Should pension funds use litigation as a stewardship tool?

pensions expert

April 21, 2026

Grace Harmon and Jamie Hanley of Labaton Keller Sucharow explore whether and how pension funds can use legal channels to hold investee companies to account over climate change and stewardship issues.

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The UK pensions sector stands at a regulatory inflexion point. As policymakers sharpen their focus on climate transition planning, attention is turning to how far trustees should go in holding investee companies to account.

If The Pensions Regulator (TPR) were to develop a Stewardship Code for transition planning, an unavoidable question would arise: should shareholder litigation form part of pension schemes' stewardship toolkit?

The answer, we believe, has to be yes.

For some, the very suggestion sounds confrontational. Yet litigation, properly understood, is not activism. It is a governance mechanism. And in an era where climate risk is financial risk, trustees must consider whether legal action sits squarely within their fiduciary obligations.

Understanding escalation

Source: ABCDStock/Shutterstock

A view of an oil refinery. Fossil fuel-producing companies have come under pressure from investors in recent years.

This debate is not abstract. It is about how pension capital – representing the retirement savings of millions – is deployed in a net-zero transition that is economically credible and legally defensible.

The UK Stewardship Code, overseen by the Financial Reporting Council, is built on the principle of active ownership. Signatories are expected to monitor investee companies, engage constructively, and escalate where concerns persist. Escalation may include voting against directors, filing shareholder resolutions, reducing investment exposure, or collaborating with other investors.

All of these escalation tools are important – but the reality is that corporates that commit fraud and/or mislead those who invest in them are unlikely to change their behaviour if escalation never reaches the threats they fear the most.

If TPR were to develop a transition-focused code for pension schemes, it would likely adapt these core concepts. Monitoring would mean assessing the credibility of transition plans, capital allocation alignment, and resilience under different climate scenarios. Engagement would involve structured dialogue with boards on targets, governance structures, and remuneration incentives linked to climate performance.

The crucial question is escalation.

A difficult choice

Source: Tint Media/Shutterstock

A protest over climate change from 2019.

Under the current Stewardship Code, escalation is explicitly recognised as part of responsible ownership. Yet in practice, escalation often stops at voting or public statements. A Transition Planning Code that is serious about financial risk management would need to clarify what escalation truly entails when a company's transition plan is materially deficient or misleading.

At that point, trustees may face a stark choice: divest and walk away, or remain invested and seek stronger accountability mechanisms. Litigation sits at the far end of that escalation spectrum.

A well-designed Transition Planning Code could recognise a graduated approach, starting with engagement and dialogue, and working through voting and shareholder resolutions, to collaborative investor action, public statements and governance challenges, and finally legal remedies (where material misstatement, breach of duty or greenwashing is alleged).

In this framing, litigation is not the starting point. It is the endpoint of a structured escalation pathway.

Litigation examples

There is a persistent misconception that shareholder litigation is inherently activist or ideological. In reality, derivative actions, securities claims, and unfair prejudice petitions are longstanding features of UK company law.

When trustees consider litigation, they do so not as campaigners but as fiduciaries. Their primary duty is to act in the best financial interests of members. If a company's board has misrepresented its climate risk exposure, failed to disclose material transition liabilities, or breached statutory reporting obligations, the financial consequences may be borne by shareholders – including pension schemes.

Recent international litigation demonstrates that these claims can gain traction.

Source: Succo via Pixabay

Recent and ongoing legal cases show how investors can use legal channels to escalate ESG issues.

For example, in the ongoing litigation captioned *Ramirez v Exxon Mobil Corporation*, located in the US District Court for the Northern District of Texas, shareholders allege Exxon made material misstatements about its management of climate change risks.

Significantly, the case survived a motion to dismiss in 2021, with the court finding that the pension fund plaintiffs adequately alleged Exxon's public statements about Exxon's financial position and climate-related risks were misleading, signaling that US courts are prepared to let climate-related securities fraud claims proceed to discovery.

Similarly, in the Judicial Court of Paris case *ClientEarth, Surfrider Foundation Europe, and Zero Waste France v Danone*, non-governmental organisations (NGOs) challenged the adequacy of Danone's environmental vigilance plan.

The litigation concluded with Danone committing to update its vigilance plan, implement reuse solutions, strengthen plastic mitigation strategies, and hold annual meetings with the NGO coalition through 2027. This strategy is an example of how litigation can hold companies accountable.

Aligning with fiduciary duty

These cases illustrate that litigation can serve three governance functions: accountability, deterrence, and value protection.

The credible threat of legal action reinforces the integrity of corporate disclosures. Where transition plans are marketed as credible but lack substance, legal scrutiny can deter greenwashing.

The existence of potential liability also sharpens board oversight. Directors are more likely to embed transition risk within enterprise risk management frameworks if legal consequences are real.

Finally, if misstatements or governance failures lead to financial loss, litigation may provide recovery or leverage in settlement negotiations.

Seen through this lens, litigation aligns absolutely with fiduciary duty. It is not about imposing social policy. It is about protecting beneficiaries from material financial risks arising from poor governance.

Indeed, trustees may find it increasingly difficult to justify ignoring legal remedies where there is credible evidence of breach. The Law Commission has clarified that financially material ESG factors must be considered. Climate transition risk is now widely recognised as such a factor.

The reframing is critical. Litigation is not a political act. It is a tool within the architecture of corporate accountability.

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