Sackers

DWP publishes draft guidance on trustees' fiduciary duties

Alert | 5 November 2026

Introduction

On 5 November 2026, the DWP published draft guidance on "Pension fund investment: fiduciary and related duties of trustees" (the "Guidance"). The consultation will run until 28 January 2027.

The Guidance aims to clarify how existing legal principles apply to contemporary investment questions. It "does not introduce new duties or alter existing legal obligations".

Key points

- The Guidance is intended to reflect the law as it stands and to give trustees greater clarity about what their existing duties require and permit.
- Trustees must identify and take account of financially material considerations over different time horizons, including the long term. These may be direct or indirect, quantitative or qualitative, and arise at asset, portfolio, system or economy level.
- A practical and proportionate approach is permitted. Trustees are not expected to consider every conceivable factor but should follow and evidence a careful decision-making process.
- Stewardship forms part of investment decision-making and may include proportionate collaboration and public policy engagement.
- Financially material considerations remain relevant to pooled investments, consolidation and transactions involving a buy-in and buy-out.
- The views of members may inform trustees' understanding, but investment decisions remain the responsibility of the trustees.

Purpose and status

The Guidance is aimed principally at trustees of trust-based occupational pension schemes but is also relevant to "others who have duties when the pension fund is invested", including those providing professional advice and services. It builds on the Financial Markets Law Committee's February 2024 paper on "Pension Fund Trustees and Fiduciary Duties" in the context of climate change, and is intended to complement regulatory guidance, including TPR's General Code of Practice.

The Guidance emphasises proportionality and does not ask trustees to undertake a wholesale revision of existing work. Instead, it is intended to support future work on a timetable appropriate to each scheme. The Guidance highlights that there is room for the industry to do complementary work to support its implementation.

Trustees' duties and members' best interests

The Guidance confirms that trustees must use their powers properly and lawfully to promote the purpose of the pension trust, putting the interests of the trust and its members ahead of their own. Their investment duties also require care and prudence, with investment powers to be "exercised in a manner calculated to ensure the security, quality, liquidity and profitability of the portfolio as a whole".

The starting point for assessing members' best interests is the trust's purpose: paying benefits over time. Trustees must consider all members and their interests as members of the scheme, rather than in some other capacity. Where there is a potential conflict of interest, the Guidance describes acting in members' best interests as acting in their "sole interest".

This is not simply a question of maximising short-term returns. Trustees should consider the longer-term consequences of investment decisions for the scheme and work with the time horizons relevant to paying pensions, including the lifetime of the scheme and its members. Decisions should be informed by evidence, analysis and advice, with trustees weighing relevant matters and exercising their judgement through a practical and proportionate process.

Financially material considerations

The Guidance confirms that trustees must identify and take account of "financially material considerations", being relevant factors. A consideration is financially material where it is reasonably capable of affecting risk, return, outcome or opportunity in the context of investing scheme assets and paying benefits over time.

The Guidance explains that financially material considerations may be positive or negative, certain or uncertain, or direct or indirect. Their materiality will depend on their magnitude, likelihood and the relevant time horizon.

Where appropriate and proportionate, trustees may consider risks and opportunities at portfolio, system or economy level. Examples include financial-system resilience, artificial intelligence, supply chains, climate change, biodiversity, health and inequality. The Guidance says that trustees should have confidence that they can consider long-term, systemic and qualitative financially material considerations, and that more things are capable of being financially material than may have appeared to be the case in the past. There is no requirement for disproportionate or impractical work. The key is undertaking a reasonable process that is applied consistently and objectively as between the various financially material factors in the circumstances of the scheme.

The Guidance recognises that pension funds both depend on and can affect wider financial and economic systems. Systemic issues may affect an entire market, network or economy, and some financially material risks and opportunities cannot be understood solely at individual investment level. Trustees should consider these wider effects where appropriate and proportionate, including the potential combined effects of their investments and those of others. This does not make trustees responsible for resolving those issues.

Describing sustainability as integral to investment decision-making, with financial materiality forming the entry point, ESG considerations should be taken into account where trustees consider them financially material. But not every ESG matter will meet that test.

The Guidance also recognises that trustees may consider members' future costs and circumstances of living where there is a credible connection with an investment decision. It makes clear that they are not responsible for those circumstances or expected to examine them as part of every decision.

Assessing financial materiality remains a matter of trustee judgement: trustees may decide not to pursue it where further investigation would be disproportionate or impractical, including because of questions of scale or causation.

Investment decision-making

Trustees must identify and weigh relevant matters before reaching a decision. The Guidance recognises that different trustee boards may reasonably reach different conclusions and that trustees are not judged in hindsight, nor expected to have perfect foresight or guarantee a particular outcome.

Trustees should consider whether they have:

- identified the relevant matters
- obtained and understood sufficient information and advice
- challenged that advice where appropriate
- weighed the relevant matters
- reached and recorded a reasoned decision.

Both quantitative and qualitative analysis may be relevant. A consideration does not lack weight simply because it cannot be expressed numerically.

Non-financial matters and members' views

Non-financial matters may be relevant in limited circumstances. Referring to the Law Commission's formulation, the Guidance notes that they may generally be taken into account where trustees have good reason to think members would share the concern and there is no risk of significant financial detriment to the fund.

Members' views may provide ideas or suggestions for trustees to consider on their merits. They may also help trustees assess whether members would share a concern when considering a non-financial factor. However, the Guidance does not require trustees to consult members to establish this: trustees may have good reason to think a concern is shared without seeking views.

The Guidance cautions that seeking members' views should not be undertaken lightly. Trustees should consider the practical challenges and costs, whether responses are representative and the possibility of low participation. Members may not have all the information available to trustees, and individual views may not reflect the interests of the membership as a whole.

Any exercise should reflect the type and circumstances of the scheme. Approaches could range from a questionnaire or survey to a meeting or structured discussion. Trustees should assess the weight to give responses and may wish to explain to members how the information has been used. The exercise does not transfer responsibility for investment decisions to members.

Trustees are generally not required to seek members' views on investment strategy. If views are sought, trustees are not required to follow them. Responsibility for the decision remains with the trustees, acting in the interests of members as a whole.

Stewardship and advisers

Stewardship is part of the investment process rather than a separate investment objective. Although investment managers or specialist providers will often carry it out, trustees retain a role in setting expectations, monitoring performance and assessing effectiveness.

Public policy engagement may form part of stewardship where the subject is financially material and the engagement is appropriate, proportionate and cost-effective. Trustees may also consider proportionate collaboration where effective action cannot reasonably be achieved by the scheme alone.

The Guidance emphasises trustees should take reasonable care when appointing advisers and managers, setting their mandates and monitoring their work. Even where functions are delegated, trustees remain responsible for fulfilling their own duties and for the strategic decisions that fall to them.

Buy-ins, buy-outs and consolidation

Financially material considerations remain relevant when trustees consider a transfer to a master trust or consolidation vehicle, or a transaction involving a buy-in and buy-out.

When selecting a provider, consolidator or insurer, trustees should consider the future administration and security of members' pensions. They should also consider the transaction partner's long-term investment approach and how it aligns with their assessment of financially material considerations.

What's next?

The Guidance is currently a consultation draft, with the deadline for comments being 28 January 2027. We currently expect that finalised guidance will not come into force before spring 2027.

Sackers will be responding to the consultation, and we'll provide further briefings and updates based on the finalised guidance.

We expect the draft Guidance will attract a lot of comment in the industry. It's important to consider what it says closely. Ultimately, whilst trustees may wish to take the finalised Guidance into account in due course when considering their investment beliefs, strategy, risk-management and stewardship frameworks, and arrangements with advisers and investment managers, it should not require a wholesale revision of existing work.

Sacker & Partners LLP
20 Gresham Street
London EC2V 7JE
T +44 (0)20 7329 6699
E enquiries@sackers.com
www.sackers.com

Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on the basis of this document alone. For specific advice on any particular aspect you should speak to your usual Sackers contact. © Sacker & Partners LLP November 2026