PENSION SCANDAL: failure of Derbyshire Pension Fund to act responsibly or with transparency from Derbyshire Pensioners Action Group and Divest Derbyshire May 2020

Dear District and County Councillors

We are writing on behalf of the Derbyshire Pensioners Action Group and the Divest Derbyshire campaign about the Derbyshire Pension Fund's failure to address climate risk properly and for its lack of transparency.

The recent covid crisis has brought these issues to the fore and underscored the risks of investing in the oil sector, as well as the need to use climate investments to support economic recovery.

The Derbyshire Pension Fund (the Fund) has over 100,000 members and affects over 280 employers in Derbyshire including Derbyshire County Council, all the borough and District Councils in Derbyshire; Derby City Council; Chesterfield College; Derby College; Derbyshire Fire Authority; Derbyshire Policy Authority; Peak District National Park Authority; University of Derby, most schools and a large number of private employers.

The Fund currently has over £200 million out of around £4.9 billion invested in fossil fuel companies including Exxon Mobil, BP and Shell, despite concerns about their growing climate risk.[1] These investments are also in direct conflict with the fact that most Derbyshire councils now acknowledge the catastrophic consequences of climate change.

Both the Derbyshire Pensioners Action Group and the Divest Derbyshire campaign are concerned that the Fund's investments in fossil fuel companies are not only driving climate change, but are a bad investment and contrary to the legal duty that the Pension Fund has to provide the best possible rate of return.

Both of our groups are also concerned about the failure of the Fund to engage properly with Pension Fund members. There are no AGMs or opportunities for Pension Fund members to engage with the Fund Committee. While most pension members are probably unaware of how their pensions are being invested, it is likely that many of them would not want their hard-earned money to be invested in climate-wrecking companies.

We call on you as councillors to persuade your colleagues responsible for the Fund, to discharge their responsibilities properly in terms of:

1. Their fiduciary duty in relation to climate risk; by divesting from fossil fuels and
2. Compliance with the Myners principles on transparency and reporting and the Law Commission's recommendations to consult with members about investments by establishing a system of regular and direct dialogue with scheme members.

[1] The world's 50 biggest oil companies, with Shell among the leaders, plan to increase production of oil by more than 35% between now and 2030, despite that fact that we need to reduce carbon emissions by 45% by 2030 to have any chance of holding global heating at a relatively safe level of 1.5 degrees C.

Fiduciary duty on climate risk

There is mounting evidence from financial experts, ranging from the Bank of England to investment banks, that fossil fuel companies are in danger of being left with trillions of dollars of worthless stranded assets[2]. Investors such as pension funds that ignore the global climate risk and fail to divest from these companies in time will foot serious losses. Thinktank Carbon Tracker has warned that the oil industry is at risk of a global market shock that could halve the value of fossil-fuel investments if governments delay setting policies to tackle the climate crisis. Carbon Tracker estimate that the drop in value will occur in the early 2020s. Local government pension funds that fail to divest in time will foot serious losses. Recent events have shown that fossil fuel investments can be very risky, with demand for oil plummeting and analysts suggest the oil and gas sector have become "low return, high risk and high carbon."

Business as usual is not an option. Either the fossil fuel companies continue to extract reserves and cause catastrophic and runaway climate change, or fossil fuel companies cut production of oil, gas and coal and are left with vast amounts of assets that will stay in the ground and their value written off.

Fiduciary duty requires pension funds to assess the financial risks due to climate change. Pension trustees are legally required to take into account factors which are financially material to risks or returns when making investment decisions. Fiduciary duty should not be misinterpreted as a duty to maximise short-term returns but rather a consideration of factors which may be material over the long term.

A December 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 challenge. Climate change is a growing risk to all society, not just individual pension funds. If pension funds are not addressing these risks, they are arguably complicit in seeing those risks increase. By failing to address the climate risks of their investments, and exclude those that pose a long term risk, the Committee is failing in its fiduciary duty.

The Fund has recently signalled a welcome intention to consider climate risks properly. It recently published a Climate-Related Disclosures Statement setting out the principles for assessing climate risk and has commissioned a confidential Climate Risk Report, unseen by ourselves.

While we do not know what the Climate Risk Report recommends we are very concerned by some of the statements and inferences in the Climate-Related Disclosures Statement. These include:

1. Serious consideration of scenarios of 3 or 4 °C warming, when 2°C warming is already catastrophic enough (in 2050 in a 2°C scenario all the UK's major ports will be below

[2] A stranded asset is something — a piece of equipment or a resource, for example — that once had value or produced income but no longer does, usually due to some kind of external change, including changes in technology, markets and societal habits. In the context of fossil fuel companies this describes oil and gas resources that haven't yet been extracted, but which appear as assets on companies' ledgers. According to a 2015 study in Nature, an estimated third of oil reserves, half of gas reserves and more than 80% of known coal reserves should remain unused in order to meet global temperature targets under the Paris Agreement.

sea level) . At 3-4°C of warming we are facing political instability, war, and economic collapse, and the extinction of half of all plant and animal species. Pension funds will be an irrelevance.

2. Favourable comparison to global benchmarks, which themselves are equivalent to 4-5°C of global warming so are actually worse than the global economy as a whole, ie, being a little bit better than these benchmarks is a pretty small achievement.

While the Fund has made some limited efforts to reduce exposure to fossil fuels in recent years, this fails to address the full risk of those holdings.

Instead of divesting from fossil fuels and eliminating those risks the Fund continues to rely on a failed strategy of engagement with the companies. Despite many years of engagement there are few meaningful results to show from this. The Climate Disclosure Report cites the successful shareholder resolution to BP in 2018/19, but BP still continues to invest only 3% of capex in renewables.

The actions taken to date are insufficient and the fund has a fiduciary duty to take the climate risks seriously. We call on you as Councillors to urge the Derbyshire Pension Committee to divest from fossil fuels in accordance with their fiduciary duty.

Alternative investments

The Fund has approved a 3% allocation to investments in global companies that are sustainable in financial, environmental, social and governance terms, as well as several renewable energy opportunities. This is all good but doesn't eliminate the risk of investing in fossil fuel companies and is still a very limited part of the investment portfolio. There are many examples of 'green' and fossil free investment options available for investors.[3] Other Pension Funds are investing in more socially and environmentally beneficial projects.[4]

With the likely devastating impacts of coronavirus on the local economy we believe it is even more important for our council's Pension Fund to be investing in beneficial projects in Derbyshire that can provide green jobs, boost the local economy and help the environment. The Committee on Climate Change has recently called for the government to use climate investments to help the economy recover from covid 19 and ensure the recovery does not 'lock-in' greenhouse gas emissions or increased climate risk. Many others are calling for a green recovery and there are many examples of climate friendly investments that could create new jobs in Derbyshire, including renewable energy production and storage, home insulation, flood protection, and modular zero carbon housing[5]. Any council recovery plan for

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[3] These include fossil free versions of large indices such as the MSCI ACWI and the S&P 500, both of which outperform their parent index.

[4] The Southwark Pension Fund plans to invest £65m into two new renewable energy funds; The Avon Pension Fund has committed £115m or 2.5% of its assets to Renewable Infrastructure funds; Danish pension funds and a consortium of institutional investors invested £2bn (€2.3bn) in the Walney Extension offshore wind farm project in the UK; Danish pension funds have pledged to invest $52 billion in energy infrastructure, green stocks and bonds and energy efficient construction up to 2030.

[5] For example Goldman Sachs has invested £75 million in a Derbyshire factory to produce energy efficient modular housing https://www.insidehousing.co.uk/news/news/goldman-sachs-invests-75m-in-offsite-house-builder-60990

covid-19 should ensure that such measures are prioritised and it is not a return to business as usual.

Any councillors interested in learning more about the benefits of divestment may be interested to know that Friends of the Earth are running an online webinar series for councillors on divestment and positive reinvestment. The first webinar will be on the 4th June, from 18:00 - 19:30. Please save the date and if you are interested contact me for further details.

Transparency

There has been little or no direct engagement with Pension Fund Members since the last AGM many years ago.

The Fund is required to monitor and report on the extent to which it complies with the Myners Principles as set out in guidance published by the CIPFA in November 2012.[6] The principles relating to transparency and reporting state:

- *Act in a transparent manner, communicating with stakeholders on issues relating to their management of investment, its governance and risks, including performance against stated objectives.*
- *Provide regular communication to Scheme members in the form they consider most appropriate.*

The Fund's response, as set out in its Annual Report, shows that the sole mechanism for communicating and reporting to stakeholders and Scheme members is the Fund's website. Unsurprisingly the response to consultations with fund members held over the last 3 years have been in the single digits.

This is unacceptable in a time of mass electronic communication. Even if the Pension Fund does not have access to all members emails it could try to send out emails to those members it has contacts for, as well as through council and company networks. It could advertise meetings in the *Derbyshire Now* magazine which goes to all County residents four times a year, or enclose a letter with the annual statement sent to all Pension Members. The Pensioners Action Group were promised last year that the Fund would set up a regular Forum for communication but no details or date have been set.

The Law Commission have also recommended that pension funds should be consulting members about investments. In 2014 it stated that the law permits pension trustees to make investment decisions that are based on non-financial factors (such as environmental and social concerns), provided that: *"they have good reason to think that scheme members share the concern; and there is no risk of significant financial detriment to the fund".*[7]

Again, the Fund appears to be failing to abide by these recommendations.

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[6] ''Principles for Investment Decision Making and Disclosure in the Local Government Pension Scheme in the United Kingdom 2012''.

[7] https://www.lawcom.gov.uk/project/pension-funds-and-social-investment/

We call on Councillors from all districts to urge the Pension Fund to set up a regular Pension Fund Members Forum and to consult members electronically or through other means about investment decisions and their investment strategy.

Thank you.

Yours faithfully

Sue Owen
On behalf of the Derbyshire Pensions Group

Lisa Hopkinson
On behalf of the Divest Derbyshire campaign

The Divest Derbyshire campaign is supported by the following organisations across Derbyshire (in alphabetical order): Amber Valley Against Fracking; Chesterfield and District Trades Union Council; Chesterfield Climate Alliance; Clay Cross Against Fracking; Coal Aston and Dronfield Against Fracking; Derby Climate Coalition; Eckington Against Fracking; Glossopdale Transition Initiative; Melbourne Area Transition; Sustainable Edale; Sustainable Hayfield; Transition Belper; Transition Buxton; Transition Chesterfield; Transition Hope Valley; Transition Matlock; Transition New Mills. Transition Wirksworth; University of Derby Students' Union.