'Fiduciary duty' remains under-defined, says UK law professor

By Editor Test   *Thu, May 2, 2013*

"This is all about what you do with other people's money – you can't get more political than that. [But] It's very difficult to lay down a hard and fast rule that will work for decades to come," said Roger McCormick.

The concept of "fiduciary duty" remains too undefined to become the legal standard for appropriate investment practices by pension trustees in the UK, said the head of the London School of Economics' Sustainable Finance Project last week, according to a report in IPE.com.

Roger McCormick of the LSE's Department of Law warned that codifying "fiduciary duty" into law wouldn't necessarily solve the problems plaguing the financial industry and noted that there is still confusion as to what fiduciary duties entail.

"From time to time, you hear suggestions and ideas about fiduciary duty, which tend to point the law in different directions," he told a reporter. "You have the ESG [environmental, social and governance] community wanting to have a more liberal interpretation of what the duties are. Then you have other people looking at investment banks selling dodgy-looking derivatives products to people that they call 'muppets,' and maybe feel that a higher level of duty should be imposed in situations like that.

 "You have to break the questions down in a more analytical fashion, almost forget the label 'fiduciary duty' and focus on what the substance of the duty should be," he said. "You can't expect trustees to take risk in this area if the law isn't reasonably clear—they are not going to be interested in sticking their necks out.

"With that as a background, we can have a more enlightened debate on the political aspects – and there are a lot of them," McCormick added. "This is all about what you do with other people's money – you can't get more political than that. [But] It's very difficult to lay down a hard and fast rule that will work for decades to come."