



FIDUCIARY DUTY IN FOCUS

APPLYING FIDUCIARY DUTIES TO SYSTEM-LEVEL INVESTING

Fiduciary Duty in Focus

Applying Fiduciary Duties to System-level Investing



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DURABLE FIDUCIARY DUTIES FOR INVESTORS

TIIP Symposium – April 14, 2026

Session on Fiduciary Duty in Focus: Applying Fiduciary Duties to System-Level Investing

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(speaking in a personal capacity)

Purpose

Today, we will:

- Provide a short summary of *Sustainable Fiduciary Duty: How fiduciary duties can be a key to escaping the climate prisoner's dilemma*.
- Discuss how we can implement these principles, as well as potential barriers and how these can be overcome.
 - Back-casting and
 - Actor mapping
- Address any outstanding questions.



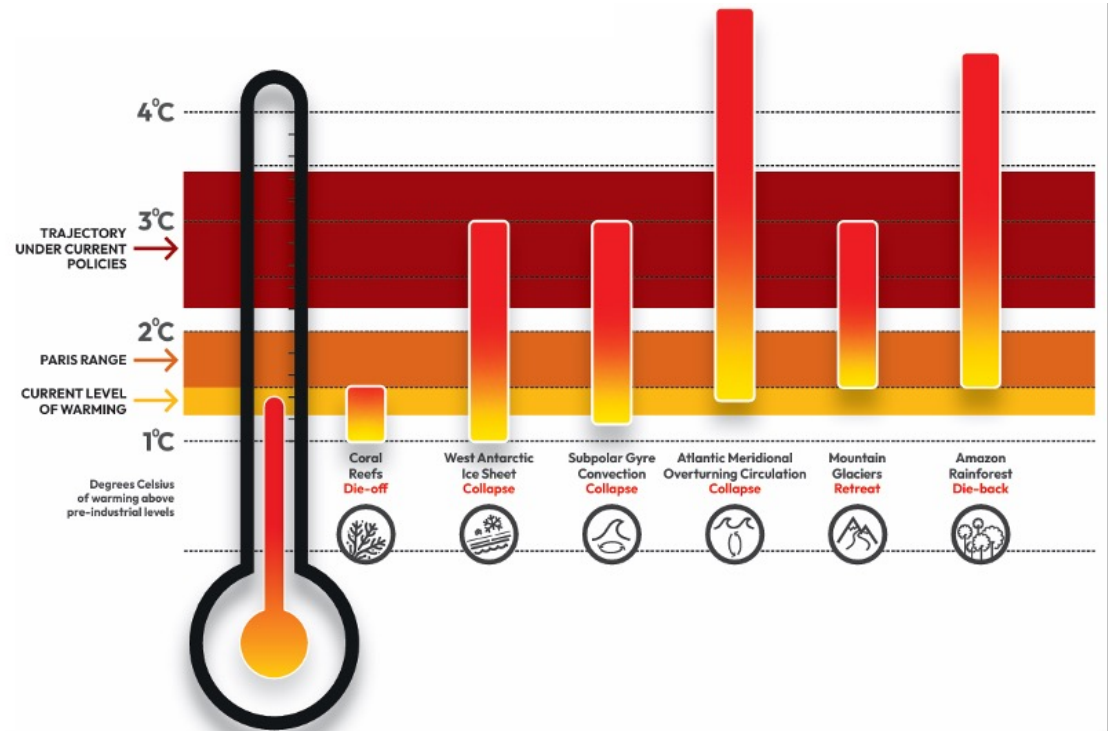
Climate change acceleration and Tipping Points:

An existential threat and a
material financial risk

What is the nature of this threat?

- Recent studies suggest that climate change is accelerating:
 - The atmosphere is more sensitive to greenhouse gases than previously thought.
 - The oceans and land absorb less greenhouse gases than in the past.
 - The albedo effect diminishes as clouds and ice cover decrease.
 - The risk of climate and economic tipping points and cascading events increases as a result of these impacts and the Earth's reducing resilience.

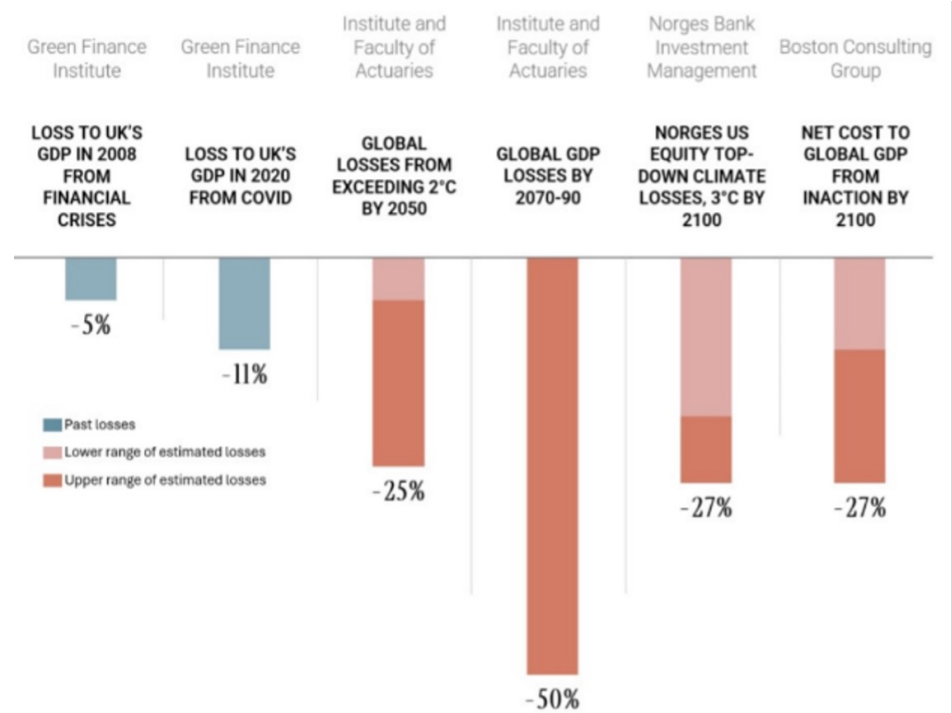
GLOBAL TIPPING POINTS EVEN BELOW 2°C | Source: Lenton et al, Global Tipping Points Report (2025)



What is the nature of this threat?

- Recent research shows that the economic and financial impact of system-level climate risks is material.
 - Studies by the **British Institute and Faculty of Actuaries** point to a loss of GDP as much as 30–50% within our lifetimes. Why? Because the increasing probability of climate tipping points and events cascades create risks of economic collapse and societal instability.
 - The **EDHEC Business School** estimates that assets as a result could lose more than 40% of their value (NPV) due to climate damage in a business-as-usual scenario. *NOTE: This loss could be reduced to <10% with effective climate mitigation measures, but is expected to rise to >50% if tipping points occur.*

ESTIMATES OF ANTICIPATED ASSET VALUE LOSS | Source: NBIM, Climate and Nature Disclosures (2024)



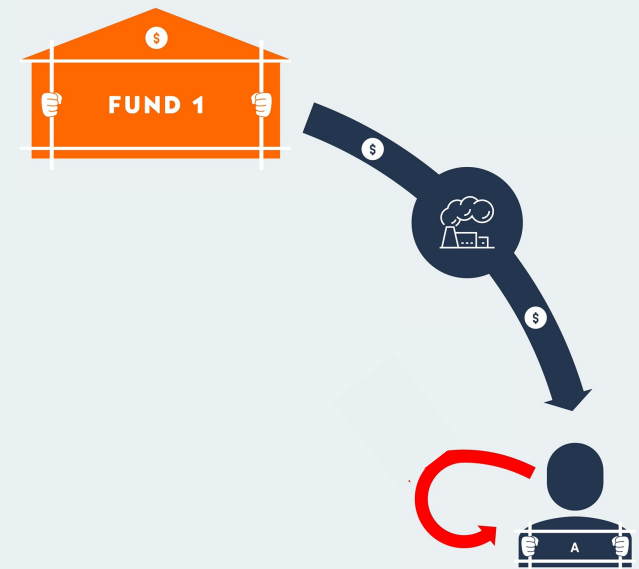
How is this relevant to investors and pension funds?

- **Risk of downside:** Investment in new or expanded unabated high-emissions projects create risks and costs that are not typically included when calculating anticipated return on investment, despite their potential to lower the value of the investor's *portfolio as a whole*.
 - Portfolio-wide negative externalities include litigation and transition risks, but also NPV of future physical damage to investments as a result of intensified extreme weather, flooding, droughts, wildfires, heatwaves, nature loss, food and water insecurity, attendant social upheaval, and system-level risks to our economy caused by climate change.
 - Loss of 40% (NPV) of asset value (EDHEC, Rebonato study)
 - Because such risks affect **entire markets and economies**, they cannot be diversified away. Instead, they must be addressed through **system-aware investment practices** that recognize the relationship between portfolio decisions and the health of the broader financial and economic system.
- **Loss of potential upside:** While negative spillover effects are downplayed (or ignored), so too are the positive impacts of investing in projects that mitigate climate change and nature loss.
 - A recent study by *Way, Ives, Mealy and Farmer (2022)* concludes that a greener, healthier, and safer global energy system is likely to be cheaper in itself, but “when climate change is taken into account, the benefits of the Fast Transition become overwhelming. ... [and] the range of expected savings is \$88–\$775 trillion”.

Given the magnitude of these risks of inaction and upside of action, why aren't we seeing greater progress?

1. Asset managers ignore portfolio-wide externalities

Investment in “dirty” new project for customer A causes damage to all of customer A's other assets. This concerns Fund Manager 1's duty of care
(See also Uniform Prudent Investor Act)



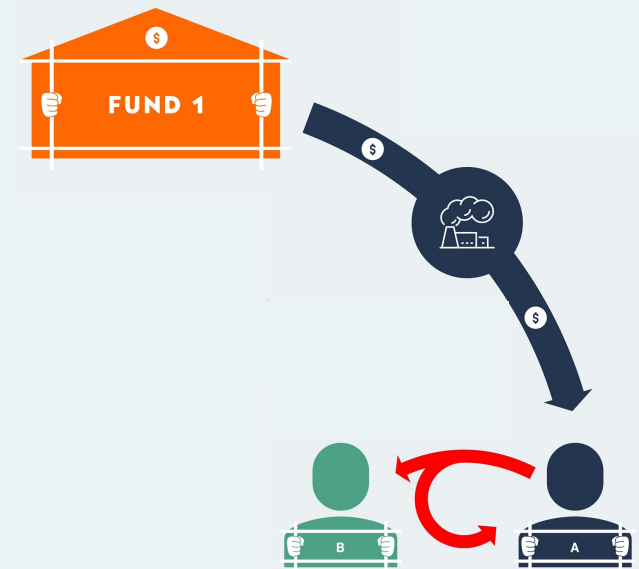
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Given the magnitude of these risks of inaction and upside of action, why aren't we seeing greater progress?

2. Asset managers ignore fund-wide externalities

Investment in “dirty” new project for customer A causes damage to all of customer B’s assets. This concerns Fund Manager 1’s duty of loyalty (even-handedness) – cf *Hirji v CPPIB*



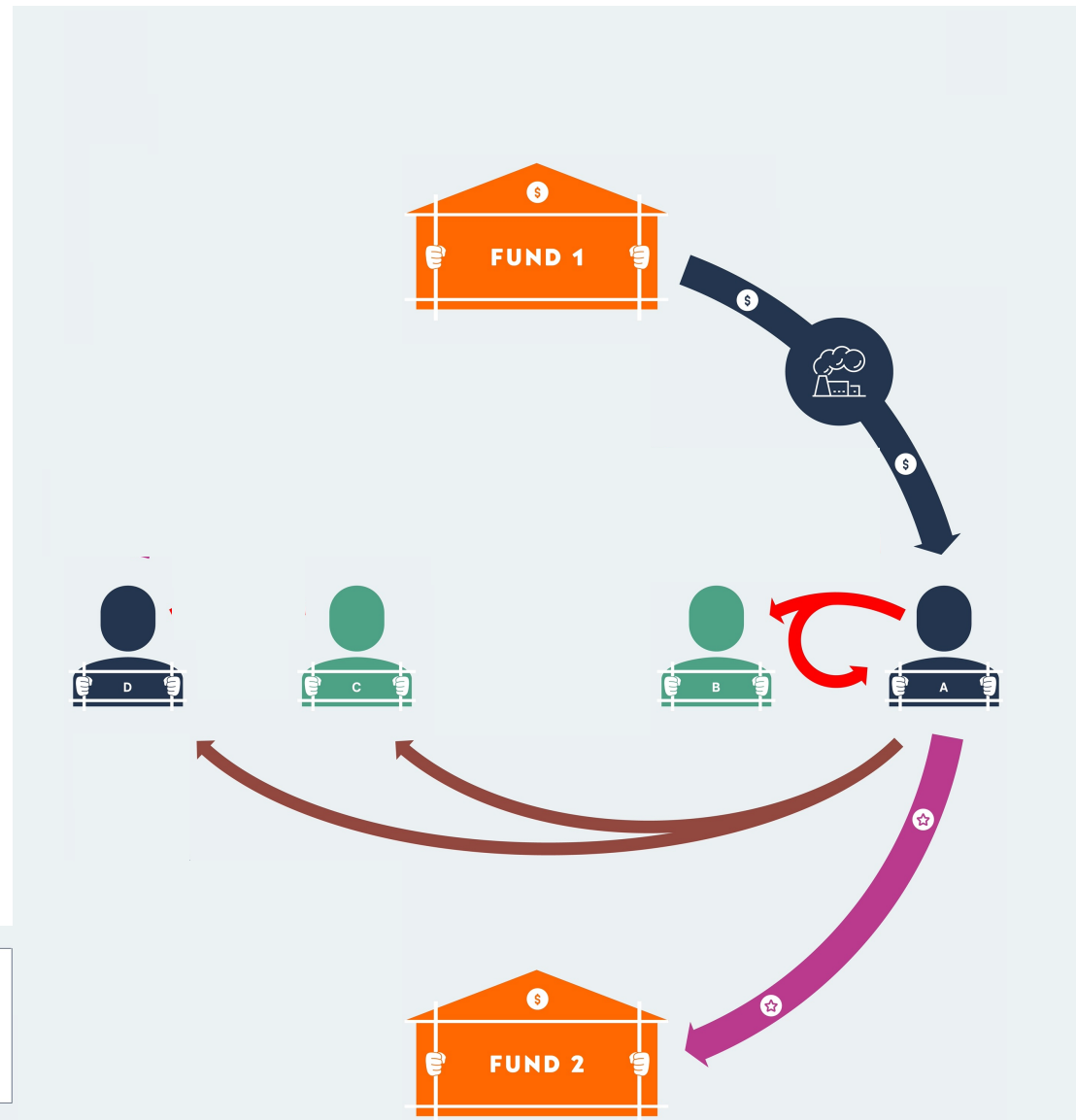
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Given the magnitude of these risks of inaction and upside of action, why aren't we seeing greater progress?

3. Asset managers ignore externalities for third parties

Investment in “dirty” new project for A causes damage to all of Fund Manager 2’s customers’ assets. Fund Manager 1 thinks this is none of his business – cf *McRitchie v Zuckerberg (Del)*?

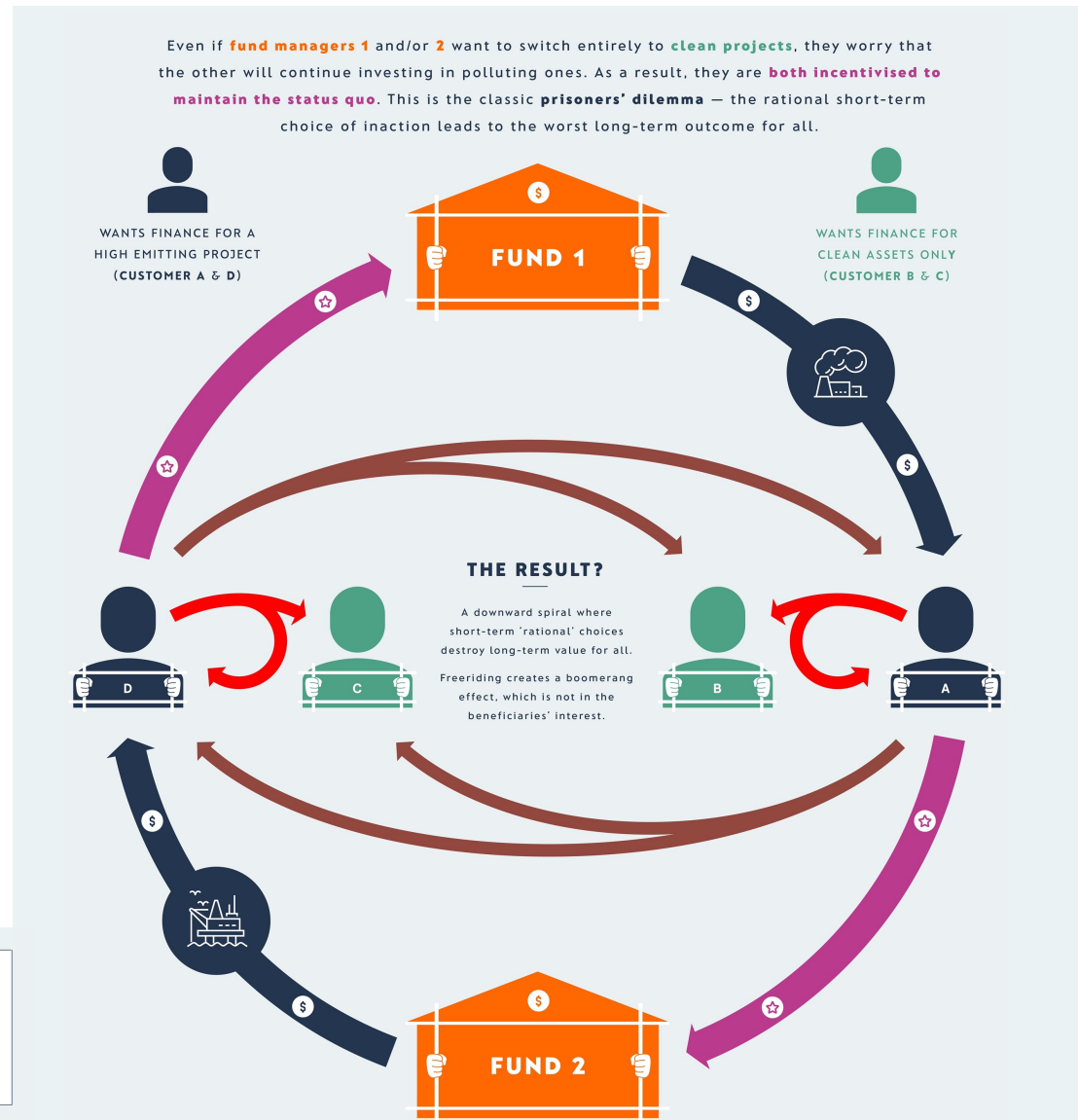


So, climate change is the ultimate prisoner's dilemma

FM 1's investment in new "dirty assets" for A means FM 2 has no incentive to avoid new dirty assets for D, which in turn damage FM 1's customers (as well as FM 2's customers). **Asset managers ignore this feedback effect.**

FM1 and 2, acting individually, each think they serve their customers' best interests, but in fact cause damage and system-level risk to everyone

Escaping the prisoners' dilemma requires collective action, consistently applied to all fiduciary investors. The principles of fiduciary duties provide such a mandatory framework.





Implications for investors: Fiduciary duties and five principles for climate action

System-level investing allows investors to escape the dilemma by:

- recognizing systemic externalities,
- coordinating with peers and other market actors, and
- acting collectively to protect long-term market performance.

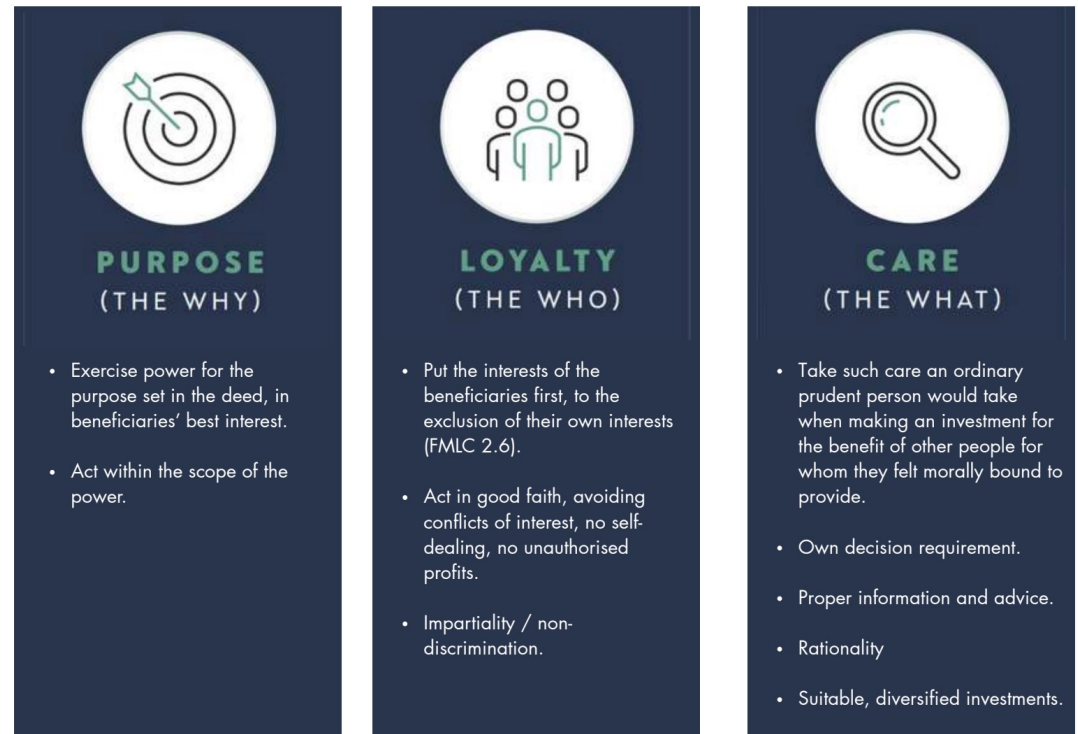
The three duties of a fiduciary*

Financial fiduciaries – such as pension trustees, directors of banks and insurance firms, investment trust and fund managers, and trustees of endowment funds and foundations – **are subject to a relationship of trust and confidence, where they undertake to invest and manage funds for (and act in the interest of) others.**

The related duties can be divided in three broad categories.

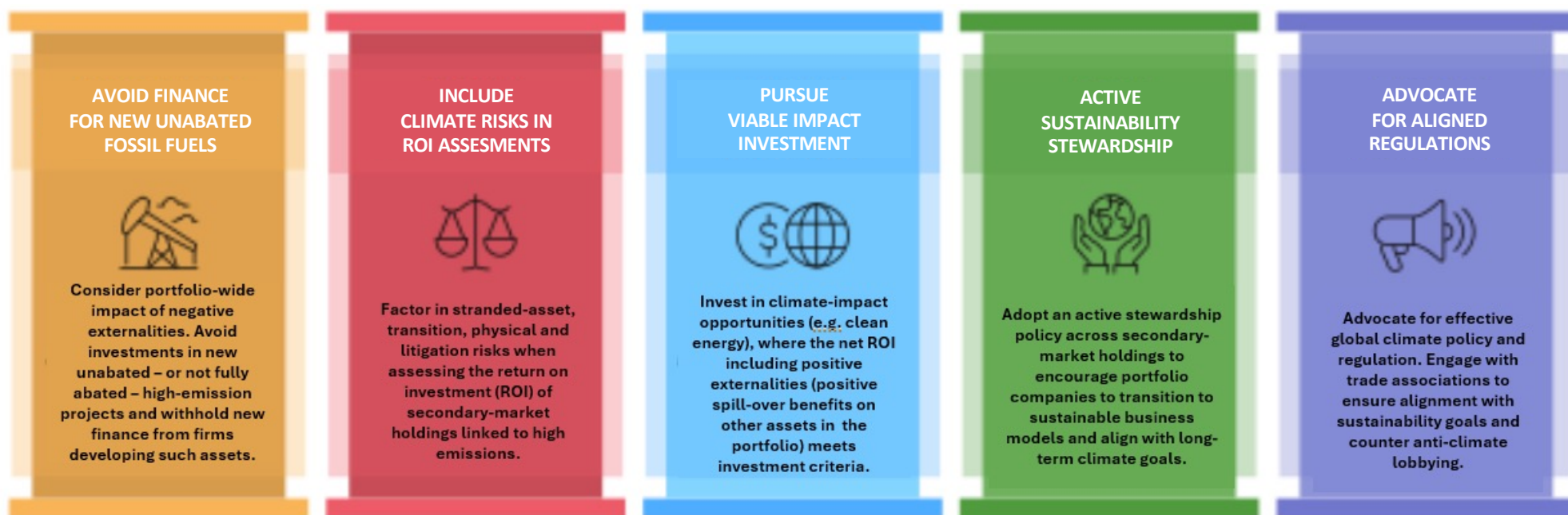
Also: duty of even-handedness

In climate litigation, several courts have rejected fingerpointing (prisoners' dilemma) as a defense (Urgenda, Milieudefensie/Shell, ICJ Opinion)



* Various other obligations, resulting from contract, tort law, statute, regulatory frameworks etc.

In the context of climate change and nature/biodiversity loss fiduciary duty not just permits, but requires system-level investing



The essence is that asset owners must calculate and take into account the portfolio- and fund-wide externalities of investment decisions, as well as the feedback effects of the impact their decisions have on others, and must tackle them

US case law suggests system-level investing is allowed / may be required

[Spence v American Airlines](#), case 4:23-cv-00552, [Findings of Fact and Conclusions of Law](#), January 10, 2025, and [Final Judgment](#), September 30, 2025 (remedies)

- The judge objects to “ESG investment”, defined as “aimed at, in whole or in part, bringing about certain types of societal change”. But see obiter dictum:
- “Investing that aims to reduce material risks or increase return for the exclusive purpose of obtaining a financial benefit is not ESG investing. Consideration of material risk-and-return factors is no different than the standard investing process when both are focused on financial ends.” (p. 25)

[McRitchie v Zuckerberg](#), C.A. No. 2022-0890-JTL, Court Of Chancery of Delaware, April 30, 2024, Laster VC, 1.

- *Under Delaware law fiduciary duties are company-specific (not to shareholders as universal asset owners). But see obiter dictum:*
- “Directors must seek to maximize the value of the firm for the ultimate benefit of its stockholders. That can involve considering a broad spectrum of issues, including how a decision affects stakeholders, the economy, and society. Directors can and should consider those issues when making decisions about what will promote the value of the firm over the long-term.” (pp. 73-74)

Intergenerational justice and pension funds: pending case

[*Hirji et al v Canada Pension Plan Investment Board*](#), File CV-25-00754169-0000 (application of 23 October 2025).

- *“4. Climate change poses a material financial risk to the CPP Funds by impacting the value of assets directly, as well as through impacts to financial and economic systems globally. As a large, globally diversified investor with long-term obligations to millions of Canadians, the CPPIB is statutorily required to identify, assess and manage the financial risks from climate change, including the risks that climate change poses to the stability of the financial system as a whole....*
- *6. The Applicants seek declarations that the CPPIB, through its failure to prudently identify, assess and manage climate-related financial risks, has breached the statutory and fiduciary duties it owes to the Applicants as Young Contributors, including: the duty to invest ‘without undue risk of loss’; the duty to act in the best interests of all contributors and beneficiaries; the duty of prudence; and the duty of impartiality and even-handedness.”*

See also [*Kvek and Client Earth v Cushman & Wakefield*](#) (claim for failure to adequately assess pension climate risk)



Discussion:
Turning theory into practice

For discussion

- How to communicate this to internal and external clients?
- What barriers may prevent investors from taking the five steps outlined?



“The enabling environment needs to change first”

“Why should I do the right thing if others aren’t?”

“Why should we act when climate impacts are so uncertain?”

- How can you respond to common arguments and overcome barriers to implementation?
- What tools or support do we need?
- Ideas for investments, legislative advocacy (e.g. UK Pension Schemes Bill), or litigation to assert these findings?



"Yes, the planet got destroyed, but for a beautiful moment in time we created a lot of value for shareholders."

Selected links and resources

- Gray, Johnson, Reeves, “Applying Fiduciary Duties to System-level Investing,” in *Handbook of System-level Investing*, Lukomnik & Burckart eds (2026)
- Lukomnik, Hawley, [Moving Beyond Modern Portfolio Theory : Investing That Matters](#) (2021)
- NZLA, [Sustainable Fiduciary Duty: The report](#) (2025) (Summary blog, [Sustainable Fiduciary Duties](#); Podcast (Jason Mitchell, A Sustainable Future), [The Climate Prisoners’ Dilemma](#) (2025); Video summary (Dave Borlace, ‘Just have a think’), [‘New analysis. How corporate overlords are unlawfully ignoring future climate impact’](#) (2025).
- [A Legal Framework for Impact](#) (Freshfields Report for UNEP-FI, PRI, and Generation Foundation)
- [Opinions for the CCLI on Directors duties and nature-related risks](#) in Australia, Canada, England and Wales, Hong Kong, India, Japan, New Zealand, and Singapore
- UK Financial Markets Law Committee, [Pension Fund Trustees and Fiduciary Duties](#) (2024)
- UK Legal Advice to USS, [Responsible Investment; what can the USS and how far must it go?](#)
- Bryant, Rickards, [Opinion for ClientEarth](#) (2019, UK)
- Lord Sales (UKSC), [Directors’ duties and climate change: Keeping pace with environmental challenges](#) (2019)
- Lord Carnwath (UKSC), [ClientEarth v Shell: What future for derivative claims?](#) (2024).
- International Court of Justice, [Advisory Opinion on Obligations of States in Respect of Climate Change](#), July 23, 2025
- [Hirji et al v Canada Pension Plan Investment Board](#), File CV-25-00754169-0000 (application of 23 October 2025)
- Ripple, Rockström, and others, [The 2025 state of the climate report: a planet on the brink](#)
- Lenton, Exeter University, [Global Tipping Points](#) (2023) and [Global Tipping Points Report 2025](#)

Fiduciaries must take effective action to mitigate further material financial climate and system-level risks



Avoid investment in new unabated (i.e. not fully and effectively abated) high-emission projects to reduce physical and system level risk (primary markets).



Integrate physical risk, stranded asset risks and litigation risks when assessing return on investment ("ROI") (secondary market investments).



Sustainable and responsible investing in transition. Consider investing in the transition and climate solutions, pursuing impact investment where viable and taking positive externalities of mitigating climate change into account when assessing ROI.



Active, effective stewardship to reduce financial and existential risks. Follow an active stewardship policy, cooperating with other investors as needed to encourage investee companies to transition to sustainable business where possible.



Policy advocacy to lower climate risks and create a level playing field. Engage with governments and market participants everywhere to advocate effective worldwide climate and nature action, cooperating with other investors where needed.