

Paper C: Fiduciary duty in the LGPS

Key points to note

The Scheme Advisory Board (SAB) has been invited to join the Department for Work and Pensions' (DWP) working group on fiduciary duty. The topic remains of significant importance within the scheme, and the group is asked for thoughts on any further areas of focus or output.

Recommendation

That the group notes the contents of this update and considers any areas of focus or output for as the Fit for the Future reforms are being implemented

Background

In response to a proposed amendment to the Pension Schemes Bill to clarify the operation of the fiduciary duty, the Government agreed to issue statutory guidance on this issue.

The Department for Work and Pensions (DWP) has launched a new working group designed to develop this statutory guidance. It has been tasked with developing "practical, principles-based guidance to give trustees of occupational pension schemes greater clarity and confidence on their investment duties.

At the last meeting of this group, it was agreed that the SAB should request representation on the DWP's working group on fiduciary duty. After representations were made to MHCLG, the Board is now represented on the working group. Pensions UK is also represented on the group.

The Board's most recent [legal advice from Nigel Giffin KC was issued in January 2025](#) and expands on a number of points from his initial advice in 2014. [A summary of the advice](#) can be found on the Board website.

The [Board's statement on lobbying](#) published in September 2024 also touched on the matter of fiduciary duty and how this interacts with environmental, social and governance (ESG) considerations, making clear that "...**the primary purpose must be to achieve the required returns in an appropriately risk-managed way to pay pensions when they become due...**". The statement further clarifies that whilst

there is a growing convergence of ESG considerations and financial considerations due to, for example, the widely acknowledged physical and financial material risks associated with climate change, decisions must not **“be driven directly by the political views of Pension Committee members or indeed Government ministers (except as where prescribed in law)”**.

It is expected that the Investment Strategy Statement (ISS) guidance issued by the Ministry for Housing, Local Government and Communities will echo this principle.

Considerations

Fiduciary duty within the LGPS remains a significant and increasingly high-profile issue. There is growing risk of politicisation of investment decisions, driven in part by global conflicts and increased campaigning and lobbying activity.

The January 2025 legal advice provides helpful clarification in this context. In particular, it reinforces that fiduciary duty remains grounded in the delivery of appropriate risk-adjusted returns, supported by robust and well-evidenced decision-making processes. It also confirms that, while member views may be taken into account, they must be considered within the framework of fiduciary duty and cannot override it.

The development of the DWP’s statutory guidance therefore presents a timely opportunity to address some of the misconceptions that have emerged around the role of ESG considerations and how these may influence investment decisions and outcomes. This group is invited to consider whether there are any specific areas or issues that the forthcoming guidance should seek to address?

The Board’s position on fiduciary duty is well established, and at this stage there are no plans to seek further legal advice. Though the guidance was published before the Fit for the Future reforms, the assumed changes considered in the advice align with the actual changes confirmed by Government and as a result, the advice provided still stands.

The Board is however progressing complementary work to develop practical guidance to support funds setting their responsible investment policies. In this context the group is also invited to consider whether there are any further areas of focus or additional outputs the Board could usefully develop to support administering authorities and pools in the coming months.