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Towards "Green" Trusteeship: New statutory amendments for occupational pension trustees

Introduction

This article concerns the introduction of changes to "occupational pension schemes"[1] by the Pension Protection Fund (Pensionable Service) and the Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018[2] (hereafter, "the Investment Regulations"). More specifically, it is argued that the changing regulatory landscape in this area is likely to have a positive influence on pension trusts' approaches to environmental risks (including climate change).

The above-named regulations are interesting for the fact that they aim to act as a driver for promoting a greater appreciation of the possible portfolio damage that may be caused by "Environment Social Governance" (ESG) risks amongst UK pension funds.[3] Succinctly, ESG refers to an 'investment approach where factors relating to environmental, social and governance issues are taken into account in the investment process.'[4] Such non-financial considerations are sensibly described as a form of "responsible investing" which has undergone a 'remarkable rise' in the past few years.[5] ESG should more properly be

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[1] These are also known as "workplace" or "private" pensions. The gov.uk website suggests that there are two types of occupational pension schemes, viz: (i) one that is based on a "defined contribution"; and (ii) one that is based on a "defined benefit" and based on final salary. See, for example, 'Types of Private Pensions' (*gov.uk*, no date) https://www.gov.uk/pension-types accessed 17 September 2019. See also, 'Trustee guidance' (*The Pensions Regulator*, no date) https://www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/trustee-guidance accessed 17 September 2019

[2] Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendments and Modification) Regulations 2018, SI 2018/988 (hereafter, "the Investment Regulations 2018")

[3] 'ESG and climate change for pension funds: Putting the law into practice' (*Sackers*, no date) https://www.sackers.com/app/uploads/2019/02/1646_Sackers_ESG_guide_V3_12_electronic.pdf accessed 17 September 2019

[4] S Daykin 'Pension Scheme Investment: Is it Always Just About the Money? To What Extent Can or Should Trustees Taken Account of Ethical or ESG Factors When Investing?' (2014) 28(4) Trust Law International 165

[5] G Kell, 'The Remarkable Rise of ESG' (*Forbes*, 26 June 2018) https://www.forbes.com/sites/georgkell/2018/07/11/the-remarkable-rise-of-esg/#7dd9fe001695 accessed 13 September 2018

considered as E-S-G, *viz* as separate things which are grouped together to make up a larger whole.[6] This article looks specifically at the environment-related risk element of ESG.

Lee and Egede have commented that 'Economic and environmental considerations are inevitably inter-related.'[7] Pension funds account for a significant proportion of the financial marketplace,[8] and a corollary of that is that pension trustees' investment decisions can have significantly damaging consequences for the environment.[9] In turn there is a heightened and growing concern for environmental risks in the markets generally,[10] and this means that the pension funds themselves are susceptible to losses if risk mitigation measures are not considered.[11] The Investment Regulations indicate that climate change is particularly problematic;[12] this is an important statutory acknowledgment given the Paris Agreement's aim to stymie the rising global temperature to under two degrees Celsius[13] as well as HM Government's commitment to a net zero target by 2050.[14]

The central thesis that is presented throughout is that it is a *sine qua non* for modern pension trustees to assess environmental risks (especially climate change risks) during the discharge of their investment duties. The article opines that the new regulatory landscape should promote a galvanising effect on the pension funds appetite to consider environmental risks.[15] It is hoped that the current anachronistic outlook of the pension fund sector will revert to one that is far "greener" and considerate of the potential, devasting consequences

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[6] Daykin (n 4) 166
[7] R Lee and T Egede, 'Bank lending and the environment: not liability but responsibility' (2007) Nov JBL 868
[8] A Mooney, 'Pension funds fail to insulate against climate change risks' *Financial Times* (London, 4 November 2018) https://www.ft.com/content/99d5c50a-30bf-39c0-b67d-6752abd7e53d accessed 13 September 2019
[9] 'Top UK pension funds put on notice over climate risk' (*ClientEarth*, 13 August 2018) https://www.clientearth.org/top-uk-pension-funds-put-on-notice-over-climate-risk/ accessed 17 September 2019
[10] See, for example, 'Environmental risks are biggest ESG factors for insurers and reinsurers, especially in Asia-Pacific, Fitch heat map reveals' (*Intelligent Insurer*, 17 September 2019) https://www.intelligentinsurer.com/news/environmental-risks-are-biggest-esg-factors-for-insurers-and-reinsurers-especially-in-asia-pacific-fitch-heat-map-reveals-19425 accessed 17 September 2019
[11] Daykin (n 4) 166-167
[12] Investment Regulations 2018, reg 4
[13] United Nations Climate Change, *The Paris Agreement* (UN 2015), Article 2(1)(a)
[14] Committee on Climate Change, *Reducing UK emission: 2019 Progress Report to Parliament* (CCC, July 2019) 11
[15] Mooney (n 8)

that investments may have to the environment. In the mind of the modern pension trustee, the imposition of a statutory duty to have greater regard to ESG considerations should be welcomed rather than admonished. Finally, it should be noted that this article does not portray its advice in respect to specific pension schemes; a consideration of how the regulatory amendments may affect pension trustees generally is what the analysis seeks to achieve.

Environmental risks

The need for pension trust funds to more adequately consider the environmental risks during their exercise of their duty of investment is evidenced in *The Kay Review*[16] and, more recently, in a 2014 report by the Law Commission.[17] These works can be seen as a possible *fons et origio* of the new regulations. In respect to ESG factors, the Law Commission report says the following:

'Many investors now look at a broader range of issues, often referred to as "environmental, social and governance" (ESG) factors. At its most basic, taking account of ESG factors is designed to reduce risks. The Kay Review highlights how poor safety procedures, together with a lack of environmental concern, may lead to disastrous and expensive mistakes.'[18]

[16] J Kay, 'The Kay Review of UK Equity Markets and Long-Term Decision Making – Final Report' (Department for Business, Innovation and Skills, 23 July 2012) https://www.gov.uk/government/news/kay-review-publishes-report-on-uk-financial-sector accessed 13 September 2019
[17] Law Commission, 'Fiduciary Duties of Investment Intermediaries' (Law Com No 313, 2014) http://www.lawcom.gov.uk/app/uploads/2015/03/lc350_fiduciary_duties.pdf accessed 13 September 2019
[18] ibid, paras 5.7-5.8

The literature on this subject pays close attention to how climate change is a likely long-term risk for pension schemes' portfolios.[19] Climate change along with environmental risks generally are explicitly referenced, *lex scripta*, in the Investment Regulations 2018 as issues which are now "financially material" considerations for pension trustees over "an appropriate time horizon".[20] To take climate-related risks as an example, such risks are not only going to arise as "physical risks" but also as "transitional risks" which include economic consequences that could impact pension funds:[21]

'Climate-related risks and opportunities will affect every part of the economy. They include physical risks from the climate itself and transition risks from actions which reduce greenhouse gas emissions. They are relevant for all companies to some extent, with transition risks being more important in the near term. Climate-related risks are therefore relevant for pension scheme investments, sponsor covenant and funding decisions.'[22]

In a broad sense the environmental risks that can affect financial transactions and investment choices can be categorised as follows: (i) direct liability risk; (ii) indirect risks, i.e. credit risk and security risk; (iii) reputational risk; and (iv) market risk.[23] Making an investment that is subject to climate-related risks could expose pension fund schemes to some

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[19] B Chapman, 'Government should force companies and pension funds to disclose climate change risks, says MPs' *Independent* (London, 4 June 2018) https://www.independent.co.uk/news/business/news/companies-pension-funds-climate-change-risk-disclosure-environmental-audit-committee-a8379461.html accessed 13 September 2019

[20] Investment Regulations 2018, reg 4

[21] 'A guide to climate-related risks: Climate change and the implications for pension schemes' (*LCP*, August 2017, LCP) 3 https://insight.lcp.uk.com/acton/attachment/20628/f-060a/1/-/-/-/-/LCP%20guide%20to%20climate%20risk%20for%20pension%20schemes.pdf accessed 16 September 2019

[22] ibid

[23] LA Brown, 'Land pollution, environmental risks and bank lending: An empirical analysis' (2015) 17(4) ELR 237

of these risks. As these categories are broadly applicable to financial institutions and the economy generally, not all are directly applicable to pension funds per se.

Liability risk, where a person is made directly responsible for statutory non-compliance, is largely irrelevant, for instance. Nonetheless, technically speaking, an employer-contributor to a defined contribution (DC) pension scheme could be subject to liability and this could affect the DC scheme through a decrease in contributions.[24] As a DC fund 'can go up or down depending on how the investments perform',[25] a credit risk could technically arise if the trustees make a specific investment which is burdened by climate-related issues.[26] Moreover, it is possible that larger market fluctuations caused by transitional climate change risks are capable of having a similar, but perhaps more significant, impact on occupational pension schemes' portfolios. Similarly, reputational risk is pertinent in this context.[27] For instance, if a pension fund's trustees have made investments which may be deemed environmentally harmful, the fund may receive reputational damage from public exposure, e.g. from the press, NGOs or other campaigning efforts.[28]

Trustee investment duty

This section analyses the general law governing the trustees' duty of investment. It is sub-divided into two parts. First, the below section looks generally at the law governing the trustees' fiduciary duty to invest. Secondly, the second section examines the extent to which the principles of trusts law apply to pension funds specifically. The below outline provides an

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[24] 'A guide to climate-related risks: Climate change and the implications for pension schemes' (*LCP*, August 2017) 10 https://insight.lcp.uk.com/acton/attachment/20628/f-060a/1/-/-/-/-/LCP%20guide%20to%20climate%20risk%20for%20pension%20schemes.pdf accessed 16 September 2019
[25] HM Government, 'Types of private pensions' (*gov.uk*, no date) https://www.gov.uk/pension-types accessed 26 September 2019
[26] 'ESG and climate change for pension funds: Putting the law into practice' (n 3) 10
[27] 'A guide to climate-related risks: Climate change and the implications for pension schemes' (n 17) 8
[28] ibid

important groundwork for later analysis of the significance of the changes that are being brought into force by the Investment Regulations 2018.

Duty to invest

It is noteworthy that, in addition to the general common law principles, there is specific legislative provision afforded to pension funds in respect to the fiduciary duty to invest.[29] The Pensions Act 1995 describes the "functions of trustees" in respect to pension funds. Trustees must act in the beneficiaries' interests and should not allow his/her personal position or circumstances to conflict with the overarching fiduciary duty to act for the beneficiaries.[30] Pursuant to s.3 of the Trustee Act 2000, a trustee can make investments 'as if they were absolutely entitled to the assets of the scheme'[31] but are subject to any specified restrictions within the scheme.[32] To provide clarity for the purposes of the scheme, the trustees have a statutory duty to 'secure that there is prepared, maintained and from time to time revised written statement of the principles governing decisions about investments.'[33] It is in the pension schemes' SIP that the amendments have been most prominent and shows promise for encouraging greater environmental risk appreciation and management by trustees.[34]

In line with modern "portfolio theory"[35] the concepts of the "diversification" and "suitability" of investments must be advanced.[36] Moreover, when choosing and making investments, pension trustees now have to exercise a statutory duty of care.[37] For instance, under the aegis of the Trustee Act 2000 a trustee must act with a degree of "skill and care"

[29] HG Hanbury and J Martin, *Modern Equity* (J Glister and J Lee eds, 20th edn, Sweet & Maxwell 2015) 462
[30] Pensions Act 1995, s.39
[31] Trustee Act 2000, s.3. See also, Pensions Act 1995, s.34(1).
[32] Pensions Act 1995, s.40(1)
[33] ibid, s.35(1)
[34] 'ESG and climate change for pension funds: Putting the law into practice' (n 3) 4
[35] G Moffat, *Moffat's Trusts Law* (J Garton ed, 6th edn, CUP 2015) 464
[36] Pensions Act 1995, s.36(2)(a)-(b)
[37] Trustee Act 2000, s.1

which is adjudged on what is deemed 'reasonable in the circumstances'.[38] This means that regard is given to the individual trustee's "special knowledge or experience".[39] Interestingly, trustees 'must obtain and consider proper advice[40] on the question whether the investment is satisfactory'.[41] Not obtaining the proper advice could result in trustee liability,[42] e.g., through the imposition of a civil penalty.[43] Finally, certain trustees may be reasonably remunerated for their services.[44]

Cowan v Scargill[45] is the oft-cited authority concerning "ethical investments" and is therefore pertinent for this article. This case concerned a National Coal Board (NCB) pension scheme for mineworkers.[46] Investment experts had advised the trustees and an investment plan was developed which, *inter alia*, aimed to invest in the competing oil and gas industries.[47] The accepted advice and plan was understandably criticised by the mineworker union beneficiaries, and the question arose as to whether the trustees had acted in the best interests of the beneficiaries.[48] Sir Robert Megarry VC, delivering his judgment, stated the following in respect to the issue of whether beneficiaries' ethical considerations had to be taken into account when exercising their power of investment:

'the duty of trustees was to act in the best interests of their beneficiaries, and, if the purpose of the trust was the provision of financial benefits, a power of investment had to be exercise so that their funds yielded the best return by way of income and capital

[38] Trustee Act 2000, s.1(1)
[39] ibid, s.1(1)(a)-(b)
[40] Pensions Act 1995, s.36(6); Trustee Act 2000, s.5(1)
[41] ibid, s.36(3)
[42] ibid, s.36(8)
[43] ibid, s.10
[44] ibid, s.29
[45] *Cowan v Scargill* [1985] Ch 270
[46] ibid
[47] ibid
[48] ibid

appreciation… and that would be so whatever might be the trustees' personal views or their moral reservations on the choice of the most suitable investments'.[49]

Thus, the Vice Chancellor's judgment in *Cowan v Scargill* prompted the common law rule which states that when exercising the duty of investment the beneficiaries' best interests are financial in nature.[50] Nonetheless, it should be noted that *Harries v Church Commissioners*[51] may be cited as authority to suggests that the position is different for charitable trusts. *Cowan v Scargill* was distinguished in *Harries v Church Commissioners* on the basis that in the latter case investments were being made which were divergent to the charitable purpose of the trust. In the charitable trust context, it was held that investments that diverge from an organisation's purpose are not suitable investments and non-financial considerations can be taken into account.[52] Hence, it is incorrect to say that the duty to invest has never permitted non-financial matters to be taken into account in all situations.

Does the general law of trusts apply to pension funds?

Before looking at the regulation in any amount of depth, it is necessary to provide an answer to the above question. Daykin, referencing the findings of the Law Commission's report,[53] states that the legal framework that governs pension trust funds includes, 'the trust deed, legislation and trust law duties.'[54] In practice, the trust deed (otherwise known for pension funds as a "scheme of funding") can be used to limit trustees' investment discretion (see below).[55]

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[49] ibid
[50] See also, *Martin v City of Edinburgh District Council* [1988] SLT 329
[51] *Harries v Church Commissioners* [1992] 1 WLR 1241
[52] ibid
[53] Law Commission (n 17)
[54] Daykin (n 4) 169
[55] M Scott Donald, 'The Pension Trust: Fit For Purpose?' (2019) 82(5) MLR 800, 803

Scott-Donald has questioned the extent to which the law of trusts applies to pension funds.[56] He begins to answer this important question with reference to Sir Robert Megarry VC in the above-cited case of *Cowan v Scargill*.[57] This case, which is of great significance to trustees' investment duties, concludes that there is 'no reason for holding that different principles apply to pension fund trusts from those which apply to other trusts.'[58] Even though the principles of the law of trusts applies to pension funds, Scott Donald acknowledges that in *Cowan v Scargill* the Vice Chancellor conceded on the point that 'unique circumstances' can be attributed to the scheme funding requirements which may make them different from private express trusts.[59]

However, a distinguishing feature between pension funds on the one hand and private trusts on the other may be seen by the beneficiaries.[60] First, pension beneficiaries are particularly at risk from poor investment choices made by their trustees. It has been said that the "openness" afforded to occupational pensions trustees' investment choices 'renders members' interests vulnerable',[61] thereby making it necessary to question whether the trust mechanism is still fit for purpose as an institutional framework for such pension schemes.[62] The second distinguishing feature between pension fund beneficiaries and private beneficiaries is that the former group are not "volunteers"[63] and consequently receive the property that is the subject to the trust beneficially as 'a form of remuneration within an employment relationship.'[64] However, in terms of the duty of investment, the applicability of general trust principles are largely acknowledged.[65]

[56] ibid
[57] *Cowan v Scargill* [1985] 1 Ch 270
[58] ibid (Robert Megarry VC) 290; Scott Donald (n 55) 803
[59] ibid
[60] Hanbury and Martin (n 29) 455
[61] Scott Donald (n 55) 800
[62] ibid
[63] Hanbury and Martin (n 29) 455
[64] Scott Donald (n 55) 803
[65] Hanbury and Martin (n 29) 462

The regulatory amendments

The Occupational Pension Schemes (Investment) Regulations 2005[66] relating to occupational pension funds have been amended by the 2018 Regulations to enforce greater consideration and disclosure of environment and other non-financial risks within the pension funds rules of investment.[67]

Regulation 2 of the 2005 Regulations states that the trustees of a pension fund 'must secure that the statement of investment principles' is prepared.[68] The statement is also known as an "SIP" and it must be 'reviewed – (a) at least every three years; and (b) without delay after any significant change in investment policy.'[69] The 2005 Regulations states that when 'preparing or revising a statement of investment principles, the trustees must' seek advice from qualified persons[70] and consult the employer.[71] Regulation 2(3) of the above-named Regulations states that SIPs must be in writing[72] and outline the following policies:

'(i) the kinds of investments to be held; (ii) the balance between different kinds of investments; (iii) risks, including the ways in which risks are to be measured and managed; (iv) the expected return on investments; (v) the realisation of investments; and (vi) the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments.'[73]

[66] Occupational Pension Schemes (Investment) Regulations 2005, SI 2005/3378 (hereafter, "Investment Regulations 2005")
[67] Investment Regulations 2018, reg 4. See also, Sackers, 'ESG and climate change for pension funds: Putting the law into practice' (Sacker & Partners LLP, 2019) https://www.sackers.com/app/uploads/2019/02/1646_Sackers_ESG_guide_V3_12_electronic.pdf accessed 14 September 2019
[68] Investment Regulations 2015, reg 2
[69] ibid, reg 2(1)(a)-(b)
[70] ibid
[71] ibid, reg 2(2)(a)
[72] ibid, reg 3
[73] ibid, reg 2(3)(b)

It is encouraging to see non-financial issues mentioned above at Regulation 2(3)(b)(vi). Nevertheless, it is argued here that the new amendments fundamentally increase the need for such issues to be considered, and this is demonstrated in the below discussion. For example, Regulation 4 of the Investment Regulations 2018 amends the above part of the 2005 Regulations (effective from 1 October 2019).[74] Accordingly Regulation 2(3)(b)(vi), above, is replaced with the following:

'(vi) financially materially considerations over the appropriate time horizon[75] of the investments, including how those considerations are taken into account in the selection, retention and realisation of investments.'[76]

Particularly significant for this article is the definition attributed by the Investment Regulations 2018 to the phrase "financially materially considerations". The following definition of what constitutes considerations that are "financially material" is inserted after Regulation 2(3) of the 2005 Regulations and makes up one of the definitions in a newly created paragraph (4):

'"financially material considerations" includes (but is not limited to) environmental, social and governance considerations (including but not limited to climate change), which the trustees of the trust scheme consider financially material'.[77]

[74] Investment Regulations 2018, reg 1
[75] Investment Regulations 2018, reg 4(2)(b): 'means the length of time that the trustees of a trust scheme consider is needed for the funding of future benefits by the investments of the scheme'.
[76] Investment Regulations 2018, reg 4(2)(a)(ii)
[77] ibid, reg 4(2)(b)

It is respectfully emphasised that the above amendments have been brought into force to encourage environmental considerations to be viewed as "financially material" within the pension trustees' broader duty of investment. Such a change statutorily enforces the suggestions of, *inter alia*, the Law Commission[78] and Daykin,[79] that ESG risks should be better interwoven into the pension funds' rules of investment. It is hoped that making environmental risks a consideration that is financially material will act to change the pension funds' general perception towards environmental risks including climate change, and non-financial risks generally.

To sum up this section, there are further amendments which should also be noted. The Investment Regulations 2018 also bring about change to the Disclosure Regulations 2013[80] by adding statutory provision for encouraging further clarity for the beneficiaries about the trustees' investment choices.[81] It specifically places an added burden on pension trustees to explicitly disclose their compliance with the Investment Regulations 2018 and to state the extent to which they have actioned the changes made to their SIPs from 1 October 2020.[82]

What pension funds need to do?

In response to the amendments pension funds need to consider how they should best change their investment rules to have a policy for managing the non-financial risks that are now to be viewed as financially material considerations. While environmental risks are quite broad, commentators on this area argue particularly for pension funds to change their SIPs and implement management strategies for climate-related risks.[83]

[78] Law Commission (n 17)
[79] Daykin (n 4)
[80] Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013
[81] Investment Regulations 2018, reg.5(2)(5)(c)
[82] ibid, reg.1(3)(a)-(c)
[83] Mooney (n 8)

At the present time of writing, it is evident that there is currently a considerable lack of engagement with environmental risks (and climate change risks) among UK pension funds. In 2018, for instance, the following was reported:

'5 per cent of the UK's biggest corporate pension funds, which collectively oversee £479bn in assets, have a policy on climate change despite concern about the possible effect of global warming on returns.'[84]

Despite the above, there is a clear developing trend towards green trusteeship. In April 2019, for instance, 'Parliament's pension fund trustees are to reconsider the rules of their investments to take account of climate change.'[85] It is reported that the trustees of Parliament's pension fund are seeking to 'fully divest from fossil fuels' given the inherent long term risks that exist in such investments.[86] Given the clear lack of engagement with environmental risks in this sector, the trustees of Parliament's pension fund are making very considerable steps to protecting both their beneficiaries and the environment as a whole, and such behaviour should be encouraged widely amongst pension funds.

Contrary to the ratio in *Cowan v Scargill*, pension trustees that consider the environmental risks (and other ethical issues) that may arise on a given investment opportunity ought to be view as acting in their beneficiaries' best interests. Succinctly, given the wide investment powers that pension trustees are afforded,[87] pension funds should take the environment and climate change into account when considering the diversity and suitability of their investment choices for their beneficiaries.

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[84] ibid
[85] F Harvey, 'UK parliament pension fund takes first step towards fossil fuel divestment' *Guardian* (London, Tuesday 9 April 2019) https://www.theguardian.com/environment/2019/apr/09/parliament-pension-fund-fossil-fuel-divestment-climate-change accessed 17 September 19
[86] ibid
[87] Hanbury and Martin (n 29) 462

It has already been noted that trustees must seek the "proper advice". To deal with the risks that may occur on investments, the pension trustees should commission the help of environmental experts which will be best placed to assist them in mitigating long-term risk exposures. Banks, by way of example, commission environmental consultants to protect themselves from environmental risks during their day-to-day loan transactions.[88] It may be the case that previous investments which are identified as "high-risk" are divested from the portfolio and future investments are afforded greater consideration in light of the environmental risks.

As well as acting to protect their beneficiaries, pension trustees must also engage with responsible investment choices to protect themselves from prospective legal challenges.[89] In 2018 some of the biggest funds were threatened with legal action for non-disclosure.[90] Thus, it is again hoped that the amendments will enforce greater clarity in regard to the trustees' broader financially material risks and opportunities,[91] and thereby prevent future law suits. In light of the environmental risks set out in an earlier section of this article, it is an inevitable corollary that the adoption of an environmental risk strategy will bode well for pension funds' reputations in the eyes of the public-at-large.

Conclusion

In sum, this article has provided an outline of the amendments that have already been, and shall in future be, brought into force by the Investment Regulations 2018. It has examined these amendments specifically in respect to occupational pension schemes and environmental

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[88] Brown (n 23)
[89] Daykin (n 4) 168
[90] C Flood, 'European pension funds considering investment risks of climate change' *Financial Times* (London, 13 August 2008) https://www.ft.com/content/4df0c648-8e85-3772-8f5d-1624cf8cd62e accessed 13 September 2019; ClientEarth (n 9)
[91] Department for Work and Pensions, 'Clarifying and strengthening trustees' investment duties: Government response' (DWP 2018) 3

risks. In so doing, it has attempted to argue that there is currently a fundamental lack of awareness and consideration for environmental risks (including climate change risks) in the investment rules of UK pension schemes.

A consequence of the Investment Regulations' amendments is that the pension funds will have to consider ESG risks as financially material when exercising their general duty of investment. Pension schemes will now have to update their SIPs in line with the changes, and ultimately, report and disclose on how the updated SIPs have been complied with by 1 October 2020. It is evident that the *raison d'être* of the amendments is to change the pension funds perceptions of environment-related risks and especially climate change risks.

Moreover, the inclusion of ESG risks as financially material considerations means that the judgment in *Cowan v Scargill*, which suggests that the best interests of beneficiaries are their financial interests, is less authoritative. Pension trustees should no longer hide behind the argument that environmentally damaging investments have been or are being made because they are for the beneficiaries best financial interests.

The article concludes by suggesting that, because of the amendments, pension fund trustees are going to have alter their perceptions in respect to non-financial risks, not only to protect their beneficiaries from future financial losses but to protect themselves from the prospective legal actions that may brought against them.

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