongst various related issues, behave ethically. The concept of "ethical" is not explicitly defined by Hermes. Rather, their interpretation is limited by its focus on corporate governance such as executive remuneration and the independence of directors. This is borne out by an examination of issues on which they reported taking a voting stance in 2007.[41] These related to board structure, capital structure, remuneration and auditors. Nowhere do the Hermes Principles and associated background descriptive documents reference human rights or the International Labour Organisation core labour standards. An examination of their voting record in the April 2008[42] report shows how on the four occasions where human right-related motions were proposed, Hermes voted against them.[43]

Critique and gaps in the NPRF's response to date

The acceptance in 2006 by the NPRF that integration of environmental, social and governance (ESG) issues would improve long-term return, the one-off initiative to exclude cluster munitions' manufacturers and the commitment to engage with active ownership activities are commendable. However there is a need for serious questions on the manner and approach to the active ownership/engagement underway through Hermes as highlighted above. There is also a need for greater transparency in the work undertaken. Equally important is a legislative basis or mandate that commits the managers of the fund not to contravene government policy by being complicit in gross abuses of rights or environmental damage. This would provide a more grounded basis for the fund to view its commitment to ESG issues and a more robust mandate to pursue its active ownership.

The decision to exclude cluster munitions arose from Ireland's high profile hosting of the global conference to finalise a convention on these weapons and the subsequent legislation passed. However, this logic is not universally applied to other industries, most notably the production of nuclear weapons. The Irish government has repeatedly stated that it is firmly opposed to the nuclear industry and has called for the speedy and total elimination of nuclear weapons. It is a signatory and active supporter of the nuclear non-proliferation treaty.[44] In 1996, the International Court of Justice issued an Advisory Opinion concerning the legality of the threat or use of nuclear weapons.[45] The Court examined current treaty law, customary rules and state practice with regard to nuclear weapons and concluded that their use would generally be contrary to the principles and rules of international humanitarian law. Following this, in 1999, the Irish government joined a group of states in tabling a UN resolution calling for a nuclear weapon-free world.[46] The resolution was passed. However, the recent NPRF annual report showed it had investments in a number of companies which the Norway State Pension Fund (GPFG) has actively chosen to divest from due to their involvement in producing nuclear weapons.[47]

Furthermore, these gaps in the structures of oversight result in policy incoherence, such as the example above. Policy coherence requires systematic and coordinated promotion of mutually reinforcing policy actions across government departments and agencies, which aim to achieve common agreed objectives. For the NPRF, policy coherence implies that its actions will not contravene or undermine the various international human rights obligations the state has undertaken through ratification of the international human rights treaties, international labour standards and environment protection commitments.

The critical block therefore to the NPRF on moving forward stems from its legislative mandate to only ensure optimal financial returns. Section 19 of the National Pensions Reserve Fund Act 2000, states the NPRF is to "secure the optimal total financial return provided the level of risk to the moneys held or invested is acceptable to the Commission".[48] Without legislative and policy reform, it will be hard to implement a comprehensive responsible investment policy because currently other considerations cannot be taken into account if they impact negatively on the returns even if only in the shorter term. Yet, as argued in the previous section, the critical question remains: will these returns be sustainable over the long-term without taking ethical issues into account, such as environmental, social and human rights concerns. This point is central to the debate because the NPRF is set up not to provide for this generation of retirees but rather future generations of pensioners.

What is missing is the NPRF's own responsible investment policy with clear underlying guidance provided by the ultimate beneficiaries of the fund and through their elected representatives in the Dáil. This guidance would need to provide agreed principles and transparent and objective processes for a roadmap on when and how the NPRF will address potentially conflicting ethical situations.

The Norwegian State Pension Fund's ethical guidelines

A number of countries have considered the issue of ethical investments of their pension funds and adopted various models to address this. The model adopted by Norway, in particular, has established them as a leader on socially responsible investment in the global economy.[49] What characterises the model is the inter-linkage of twin mechanisms of active ownership and exclusion both underpinned by a clear public expression of societal values and norms. The Norges Bank Investment Management (NBIM)[50] and the Council on Ethics[51] represents a form of state due diligence – in ensuring that it is dealing with its risk of being complicit in gross human rights abuses or damage to the environment. The GPFG is one of the largest pension funds in the world. As of March 2009, it was worth NoK 2076 billion (approximately €228.32 billion).[52] It is funded by oil and gas revenues from Norway's extensive oil fields.

The incentive to engage the Norwegian public with the ethics of the GPFG was the disclosure of investments in companies producing landmines. This was seen to be in breach of Norway's commitments to the Ottawa Convention on Anti-personnel Mines. The government responded and created an advisory committee on international law to advise on specific investments and whether these were in conflict with Norway's international commitments. This led to a divestment from one company for its subsidiary's production of such mines. This process resulted in a wider debate in society leading to the creation of the current ethical guidelines in 2004. In 2008 an extensive review was conducted that may result in some modifications to these.

There are two sets of ethical principles under-pinning the guidelines:[53]

1 The Fund should benefit future generations and thus secure long-term returns – to achieve this it is contingent on there being a globally based sustainable development process in the economic, environmental and social senses.

2 The Fund should not be complicit in serious unethical conduct – it should not make investments which constitute an unacceptable risk of contributing to unethical acts or omissions, such as violations of fundamental humanitarian principles, serious violations of human rights, gross corruption or severe environmental damage.

There are three inter-locking mechanisms to pursue this work, active ownership and engagement with companies on ESG issues, negatively screening out weapons that infringe humanitarian law and exclusion of companies where there is an unacceptable risk of contributing to:

- Serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other child exploitation;
- Serious violations of individuals' rights in situations of war or conflict;
- Severe environmental damage;
- Gross corruption;
- Other particularly serious violations of fundamental ethical norms.

How the ethical guidelines are put into practice

The NBIM is responsible for the management and investment of the fund, as part of this it has a pro-active programme of active engagement work. With a view to achieving greater results in its work, it has identified particular focus areas such as child labour[54] and climate change. By focusing on particular themes which it believes are particularly salient to the longer-term sustainability and success of the fund it believes it carries more credibility and weight into its discussions with company managements. It also allows it to target groupings of companies across industrial and geographic sectors. The companies it engages with are not typically the laggards in a particular sector. The NBIM can often engage with industry leaders and use these to build broader industry wide consensus.

On the other hand it is the responsibility of the Council on Ethics to oversee and evaluate whether investments made by the fund are consistent with the ethical guidelines of the GPFG. This has two elements, firstly to ensure there are no investments in companies involved in excluded weapons and secondly to assess companies for exclusion due to the reasons given above. Based on this evaluation which involves the companies, the Council makes recommendations to the Ministry of Finance, which then has the decision making power on screening out or excluding companies. In either case, the Council's recommendation is eventually made public. The NBIM, which manages the operations of the fund, is given due notice to sell the relevant holdings before publication of the recommendation takes place. Exclusion of a company is a defence mechanism to avoid a situation where the GPFG is contributing to ethically unacceptable practices. The Council takes a forward looking perspective and considers likely future practices; therefore it is part of Norway's risk management process to avoid future complicity. It is not a mechanism to punish past performance. The decision to divest from a company is therefore a decision to ensure that the GPFG avoids future risk of complicity and is not therefore a statement of unethical practice of the company. "The Council does not have to prove that a company is guilty of unethical practices."[55]

The Council has a secretariat of 7 staff whose backgrounds and qualifications include law, economics, human rights and environmental issues. It had an annual budget of just over €1 million in 2008.

Table 1 summarises the operation of the ethical guidelines of the fund. It pulls together the four inter-locking elements that will constitute the GPFG complete responsible investment policy following the finalisation of the 2008 evaluation. It demonstrates the operating principles, the strategies and actions along with what these achieve and presents the respective roles played by parliament/government, the NBIM and the Council on Ethics. In comparison it is worth highlighting that the NPRF is only engaging with the active ownership/engagement and one aspect of negative screening.

Table 1. The operation of the Norwegian Ethical Guidelines

Norwegian Fund Ethical Guidelines	Positive screening	Active engagement/ ownership	Negative screening	Exclusion/divestment
Principle	Limited to 1% of fund - choice of investments for their positive characteristics - renewable, sustainable energy etc	Long-term sustainability of the global economy, society and ecology are crucial for long-term investment performance. Based on respect for internationally accepted norms - OECD guidelines for MNCs and UN Global Compact	Based on Norwegian societal consensus of what is unethical and international conventions which it has ratified - e.g. companies producing nuclear weapons, cluster and anti-personnel mines, exporting weapons to Burma and production of tobacco.	Based on Norwegian societal consensus of what is unethical as set out in the regulation of the management of the fund.
Strategy	Positively screening in of investments	Engage in active ownership - influencing business on Environmental Social and Governance issues	Negative screening for companies engaged in production of these products.	Ensure companies that are engaged in abuse of rights are investigated
Actions	Develop criteria for the positive things to be invested and will actively research where these are	Currently 3 focus areas for engagement: corporate governance, child labour and climate change. Has flagged that it may begin to look at impact of tax havens and transparency in extractive industries.	Avoid and divest if found within the portfolio.	Monitor stories of company abuse with use of specialist agencies and reports of NGOs. Determine where to focus investigations and conduct detailed research.
Satisfies	Political concerns to engage more proactively with new green deal issues	Fiduciary duty to manage ESG concerns	State's commitment to ensure due diligence of ensuring avoidance of complicity.	State's commitment to ensure due diligence of ensuring avoidance of complicity
Achieves	Greater economic and political focus on new areas of the economy that need to be developed	Presses markets and companies to engage with these issues and adapt practices, ensure compliance	Moral satisfaction and compliance with international obligations undertaken	Greater market awareness that human rights and issues of complicity are of concern to investors and society
Responsible	NBIM implements	NBIM decides and implements	Council on Ethics evaluates, then recommends and Ministry of Finance decides on exclusion which NBIM implements	Council on Ethics evaluates, then recommends and Ministry of Finance decides on exclusion which NBIM implements

Norway's record on divestment

As of March 2009 the Ministry of Finance, based on Council on Ethics recommendations, had divested from 9 companies involved in cluster munitions, 11 companies in nuclear weapons, 1 involved in anti-personnel landmines, 1 company for supplying military equipment to Burma, 2 companies for human rights abuses and 8 companies for environmental damage.

A central and repeated tension in the various reports written over the period of the evaluation of the ethical guidelines was the role played by Council on Ethics in avoiding complicity and/or of influencing companies to modify behaviour through the threat or implementation of divestment.[56]

The Ministry of Finance and the Council on Ethics have re-affirmed that the central objective of implementing decisions of divestment is to avoid complicity. They acknowledge that there may be an impact on poor corporate behaviour in the threat of divestment but certainly this is not put forward as its central purpose. They note that divestment results in the ending of any opportunity to influence. The Council on Ethics notes that in the case of a proposal for divestment, this can be a motivation for a company to engage more enthusiastically with the active ownership work of the NBIM.

The Council on Ethics report on Monsanto is cited as a case in point in this regard.[57] In 2006, the Council had recommended exclusion to the Ministry of Finance for reasons related to child labour abuses. The Ministry recommended that the NBIM should exercise its ownership rights in order to see if this reduced the risk to the fund. Arising from this, the NBIM has been able to achieve changes in Monsanto's practices that have led to the divestment recommendation of the Council not going ahead.

The GPFG and its applicability to the Irish context

If Ireland is to further develop its own responsible investment policy, Norway provides an interesting case study. The first area to draw on is the basis of Norway's ethical guidelines. If one reviews these guidelines, the criteria supporting them are drawn from agreed global values that are consistent over time.[58] This makes it easier to transfer to other countries, which would not be the case if these principles were based on a national set of values and morals. For example, the reference to human rights violations and humanitarian law are supported by international law. The area of corruption can be linked back to the UN Convention on Corruption and the OECD anti-bribery conventions.[59] These global agreements and treaties also apply to Ireland and do not contradict those Ireland has already signed. Furthermore, the ethical guidelines for GPFG provide a mechanism for ensuring that Norway's values are respected, going the necessary step beyond simple commitment.

Another critical component for the NPRF to look at from the GPFG is its arguments on the impact of its ethical policy on the risk-return profile. At one level excluding one company should not affect the risk profile as there are enough alternative companies suitable for investment.[60] The rationale here is that divestment from one company, versus an industry, should not impact on the macro risk-return profile of the pension fund. Furthermore, as argued at the beginning of this paper, over the long-term incorporating ethical criteria may actually improve or at least maintain the risk-return profile, because the investment is more sustainable over the long-term. In addition, when the GPFG decides to divest, such information is not made public until the divestment is complete and therefore should not impact on the market expectations of the company.

It is also important to question whether the size of the NPRF enables it to influence the market towards ethical decision-making. This is especially important given the difference in size of the GPFG versus the NPRF and the perception that the overall size of the fund matters.

In response, up to 2008, the GPFG was limited to having no more than 5% of the equity of any one company, its holdings have in effect been quite small. It does not believe that its active ownership work will in all cases be successful so the work of the Council on Ethics is complementary in attempting to influence behaviour through any associated negative publicity or negative market or consumer sentiment that may befall the company.

Beyond these considerations, there is the impact that can be achieved by a network of funds. While certain funds may be too small to influence individually, it is the combined power from a network of funds sending the same signals to companies on ethical investment. It is this joint power that will be able to initiate change. The GPFG recognises this and is part of various consultative networks through which it seeks to learn, share but also press for change. As a sovereign fund, its decisions carry with it the political backing of the state which lends it added weight comparable to privately owned funds of a similar size.

An important impact of the GPFG has been that other pension funds in Norway and outside Norway have followed the decisions of the GPFG. DnB, a large private investor, had nine identical exclusions to the GPFG.[61] Furthermore, each new exclusion had a shorter time-lag between GPFG's decision and DnB's. This has important implications for the NPRF as it too belongs in various networks. By taking a lead and acting in concert with other funds it can send a signal to the markets concerning what is considered responsible corporate behaviour. Finally, as mentioned above, through incorporating the option of exclusion, the GPFG has created a mechanism through which it can engage in dialogue, which is critical to foster behaviour change. If it achieves this change, then the need for exclusion is prevented, but this does not take away the threat of exclusion which acts as an incentive for behaviour change.

Critically to deliver on its policy, the Norwegian government saw the need for a separate and distinct Council on Ethics. In the current economic context in Ireland it may not seem feasible to propose such a body. The current costs of managing the NPRF come to €31 million per annum.[62] Adding the cost of the Council on Ethics to this needs to be seen in terms of the returns to be gained over the longer-term.

Conclusion

Since the financial crisis in 2008, many questions are being asked around the ethics, standards and regulations governing financial markets. This presents a key opportunity for reframing the rules and standards around international investment policy. Building on UN thinking on business and human rights, models currently in existence in other countries, and experience of voluntary industry initiatives, there is now an opportunity to redraw the investment landscape and demonstrate commitment to ethical globalisation. This would promote standards of behaviour and operation that reflect the desire of the great majority to see a globalisation built on respect for human rights, the environment and international humanitarian law.

The Norwegian Government Pension Fund offers a way to build on Ireland's existing structures and move it to the next stage where Ireland is taking an active role in ensuring non-complicity with systematic violations of ethical norms. Ireland has already shown that it is willing to debate and push this ethical agenda forward. Ireland was a key driver behind the mandate of the UN SRSG and has, as part of the EU, accepted its operating framework for dealing with human rights and business. Similarly, the NPRF has accepted the principles of the universal owner hypothesis and has signed up to the UN Principles on Responsible Investment. It accepts that long-term returns can only be secured through broader questions of sustainability being understood and has commenced a process of active ownership via an intermediary service provider. Despite these efforts it is hampered by virtue of its mandate that precludes it by law from any considerations save the maximisation of returns. As a result, public pressure continues on the Irish government and the NPRF to undertake a fundamental review of the legislative underpinnings of the NPRF. This seeks to ensure the development of robust ethical guidelines and implementation mechanisms that will provide, as in the Norwegian model, a sound return for future Irish pensioners but without entailing the risk of complicity in rights' abuses among communities around the world.

Endnotes

1 This article is an edited version of a paper presented by the author at the Development Studies Association Conference held at the Coleraine Campus of the University of Ulster, 2-4 September 2009.

2 Minister for Finance, Brian Lenihan speaking in Dáil Éireann, 3 March 2009

3 Schwartz, M.S. (2003), p.195

4 It is worth noting that the challenges facing Ireland now are likely to be ones that will be facing the UK with the conclusion of the work of the Personal Accounts Delivery Authority (PADA) http://www.padeliveryauthority.org.uk/. PADA is currently designing and introducing the infrastructure for the new pension scheme. It aims to provide access to what would be a mandatory workplace pension for millions of people in the UK – typically those on low to middle incomes. Some current analysis suggests that there are no plans to deal with the ethical issues that are sure to be raised. See http://www.ethicalinvestors.com/pensionssite.php?p=personal_accounts.

5 There are two Norwegian state pension funds. In this article references to the Norway State Pension Fund concern the Government Pension Fund – Global (GPFG).

6 Ruggie (2008)

7 Guay et al. (2004), pp.125-39

8 Eurosif (European Social Investment Forum, 2008)

9 Ireland negotiated and presented the Commission on Human Rights Decision 2004/116 requesting the Office of the High Commissioner for Human Rights to compile a report setting out the scope and legal status of existing initiatives and standards relating to the responsibility of transnational corporations and related business enterprises with regard to human rights. This report formed the basis for the establishment of SRSG mandate in 2005.

10 Ruggie (2008), paras 18, 82 and 83

[11] ibid., p.20
[12] Graver Committee (2003)
[13] Ruggie (2008), para 27, p.9
[14] ibid., para 32, p.11
[15] Ruggie (2008), para 27, p.9
[16] Dutch Association of Industry-wide Pension Funds (2007), p.81
[17] Schueth (2003)
[18] See for example the shareholder resolution to Royal Dutch AGM in 2006 by the British and Irish faith-based shareholder network: www.eccr.org.uk/dcs/ShellShareholderResolution.pdf.
[19] World Economic Forum (2005) p.7
[20] ibid., p.8
[21] "The primary responsibility of fiduciaries is to run the [pension] plan solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and paying plan expenses": (www.dol.gov/dol/topic/retirement/fiduciaryresp.htm). Interpretations of what constitutes prudent investment behaviour are constantly evolving, however these have, in general, been taken to mean a focus on financial returns.
[22] Mercer Investment Consulting (2006)
[23] Pearce and Ganzi (2002)
[24] Mercer Investment Consulting (2006)
[25] Coalition for Environmentally Responsible Economies (2002)
[26] Kjaer (2007)
[27] "Pay as you go" refers to funding each year's commitments from current exchequer revenues.
[28] National Pensions Reserve Fund, Quarterly Performance and Portfolio update at 30 September 2008
[29] National Pensions Reserve Fund, Quarterly Performance and Portfolio update at 31 March 2009
[30] National Pensions Reserve Fund and Miscellaneous Provisions Act, 2009
[31] National Pensions Reserve Fund Commission (2008)
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Item 4: Shareholder proposal requesting Cooper to establish a code of conduct based on International Labour Organization human rights standards; E.I. Du Pont De Nemours & Co. (2008), 30 April, AGM Item 6: Amend Human Rights Policies

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51 http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council.html?id=434879

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54 See "NBIM Investor expectations on children's rights", n.d.

55 Chesterman (2008)

56 Norway Ministry of Finance (2007, 2008); Norges Bank Investment Management, (2008); Albright Group and Chesterman S. (2008)

57 Council on Ethics (2009)

58 Chesterman (2008), p.585

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