



## Charities

ESG Investing and  
Trustee Fiduciary  
Duty

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# ESG Investing and Trustee Fiduciary Duty

## Introduction to ESG Investing

ESG investing is a forward-thinking investment strategy that aims to 'do good' as well as generate a good return by screening out any fund with significant exposure to "sin stocks" such as:

- The Tobacco Industry
- Nuclear Weapons
- Adult Entertainment
- Gambling
- Civilian Firearms

ESG investing is a fast-growing global trend and arguably one of the most important consumer shifts in the investment industry for some time. Over the next few years, organisations will be divesting and moving away from 'sin stocks' to opt for a more socially conscious route. This has come about largely due to consumer demand and governments and organisations finally facing the reality of urgent issues such as climate change that have come about as a direct result of the decisions, both on a small and large scale, that we have made in the past. Looking towards the future, investors face an uphill battle but it's also an opportunity to make use of strategic asset allocation, resources and collective power to enact change.

**One of the most important consumer shifts in the investment industry for some time**

In response to demand and regulatory drivers, the speed and quantity of ESG investment products is set to increase, as is the quality and quantity of ESG data. However, this trend is also set to increase the burden on charity Trustees and Investment Committees.

## Trustee Fiduciary Duties

Charity Trustees have long been legally bound by their overriding duty to advance the purposes of their charity as well as several basic responsibilities including: managing the charity's resources responsibly; acting under the duty of prudence in exercising sound judgement by ensuring charity assets are only used to support or carry out its purposes; avoiding exposing the charity's assets, beneficiaries or reputation to undue risk; not over-committing the charity and taking special care when investing.

These duties are set to increase as the Charity Commission launched a [consultation](#) on 8 April 2021 to clarify 'Charity Responsible Investing Guidance', set to close on 20 May 2021, which will result in revised guidance for Charity Trustees about adopting a responsible (or 'ethical') approach to investing their charity's funds. Several respondents to date have submitted that trustees were unable to make responsible investments because they believe their overriding legal duty is to maximise the financial returns when investing, regardless of any other consideration.

A few days after the Consultation was published, in the case of *Butler-Sloss v Charity Commission* [2021] 4 WLUK 58, the High Court granted permission for charity trustees to bring proceedings to obtain declaratory relief and directions where they wished to adopt “responsible” investment policies. The High Court granted permission as the Court held the Commission’s draft guidance as arguably inconsistent with the 1991 case of *Harries v Church Commissioners for England* (commonly referred to as the “Bishop of Oxford” case). The divergence of opinion highlighted the need for the proceedings to clarify the law.

**ESG considerations may not fall within a charity’s objectives but may be in keeping with the moral views of both the trustees and other charity stakeholders**

This creates a challenge for charities as ESG considerations may not fall within a charity’s objectives but may be in keeping with the moral views of both the trustees and other charity stakeholders.

The draft Charity Commission guidance does not deal with this point directly but does introduce a wider set of circumstances in which a charity trustee could justify the risk of accepting lower economic returns on investment. The focus remains, appropriately, on acting in the overall best interests of the charity and its objects, and the guidance acknowledges the role that negative and positive screening may have in that wider context. The draft guidance also does not address the fundamental moral issue: many trustees and charity stakeholders want to invest assets ethically and responsibly regardless of whether it can be said that all their ethical concerns fall within the confines of the charity’s objects.

Ahead of the courts having an opportunity to clarify or revise the conclusions of the Bishop of Oxford case to bring the law in line with the Charity Commission’s draft guidance, there is the duty on Charity Trustees to make financial decisions that align with their charity’s purpose and values. For instance, an environmental charity may choose to opt to invest in renewable energy and a health charity may want to avoid investing in any products causing harm to health. This ‘negative screening’ which is frequently carried out with an Ethical (ESG) Investment strategy, makes it highly desirable for trustees seeking good performance and the assurance that the charity’s investments are of ‘doing good’.



## SCM Research

Due to our growing concerns about the misleading data being produced in respect of ESG/Ethical investment products, in November 2019 we produced our **Greenwashing: Misclassification and Mis-selling of Ethical Funds report** which highlighted widespread greenwashing that was occurring due to a data fog and lack of regulation. Morningstar has also conducted research that found many firms are **simply renaming/rebadging existing funds as sustainable**, but under the bonnet little had changed. The Financial Times has also covered growing concerns about the ability of fund managers to 'compare ESG apples with oranges' and the **precise and validated sustainability ratings needed to avoid greenwashing**.

By way of example, two of the largest ESG data providers are MSCI and Sustainalytics. Each provider has a different method of scoring – for example MSCI ranks the companies against their peers rather than all companies. There are also question marks over the accuracy and reliability of data provided by individual companies which is not normally independently audited.

SCM recently compiled a list of FTSE100 stocks which many ESG investors would not score highly because they operated in tobacco, alcoholic beverages, defence, gambling, mineral resources etc. The findings illustrate that many score highly nonetheless and there is no correlation between the two providers scores:

### Sustainalytics<sup>1</sup> Vs MSCI<sup>2</sup> Risk Ratings for various FTSE 100 stocks

FTSE 100 Stocks	Activity	Sustainalytics ESG Risk Rating	MSCI ESG Rating
		<div><div>Neg</div><div>Low</div><div>Med</div><div>High</div><div>Severe</div><div>0-10</div><div>10-20</div><div>20-30</div><div>30-40</div><div>40+</div></div>	<div><div>CCC</div><div>B</div><div>BB</div><div>BBB</div><div>A</div><div>AA</div><div>AAA</div></div>
BP	Oil & Gas	High Risk	BBB
Shell	Oil & Gas	High Risk	A
Antofagasta	Mining	Medium Risk	AA
Anglo American	Mining	High Risk	A
Rio	Mining	High Risk	A
Glencore	Mining	High Risk	BBB
BAE Systems	Defence	High Risk	AA
EasyJet	Airline	High Risk	N/A
IAG	Airline	Medium Risk	N/A
Diageo	Alcoholic Beverages	Low Risk	AAA
BAT	Tobacco	Medium Risk	BBB
Imperial Blinds	Tobacco	Medium Risk	A
Flutter Entertainment	Gambling	Medium Risk	AA

<sup>1</sup> <https://www.sustainalytics.com/esg-ratings>

<sup>2</sup> <https://www.msci.com/our-solutions/esg-investing/esg-ratings/esg-ratings-corporate-search-tool>



We are aware that many Charity Investment Teams and Trustees are having to conduct due diligence on sustainability and net carbon etc, and investment managers are being asked to give these factors significant consideration and filtering in their asset allocation processes. At SCM we always incorporate these and other ESG/sustainability issues when investing in any asset – particularly in markets such as China and Russia where such issues tend to be most prevalent. In terms of the CO2 emissions, we believe that the most accurate and reliable data is that pertaining to the overall country. We also believe that by interrogating this data over broad sectors enables a more accurate picture that takes out the variability and subjectivity of individual company data.



We then went one stage further. We analysed broad sectors of the market using the Bloomberg Industry Classification System (BICS) that classifies firms' general business activities via 10 broad classifications. We found that 3 BICS sectors (utilities, materials, and energy) accounted for 91.3% of total CO<sub>2</sub> emissions but just 7.9% of the SCM Ethical (ESG) Portfolio. The analysis covered 1,279 stocks around the world. The total CO<sub>2</sub> emissions (where data available) from these companies amounted to 7,534 m tons in 2019 of which the top 20 polluters accounted for 37.2% of the total (these 20 securities amounted to just 0.4% of the SCM Ethical (ESG) Portfolio):

Description	Country	2019 total GHG CO <sub>2</sub> emissions	Percentage of overall CO <sub>2</sub> emissions within BICS classification	Percentage of overall SCM Ethical (ESG) Portfolio (GBP)
Huaneng Power International Inc	China	336.30	4.7%	0%
Korea Electric Power Corp	South Korea	202.20	2.8%	0%
Datang International Power Generation Co Ltd	China	198.53	2.8%	0%
ArcelorMittal SA	Luxembourg	182.30	2.6%	0%
PetroChina Co Ltd	China	174.08	2.4%	0%
China Petroleum & Chemical Corp	China	170.69	2.4%	0%
Huadian Power International Corp Ltd	China	167.93	2.4%	0%
China Resources Power Holdings Co Ltd	Hong Kong	134.02	1.9%	0%
LafargeHolcim Ltd	Switzerland	129.00	1.8%	0%
Exxon Mobil Corp	United States	123.00	1.7%	0.4%
RWE AG	Germany	96.42	1.4%	0%
Nippon Steel Corp	Japan	93.00	1.3%	0%
Southern Co/The	United States	88.25	1.2%	0%
POSCO	South Korea	81.36	1.1%	0%
Rosneft Oil Co PJSC	Russia	81.20	1.1%	0%
Royal Dutch Shell PLC	Netherlands	81.00	1.1%	0%
American Electric Power Co Inc	United States	79.29	1.1%	0%
HeidelbergCement AG	Germany	77.00	1.1%	0%
Tata Steel Ltd	India	74.60	1.0%	0%
Enel SpA	Italy	71.53	1.0%	0%
		2,641.70	37.2%	0%
	Total from 1,282 stocks	7,107.81		

Our latest research in March 2021 indicates that data providers still produce varying results for the same stock and out of the 16 UK registered funds that were classified as 'Ethical' (out of the total 194 analysed) they were only 5% better in terms of their overall sustainability score than non-sustainable funds which may surprise many investors.

With problems like this, we fully understand trustee's ability to invest ethically may fall victim to firms marketing ethical products without transparency or rigorous data benchmarks, and Trustees' sentiment is to proceed with caution.

### SCM's Approach to ESG Investing

As professional investors, headed by our Chief Investment Officer, Alan Miller, who has over 30 years experiences and is one of a handful of highly respected UK fund managers, SCM Direct works with charities and Trustees to support and fulfil their ESG investment requirements.

Launched in 2009, SCM holds the longest actively managed pure Exchange Traded Fund (ETF) Discretionary Portfolio Manager track record in the UK. We take a cautious approach to launching new Portfolios and having waited for the universe of high quality Ethical/ESG ETFs to improve before launching our SCM Ethical (ESG) Portfolio in August 2019, with a bias to £ denominated markets e.g. UK equities and bonds; with all the ETFs held within the Portfolio listed on the London Stock Exchange. Our objectives of high investment liquidity, flexibility and transparency are satisfied through investing via UCITS compliant ETFs. Our SCM Ethical (ESG) brochure is here and follows our overall investment strategies of being asset allocation rather than stockpicking led, contrarian, 100% transparent on both fees and holdings, and conducting robust under the bonnet due diligence based on fundamentals, irrespective of an ETF's name or label.

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**SCM Direct is working with charities to support and fulfil their ESG investment requirements**

### How SCM Can Help

If you have found the information useful and would like to enquire further, the SCM Team are available to help you navigate through your ESG responsibilities and answer any investment queries you may have.

Do not hesitate to contact us at [enquiries@scmdirect.com](mailto:enquiries@scmdirect.com) or call us on 020 7838 8650 to arrange a call, Zoom or face to face meeting.

SCM also offers Charities a Free Fee Analysis Service – as Ongoing Charges (OCF) are NOT the full cost of investing, it does not include transaction costs at individual fund level.

# AWARDS



Best Online Female Wealth Manager 2024 - *Gina Miller*



UK Financial Services Provider of the Year



Most Outstanding in Long-Term Returns



Most Innovative Online Wealth Management Firm 2024 - *London*

## WINNERS 2024



Leading Investment Company - *UK 2023*



Leading Fund Management Firm of the Year - *UK 2021*



Alan Miller - 30 Most Influential in the European ETF Industry List 2020



Most Trusted Online Investment Manager of 2019 - *UK*

## WINNERS 2023

## WINNERS 2021

## WINNERS 2020

## WINNERS 2019



Business Woman of the Year  
*Gina Miller*



Online Wealth Manager of the Year



SCM Investment Manager of the Year



Campaigner of the Year  
*Gina Miller*

## WINNERS 2018

## WINNERS 2017



## Important Notices and Risk Warnings

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**SCM Private does not give personal advice**



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