



### Summary

- The Pensions Minister, Torsten Bell, recently announced that he will bring forward legislation to allow the government to develop statutory guidance for the trust-based private pensions sector, providing clarification on how trustees can comply with their existing duties when considering wider factors, such as climate risk.
- This intention comes at a time when considerations such as climate change, intergenerational fairness and broader systemic risks increasingly shape investment outcomes over a longer-time horizon.
- Industry experts emphasise the need for trustees to incorporate a broad range of considerations while ensuring fiduciary duties are prioritised in decision-making.
- Trustees suggest that the time horizon for investments is crucial; younger members may face more significant financial impacts from climate risk, suggesting that managing these risks should influence default investment strategies.

## Juggling duty and risk

Paige Perrin explores the struggle trustees face when defining where to draw the line between their core fiduciary responsibility and wider issues, such as climate risk and intergenerational fairness, when it comes to investing members' money

“As a trustee, the first and foremost consideration is the financial benefit of the beneficiary, taking into account both risk and return. However, many things that appear to be ‘wider’ issues are in fact financial risks,” Association of Member Nominated

Trustees (AMNT) co-chair, Maggie Rodger, says.

For pension trustees, uncertainty is nothing new. Balancing risk and return, managing governance budgets, and navigating regulatory change are all key parts of a trustee’s role.

But in recent years, trustees

increasingly have to decide how factors typically considered non-financially material can be factored in without straying beyond their fiduciary duty to act in members’ best financial interests.

As climate change, intergenerational fairness and broader systemic risks increasingly shape investment outcomes over longer time horizons, the traditional distinction between financial judgement and wider considerations is proving harder to manage.

However, Pensions Minister, Torsten Bell, announced at the end of last year that he would be bringing forward legislation to allow the government to develop statutory guidance for the trust-based private pensions sector, providing clarification on how trustees can comply with their existing duties when considering wider factors.

He acknowledged that there has been a “long-running debate” around the scope of trustees’ investment duties and agreed that more clarity about the ability of trustees to take into account structural factors such as climate risk and members’ standards of living when making investment decisions would help.

The Minister hopes to bring forward clarity on the next steps in a matter of months and confirmed that he would envisage taking powers in primary legislation, before then consulting on the statutory guidance relating to the powers provided to the government.

The government and Bell’s recognition of this challenge arguably reflect its importance and the necessity of providing clarification on how trustees can comply with their existing duties when considering wider factors.

## Duties

“In pensions, there are very few instances where there is only one ‘right’ answer. Therefore, the role of a good trustee is always one of balancing competing priorities,” Vidett head of sole trustee, Duncan Willsher, says.

Willsher outlines the core duties of trustees, emphasising that fiduciary responsibility must remain the most important.

“Fiduciary first; climate and other wider issues handled where financially material; stewardship evidenced in the implementation statement; employer collaboration with clear trustee independence – simple, defensible and proportionate for robust long-term outcomes,” he says.

Pensions Management Institute chief strategy officer, Helen Forrest Hall, notes that pension scheme trustees “increasingly recognise” that fiduciary duty extends beyond routine scheme management to long-term challenges such as climate change, sustainability, private market investment portfolios and intergenerational fairness.

However, Forrest Hall warns that

these short and long-term goals “must be balanced” and says they are not exclusive of each other.

“To achieve this balance, trustees are strengthening governance through clearer frameworks, high-quality advice and raising professional standards, and where it’s better for members, are embracing the benefits of scale through consolidation,” Forrest Hall continues.

Supporting this, Rodger points out that it should also be remembered that “where there are risks, there are also opportunities”.

For instance, she suggests that long-term investment in new energy sources may be both financially attractive and consistent with trustees’ duties.

“The interest of the beneficiary should always be the first concern when considering any investment opportunity,” she says.

“Such investments also highlight the fiduciary dilemmas trustees can face. The issue boils down to the timescale or investment horizon for such assets.”

BESTrustees professional trustee, Rachel Brougham, agrees and stresses that the time horizon is a “key factor” in how these risks ought to be considered.

Rodger suggests that “climate change, for example, represents a major risk for long-term investment”.

“Its impact extends well beyond the oil and gas industries, to connected sectors and ultimately to the entire economic environment if it disrupts food supplies, trade routes, and economic stability more broadly. These risks will influence the long-term value of investments, both through their direct effects and because investors increasingly price them into their own decision making, which then affects markets,” Rodger continues.

But this risk also varies between generations, as Brougham goes on to explain. “The financial impact of climate risk, for example, will be more significant for a younger member compared to someone about to retire, and therefore

ought to become a bigger consideration in default design,” she says.

## Considerations

Despite a clear consensus on the importance of considering other broader issues alongside trustees’ fiduciary duties to members, industry experts agree that there are substantial challenges to their day-to-day work, particularly in terms of legal and regulatory issues.

“The biggest concerns are legal or regulatory challenge for straying from or failing to meet core duties, and potential backlash from scheme members, sponsors, or the press if investments don’t reflect stakeholders’ priorities,” Legal and General Asset Management head of delegated solutions, Tim Dougall, says.

Additionally, Vidett client director, Kevin Dolan, adds that “keeping up to speed, acknowledging/managing risk and taking appropriate action in an ever-changing landscape with the potential of regulatory scrutiny [also] presents its own challenges”.

Brougham also acknowledges that trustees are not adequately equipped (in skills, data, and advice) to assess these broader risks of legal challenges, regulatory scrutiny, or member backlash, but suggests that this is improving.

Yet, she suggests that it is “perhaps increasingly hard for lay trustees to keep updated on the latest developments and allocate appropriate time for both the education that is needed to improve knowledge alongside the time needed to properly consider the risks and opportunities with their advisers”.

As such, she indicates that this comes down to governance budget as to how much time can be allocated.

As evidenced, holding the role of trustee is not easy with the amount of knowledge required and the ability to navigate duties in the best interest of scheme participants.

Dalriada trustee director, Caroline Allensby-Green, points out that one trustee cannot be expected to know



everything about pensions.

One area in particular Vidett chief client officer, Alison Hatcher, highlights is risk management, which she calls “a particular challenge”.

“Risk management on schemes is varied, and understanding how to take risk is complex for anyone. It is this evaluation of risk that good trustees understand, and this skill is essential today,” she argues.

Given this, Hatcher thinks trustees need to spend more time understanding risk and its measures to make good decisions.

Meanwhile, Brougham highlights that “regulatory scrutiny is always a concern, regardless of what it is trying to achieve”, and suggests that this scrutiny often, unfortunately, drives “tick-box behaviours”.

She also notes that “disclosure demands reduce the governance time available to consider some of these issues more broadly and to make more of a real-world impact” (such as the Taskforce for Climate-related Financial Disclosures reports).

Therefore, she argues: “Investment decisions taken properly, with good advice, robust discussion, and a focus on the financial risks involved (including nature, climate and social risks) ought not to attract unwanted legal attention.”

“Trustees cannot develop the knowledge and understanding without that support from advisers. Investment managers also need to do a better job of holding investee companies to account,” Brougham continues. “Unfortunately, regulators have put the problem at trustees’ doors without fully commensurate regulation of investment managers and investee companies, or global political will to fix climate change.”

However, Brougham doesn’t just single out trustees, investment managers and investee companies and observes that “it can also be argued that the

sponsor ought to be aware of the issues, and justification for a given strategy, when they are being consulted on about a scheme’s statement of investment principles”.

Overall, it seems clear that a trustee’s ability to judge wider risk is not just a one-person or board job, and instead one that needs support from colleagues, policy makers, regulators, investment managers, advisers, and even sponsors.

However, Dolan is clear that the “considerations of members’ best interests and thereby complying with a trustee’s fiduciary duties, however, should always be the first consideration and using that fundamental approach often helps to ease the decision-making process and justify actions undertaken”.

### Policy

As the government prepares to clarify trustee responsibilities, pension experts have welcomed the proposals. However, they have also argued that more clarity is needed on whether these proposals will hinder or help trustees with their duties to members.

Hatcher welcomes the proposal, noting that “guidance is useful to help understand with more certainty the expectations behind regulation”, and says this can “shape behaviour and avoid adverse consequences”.

“If there are regulatory changes, where the government feel trustees need support via guidance or that trustees are requesting the guidance, this will be helpful,” she says.

Expanding on this, Brougham states that providing “guidance or clarity around fiduciary duty – as long as it avoids any unintended consequences that could otherwise be challenged – may just give trustees the confidence to properly take into account these broader risks which they might otherwise be ignoring because it’s simply considered to be ‘too difficult’”.

Dougall echoes this, stating “clear statutory guidance would reduce the

current ambiguity and give trustees confidence”, but recognises that this also could be viewed by some as “overly prescriptive”.

Indeed, Brougham believes that the existing definition of fiduciary duty is “sufficient to enable trustees to take into account wider factors”.

Her reasoning behind this is “because most of [*the wider factors*], over an appropriate time-horizon (which for a young defined contribution (DC) member goes way beyond 2050), will manifest as financial risks that need to be considered in any event”.

Allensby-Green says Dalriada “do not believe that further guidance from the government in relation to financially material considerations is necessary”.

Meanwhile, Rodger points out that the AMNT supports the Share Action-sponsored proposal for an amendment in law within the Pension Schemes Bill to provide added clarity on pension schemes’ fiduciary duties.

She notes, currently, Bell “appears to be considering statutory guidance” but argues that this is “much weaker and will not necessarily protect trustees against a legal challenge”.

Rodger also suggests that this “also could be subject to removal at any time,” but notes that further discussions are needed on this and are ongoing.

This issue of clarity has also been raised by several pension professionals, highlighting a shared concern within the industry.

Hatcher warns that if guidance is issued “without clarity of where it applies or who it applies to”, could create “confusion and not be helpful in supporting the reason it was issued”.

However, Brougham points out wider debates that are being had about mandating pension investment and notes that the “greater concern is the prospect of government trying to direct pension scheme trustees where to invest if the Mansion House Accord fails to deliver to its agenda”.

“If we take that to its logical conclusion, then there is potentially little left of the key characteristics of trusteeship, and what impact might that have on member confidence in these arrangements, and therefore their willingness to save for retirement,” Brougham continues.

### Evolution

Looking at past progress, it becomes clear that many of these broader considerations are becoming more natural for trustee boards to consider in their day-to-day management of scheme investments.

Brougham suggests that the line

between financial and non-financial considerations has “probably become clearer over time”.

“What once might have been a typical old school response of ‘it’s all about the returns, we don’t need to be worried about all that fluffy stuff’ has evolved as it has become clearer that the ‘fluffy stuff’ has financial impact either as a risk, or an opportunity,” she explains.

“It’s not a big stretch, in being encouraged to think more broadly and more critically about these risks, to conclude that most, if not all, of them will have some financial impact over a given time horizon.”

Hatcher adds that having a trustee

board and advisers that are “open-minded” to consider these is how change occurs, “as the more people looking at them, the more chance we must develop common practices here”.

Dougall echoes this, noting that “systemic risks are increasingly being recognised, and the fact that investment decisions can form part of a much broader complex adaptive system”.

He adds that “what’s challenging for both trustees and policymakers is understanding how their individual actions could impact the overall system in unexpected ways”.

Yet, Brougham stresses that it is important to remember that “one size will not fit all members”.

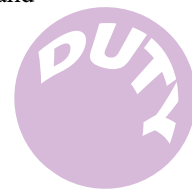
“Creating ‘time horizon strategies’ reflecting the different risks that will impact members at different ages need to be considered, alongside rethinking the balance between growth and risk-managed elements over the lifetime of the members,” Brougham concludes.

Ultimately, however, the responsibility for providing clarity on fiduciary duty still rests with the government. Trustees and advisers can continue to adapt their practices and evolve their approach, but without formal statutory guidance, there remains uncertainty over how far and in what ways these considerations should be integrated into decision-making.

The next step is therefore to await the statutory guidance that the Pensions Minister and the government will publish, setting out these expectations and boundaries for trustees’ fiduciary duties.

Such guidance could not only support trustees in fulfilling their duties but also help build consistency across the sector, ensuring that pension schemes can confidently align long-term investment strategies with members’ best interests.

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**Written by Paige Perrin**