



# DIVEST LOCAL GOVERNMENT

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## Fiduciary Duty:

## Is Fossil Fuel Divestment Legal?

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# Introduction

- Fiduciary duty is a legal duty for fund managers to make recommendations for investments in a way that best serves **all** the investors they represent.
- It *also* means that there is an obligation to impartiality **between** the investors in or beneficiaries of your investment recommendations.
- Those that represent their interests represent *all* of the beneficiaries - and are mandated to protect the assets of *all* beneficiaries **equally**.

# Duty to Divest

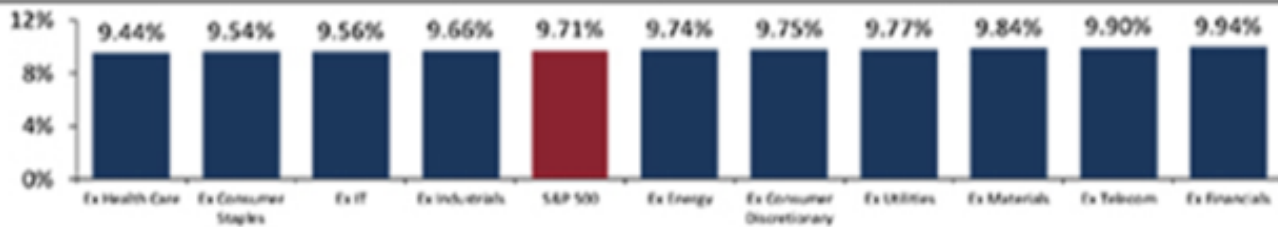
A carbon budget consistent with a 2°C target would render the vast majority of reserves 'stranded' — oil, gas and coal that will be literally unburnable... Unsavvy investors who continue to invest in fossil fuels could face potentially huge losses."

*- Mark Carney, former Governor of the Bank of England and former Chair of the Financial Stability Board*

○ Fossil fuel free indices are out-performing their parent indices – for example, fossil free versions of FTSE indices have outperformed their parent indices over the last five years (as of December 2018) – or from the much longer studies carried out by Grantham et. al.

# Yes, You Can Divest From Oil – or Anything Else – Without Much Consequence

Annualized Absolute Returns (Nominal Terms): 1989-2017 – Range: 50 bps



Modeling Study by  
Jeremy Grantham  
et al:

Impact of  
Divestment from  
1989 to 2017

# Supposed Barriers to Divest

Previously some funds argued that they could not divest, because their “fiduciary duty” meant they had to ignore so-called “ethical” issues

Local Gov Pension Scheme legal advice and Law Commission guidance say fiduciary duty rules **do allow pension funds to consider ethical factors** in investment decisions, **so long as these do not negatively affect financial performance and are not contrary to members’ wishes.**

A 2016 legal opinion for ClientEarth from two leading UK barristers found that **pension fund trustees who fail to consider climate risk could be exposing themselves to legal challenges in the future**

# Divest Commitments

As of December 2019, **over 14,000 institutions worldwide**, whose assets total over \$12 trillion, have made divestment commitments.

This includes at least **11 UK local government pension schemes** that have already made full or partial divestment commitments.

Full: Southwark, Islington, Lambeth, Waltham Forest, Croydon, Cardiff

Partial: Merseyside, South Yorkshire, Hackney, Haringey, Environment Agency Pension Fund

# Re-investment

Islington**Now**

Islington first to invest £150m from pension scheme into housing

By **Alice Tchernookova** - 5th December 2014

the**energyst**

London and Manchester pension funds increase stake in SSE's Clyde Windfarm

By **Brendan Coyne** - August 1, 2017

**ECONOMY**

**Westmill solar co-op gets £12m backing from Lancashire council pension fund**



# Sources and Further Useful Links

*Referral to the Pensions Regulator Local Government Pension Scheme and Climate Risk, Feb 2017 –*

**Client Earth and ShareAction**

<https://www.documents.clientearth.org/wp-content/uploads/library/2017-02-10-clientearth-referral-to-the-pensions-regulator-lgps-funds-coll-en.pdf>

*QC Opinion: The legal duties of pension fund trustees in relation to climate change, April 2017 –*

**Client Earth**

<https://www.documents.clientearth.org/library/download-info/qc-opinion-the-legal-duties-of-pension-fund-trustees-in-relation-to-climate-change/>

*“IS IT ALWAYS ABOUT THE MONEY?” Pension trustees’ duties when setting an investment strategy, Guidance from the **Law Commission*** [http://www.lawcom.gov.uk/app/uploads/2015/03/lc350\\_fiduciary\\_duties\\_guidance.pdf](http://www.lawcom.gov.uk/app/uploads/2015/03/lc350_fiduciary_duties_guidance.pdf)

FTSE ex Fossil Fuels Index Series <https://www.ftserussell.com/products/indices/ex-fossil-fuels>

Legal Opinions and Summaries, **Local Government Pension Scheme Advisory Board**

[http://www.lgpsboard.org/index.php/board\\_publications/legal\\_opinions](http://www.lgpsboard.org/index.php/board_publications/legal_opinions)



# Re-investment Sources

- <http://islingtonnow.co.uk/islington-first-to-invest-150m-from-pension-scheme-into-housing/>
- <https://blueandgreentomorrow.com/economy/westmill-solar-lancashire-pension-fund/>
- <https://theenergyst.com/london-and-manchester-pension-funds-increase-stake-in-sses-clyde-windfarm/>