
BLOG POST & COMMENTARY

PENSION FUND GOVERNANCE

When Administration Becomes a Fiduciary Issue: A Risk Every South African Pension Fund Should Be Managing

Why membership integrity and fund administration are not merely operational concerns, but fiduciary obligations that sit squarely with the principal officer and what every fund member is entitled to expect.

By adVenire Consulting | June 2026 | 6 min read

“When a pension fund reaches for legal counsel to resolve what should be a routine administration matter, it is worth asking a harder question: has the fiduciary duty to members been subordinated to the management of institutional risk? That distinction, if it holds, is a governance concern, not merely a legal one.”

— adVenire Consulting

Introduction: Administration Is a Fiduciary Act

South Africa’s retirement fund industry manages the long-term financial security of millions of people. That responsibility is held, in law and in practice, by the principal officer and board of trustees of each fund. However, a pattern is emerging that deserves the attention of every governance professional, every trustee, and every fund member: when administration problems arise, the instinct of many funds is to reach for legal counsel rather than to ask whether the principal officer is discharging their fiduciary duty to resolve it.

This distinction matters enormously. A legal response and a fiduciary response are not the same thing. Legal counsel protects the institution. Fiduciary duty protects the member. Legal compliance protects the institution. Both are necessary, but they are not the same. When one is mistaken for the other, it is the member who bears the risk. This blog explores that distinction, what it means for principal officers and trustees, and what it means for you as a fund member.

A Hypothetical Worth Taking Seriously: When Legal Becomes the Default

Pension funds periodically verify their membership registers. That is normal, and it is good governance when done well. But consider a scenario: a fund discovers membership anomalies and the response that becomes visible externally is a legal one, led by counsel rather than resolved through administrative and governance processes. Administrators verify membership. Principal officers ensure it is done correctly, on time, and in members' interests. Legal advisors are engaged when there is legal exposure to contain. When a fund substitutes legal management for administrative resolution, it has signalled something worth examining about where its priorities lie.

Consider a large employer-linked pension fund that has navigated significant institutional restructuring over many years: employee transfers, the creation of subsidiaries, changes to the employer's organisational structure. Each of those changes carries direct implications for fund membership: who qualifies, under which rules, and whether the fund's governing documentation has kept pace. Now suppose membership anomalies become apparent, and the response that reaches the public domain is a legal one. The fiduciary response, the principal officer taking ownership of the administration question and resolving it visibly in members' interests, is not what the outside world sees. Whether that reflects internal reality or simply how information flows publicly, the gap is worth examining. If the fiduciary response is happening but invisible, that is a communication problem. If it is not happening at all, that is a governance one.

“The fiduciary duty of the principal officer is not activated only when the law requires it. It is the standing obligation under which every administrative decision in the fund should be made. Membership integrity is not a legal question. It is a fiduciary one.”

The Fiduciary Duty Is Not a Legal Concept: It Is an Administrative One

Here is the part that matters to you personally, whether you are a trustee, a principal officer, or simply a member of a South African retirement fund. The Pension Funds Act places the fiduciary duty squarely on the board of trustees and the principal officer. That duty is not contingent on a court order, a legal opinion, or a regulatory directive. It is the standing obligation under which every decision affecting members must be made. It applies to investment decisions. It applies to benefit payments. This principle applies with equal force to administration.

Membership integrity, knowing who the fund's members are, under what rules they are enrolled, and what benefits they have accrued is a core administrative function. When that function breaks down, the fiduciary response is for the principal officer to own the problem, direct its resolution, and protect affected members in the process. The legal response is to appoint counsel to contain the institution's exposure. The fiduciary response is to ask whether members have been treated fairly and what must be done to make them whole. These are not the same response. Only one of them puts the member first.

This is not an abstract point. For members in defined contribution funds, the stakes are concrete: individual accounts with real and balances, unclaimed benefit provisions, Section 37C death benefit rules, and tax treatment on exit. An administrative failure that goes unresolved or that is managed as a legal liability rather than as a member welfare obligation can have life-altering consequences for the individuals and families who depend on that fund.

Key Insight: *The principal officer's fiduciary duty to members does not pause while legal counsel manages the fund's exposure. The duty is continuous. When administration fails, the question is not "what does the law allow us to do?" The question is "what do we owe our members, and how do we deliver it?" These are different questions, and they lead to different places.*

The Counterargument: When Legal Really Does Come First

It is worth pausing to acknowledge that this argument has a serious counterpoint, and that serious governance professionals make it. There are situations in which engaging legal counsel first is not a failure of fiduciary duty but an expression of it. When a membership anomaly carries potential criminal exposure, when regulatory reportability is genuinely uncertain, or when the fund faces the risk of acting in a way that inadvertently prejudices the very members it is trying to protect, the responsible move may be to obtain legal advice before taking administrative action. Counsel in those circumstances is not a substitute for fiduciary leadership. It is the infrastructure through which fiduciary leadership operates safely.

Boards operate under real constraints. Principal officers manage competing obligations to regulators, employers, and members simultaneously. The picture seen from outside a fund is rarely complete, and the absence of visible fiduciary action does not always mean the absence of fiduciary intent. These are fair points, and they deserve to be taken seriously.

However, they do not dissolve the underlying concern. The question is not whether legal counsel should ever be involved. Of course it should. The question is whether the principal officer remains visibly in the lead, whether the member's interest is the explicit frame through which legal advice is sought and applied, and whether the fund can demonstrate, if called upon, that its legal response served its fiduciary obligations rather than displaced them. That distinction is harder to maintain under pressure than it sounds, and it is precisely the discipline that governance frameworks exist to enforce.

What Principal Officers and Trustees Should Be Asking

The Pension Funds Act is clear about where responsibility sits. The board of trustees and the principal officer carry fiduciary duties to members not to the employer, not to the fund's lawyers, but to the members. The principal officer is also required to report material irregularities to the Financial Sector Conduct Authority (FSCA). These obligations are active, not reactive. Every principal officer in South Africa should be able to answer the following questions with confidence:

- **Is our membership register accurate and current?** Not in the sense that no one has challenged it, but in the sense that we have independently verified it against our fund rules, our employer's current structure, and the actual contribution records of each member?
- **Do our fund rules reflect the current structure of our participating employer?** If the employer has been through restructuring, unbundling, subsidiary creation, or employee transfers, have the fund's rules been formally reviewed and amended to keep pace? Fund rules are registerable documents. Their currency is a fiduciary matter, not merely an administrative one.
- **If a membership anomaly were identified tomorrow, what would our response be?** Would it be a fiduciary response the principal officer taking ownership and directing resolution in members' interests? Or would it be a legal response counsel containing the fund's exposure? If the honest answer is the latter, that is a governance gap that needs to be addressed now, not when the problem becomes public.
- **Have we reported, or do we have an obligation to report, any material irregularities to the FSCA?** The obligation to report is not discretionary. It is part of the principal officer's fiduciary and statutory responsibility. If there is uncertainty about whether an obligation exists, that uncertainty is itself a governance concern.

What You Are Entitled to Expect as a Fund Member

The scenario described above may be hypothetical in its particulars, but the governance risk it illustrates is not. The underlying questions it raises apply to every fund in the country. If you are a member of any South African retirement fund, pension fund, provident fund, or retirement annuity, there are things you are entitled to know, and questions you are entitled to ask. Most members never ask them. They assume the fund knows who they are, what they are owed, and what rules apply to them. That assumption is usually correct. But “usually” is not good enough when your retirement security is at stake.

- **Does my fund’s rulebook reflect the current structure of my employer?** If your employer has been through mergers, restructuring, or the creation of subsidiaries, has the fund kept pace? This is not a question about legal technicality. It is a question about whether the fund is being administered in your interests.
- **When last was an independent governance review of my fund conducted?** Not an audit of financial statements, a governance review, examining whether the fund is being administered in members’ interests and whether the principal officer is actively discharging their fiduciary duties.
- **Who is responsible for protecting my accrued benefit if my employment classification changes?** The answer should be clear, and it should come from the principal officer, not from the fund’s legal team. If it does not, that is itself a governance concern.
- **What happens to my benefit if I am reclassified, transferred, or if my employer restructures?** You are entitled to a clear answer. Get it in writing.

Conclusion: The Fiduciary Duty Must Lead

adVenire Consulting is a governance advisory firm. We work with trustees, principal officers, and boards across the South African financial services sector. What we observe and what we believe we have a professional responsibility to name is a systemic tendency in the retirement fund industry to treat administration failures as legal problems rather than fiduciary ones. The two are not the same, and the difference matters enormously to the members whose futures depend on how those failures are resolved.

The hypothetical scenario this post explores is not far-fetched. Across the industry, funds are navigating employer restructuring, employee transfers, and changes to organisational

form that carry direct implications for membership and benefit entitlement. In each of those situations, a choice is made: whether the principal officer leads from a position of fiduciary duty or defers to legal counsel to manage the exposure. We do not always know, from the outside, which choice has been made. But the governance culture of a fund is ultimately defined by which question it asks first: “what does the law allow us to do?” or “what do we owe our members?” Members notice, even when they cannot always name, the difference.

“Every South African pension fund faces the risk of administration falling behind institutional change. The question is not whether the law will eventually require a response. The question is whether the principal officer will lead with their fiduciary duty before it does.”

— adVenire Consulting

About This Post

This post presents the views and professional assessment of adVenire Consulting on matters of pension fund governance. It is intended to provoke critical thinking about how fiduciary and legal obligations interact in practice, not to make findings about any specific fund or individual. It does not constitute legal or financial advice. No finding of wrongdoing is asserted or implied, and readers are encouraged to seek independent professional guidance on matters specific to their fund.

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