

Article

AI and trusteeship: operational assistance or something more?

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ABSTRACT

In light of the ‘AI as a fiduciary’ hypothesis, this article refutes the possibility of AI assuming the role of trustee by highlighting the doctrinal limits that constrain its operation in the trust context, particularly those arising from trustee-specific and fiduciary duties. At the same time, it advances a normative argument that AI should be confined to a role of operational responsibility only, given the central importance of trustee discretion and judgment. At its core, this piece is concerned with trustee decision-making and offers practical guidance for the safe and responsible use of AI in trust administration.

INTRODUCTION

This article is concerned with the extent to which generative artificial intelligence (GenAI or simply ‘AI’) can integrate into the administration of trusts. It assesses, first, how the current law surrounding trust administration allows trustees to use AI. Moreover, it normatively questions whether AI should be permitted to undertake aspects of trustees’ responsibilities, given the role that trustee decision-making plays in carrying out their duties. In this manner, it provides practical guidance for trustees by clarifying how AI can be employed to augment, yet not replace, the performance of fiduciary obligations.

Recent scholarship in this area posits the possibility of AI eventually establishing fiduciary relationships.¹ This work aims to counter such futuristic claims by providing a more realistic interpretation, firmly grounded in trust law. In light of the clear restrictions placed upon AI by the trustee duties (subsequently outlined), this article tempers the ‘AI as a fiduciary’ hypothesis by suggesting that AI’s role in fiduciary relationships can be nothing more than a position of operational responsibility. At the moment, AI is good at performing administrative tasks, and there is no doubt that trustees will find the technology helpful in the discharge of their various

duties.² For instance, it is clear that, *inter alia*, AI is advancing investment and portfolio management in the financial sector, and that this will help trustees to carry out their investment duty under the Trustee Act 2000.³ Nonetheless, no matter how advanced AI becomes, it is important to remember that trust law is ingrained with the concept of human conscience and discretionary judgment.⁴

This piece builds upon a previous submission to this journal that evaluated AI’s use *vis-a-vis* the trustee investment duty, and which concluded that law reform is necessary to prevent any potential trustee liability exposure.⁵ This present article, however, is more normative in its outlook, exploring the limits of AI when compared against trustee duties broadly; this includes both trustee-specific duties and fiduciary duties. At its core, the work looks at the importance of human decision-making in trusteeship, showing how the exercise of each duty requires a deftness of human touch that is beyond the mechanistic logic of AI. This article matters now because trustees are increasingly under pressure to adopt AI tools, with little guidance or certainty.

To evaluate its thesis, this article begins by providing an overview of some of the proponents who suggest that AI

¹ Zhaoyi Li, ‘Artificial Fiduciaries’ (2024) 81 Washington and Lee Law Review 1299, available at <<https://scholarlycommons.law.wlu.edu/wlulr/vol81/iss4/3/>> accessed 12 September 2025.

² Anselmo Reyes, ‘Trust Law and AI’ in Ernest Lim and Phillip Morgan (eds), *The Cambridge Handbook of Private Law and Artificial Intelligence* (Cambridge University Press 2024), available at <<https://www.cambridge.org/core/books/cambridge-handbook-of-private-law-and-artificial-intelligence/trust-law-and-ai/42502B7C5C9402073447D856939455B9>> accessed 12 September 2025.

³ Lloyd Brown, ‘Artificial Intelligence & Trusts and Trustees: a new dawn of investment opportunities and risks?’ (2025) 31(5) *Trusts & Trustees* 210, 211–212.

⁴ Irit Samet, ‘On Trusts, Hypocrisy and Conscience’ (2024) 83(1) *The Cambridge Law Journal* 158.

⁵ Brown (n 3).

could be a fiduciary. It then goes on to look at the trustee duties, both specific and fiduciary. Here, the article demonstrates that these duties are inherently grounded in human consciousness and decision-making. Although the work places limits on the use of AI in trusts, the analysis nevertheless contends that the technology can play an operational role in trustees' decision-making processes. Prior to its conclusion, the work draws lessons from analogous sectors and provides practical takeaways for trustees.

AI AS TRUSTEE AND FIDUCIARY

Recent commentators propose an ambitious account of AI's role in trust and fiduciary law, asserting not only that AI can assist trustees but that it may eventually perform trustee-like or even fiduciary functions. This article provides a summary of these claims, only to refute them. While acknowledging that AI will transform certain aspects of trust administration, the article maintains that the law's doctrinal framework and the moral character of trusteeship impose stringent limitations on any transition from mere tool to trustee.

Reyes, for example, believes that 'AI will greatly assist in the administration of express and charitable trusts and also be of significant benefit to trust law in acting as an adjudicator'.⁶ On this account, he suggests that AI is capable of becoming an 'acceptable trustee' for express trusts, and that neither resulting trusts nor discretionary trusts pose a challenge to AI as trustees or adjudicators.⁷ As a trustee, AI can manage express trusts and help the administration of charitable trusts, while offering consistency and lower costs compared to human trustees.⁸ He acknowledges that constructive trusts 'may pose a problem', since there is a need to prove intent and moral judgment, but that can be resolved through law reform.⁹ Indeed, Reyes proposes using human 'protectors' to assist AI, and programming errors to be resolved by appropriate contractual remedies.¹⁰ Even if these propositions may be theoretically feasible, they fail to adequately address the persistent legal and normative challenges, *viz*: AI has no legal personality and these possible solutions do not absolve trustees of their accountability under their specific and fiduciary obligations.

A similar line of argument is advanced by Zhaoyi Li, who in 'Artificial Fiduciaries' argues that AI may one day adopt fiduciary obligations in corporate governance settings.¹¹ Li's analysis is instructive because she also acknowledges the limits of current AI models. The first limitation relates to the fact that AI's reasoning is often opaque to users (the so-called 'black box' problem).¹² Li further believes that an over-

reliance on AI could in fact create a 'superdirector' effect in corporate boards, which interferes with human deliberation.¹³ Those very concerns are highly relevant to trusteeship. For instance, if a trustee over-relies on AI during trust administration, its opacity may unduly shape the decision-making process. Li therefore insists that it is necessary to always keep 'a human in the loop', a constraint the article adopts as doctrinally necessary for trustees.¹⁴

Gudkov goes further still, likening AI to a 'quasi-person' capable of forming fiduciary relationships with human principals, if they so choose.¹⁵ To his mind, an example of where such a relationship may form is where a person unilaterally assigns fiduciary responsibility to AI.¹⁶ This line of reasoning raises pertinent philosophical questions, yet it encounters decisive legal challenges. Fiduciary status assumes legal personality and a human moral conscience. Without radical reform to grant personality (or to reconceptualise fiduciary law), trustee and fiduciary obligations will continue to be anthropocentric. Even proponents know these limits.¹⁷

Linked to these propositions, Felin et al. argue for preserving a 'first person perspective' in fiduciary decision-making.¹⁸ Ultimately, while AI can support fiduciaries operationally, it cannot make 'actor specific decisions'.¹⁹ This article agrees with this observation. The subsequent doctrinal analysis reveals how trustee obligations embed moral and ethical judgment in a manner that is unsuitable for AI. Consequently, although AI may assume a significant operational role (in terms of record management, monitoring, and analysis), it is incapable of assuming legal or fiduciary accountability for the decisions made by trustees.

TRUSTEE DUTIES

The section begins by outlining the trustee duty of care, which warrants separate consideration as it sets the general standard of conduct across all trustee-specific duties. It then turns to the non-delegation rule, before dividing the trustee-specific duties into two categories: those focused on *beneficiaries* and those focused on trust *property*. The section concludes with the fiduciary duties proper, grounded in the principle of loyalty, including the no-conflict and no-profit rules.

Duty of care

Trustees' decision-making in administering the trust is governed by the duty of care, which exists at common law and in statute. Despite its codification in section 1 of the Trustee Act 2000,²⁰ common law principles remain extant and

⁶ Reyes (n 2).

⁷ *ibid*.

⁸ *ibid*.

⁹ *ibid*.

¹⁰ *ibid*.

¹¹ Li (n 1).

¹² *ibid*. For a useful description of the 'black box' problem, see: Matthew Kosinski, 'What Is Black Box AI and How Does It Work?' (IBM, 29 October 2024) <<https://www.ibm.com/think/topics/black-box-ai>> accessed 12 September 2025.

¹³ *ibid*.

¹⁴ *ibid*.

¹⁵ Aleksei Gudkov, 'On Fiduciary Relationships with Artificial Intelligence Systems' (2020) 41 *Liverpool Law Review* 251.

¹⁶ *ibid*, section 2.1.

¹⁷ See Li (n 1) and Gudkov (n 15).

¹⁸ Teppo Felin, Mari Sako, and Jessica Hullman, 'Artificial Intelligence and Actor-Specific Decisions' (3 June 2025), available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5279401> accessed 12 September 2025.

¹⁹ *ibid*.

²⁰ Trustee Act 2000, s 1.

informative. The duty ensures that trustees exercise judgment prudently and remain personally accountable for their decisions.

The statutory duty of care requires trustees to ‘exercise such care and skill as is reasonable in the circumstances’.²¹ Furthermore, case law demonstrates that trustee liability is not solely determined by process or outcome, but rather by the exercise of judgment in accordance with ordinary prudence. In *Speight v Gaunt* (1883) 9 App Cas 1, the Earl of Selbourne LC observed that ‘as a general rule a trustee sufficiently discharges his duty if he takes in managing trust affairs all those precautions which an ordinary prudent man of business would take in managing similar affairs of his own’.²² This principle was later applied in *Learoyd v Whitley* (1887) 12 App CAS 272, where the House of Lords held that trustees who had not acted with ordinary prudence were liable to make good the losses sustained by their decisions.²³ *Learoyd* shows the emphasis that the law places on trustee decision-making and the accountability trustees bear for mistakes.

Both statute and common law recognise that the duty of care applies to all types of trustees (professional, amateur, or corporate), but not equally. Section 1(1)(a)–(b) of the Trustee Act 2000 indicates that particular regard should be had to ‘any special knowledge or experience’ that a trustee has, or may be expected to have due to their business or profession.²⁴ Prior to the Act of 2000’s enactment, in *Bartlett v Barclays Bank Trust Co Ltd (No 1)* [1980] Ch 515, Brightman J ruled that a trustee who has a higher standard of skill and expertise should be held to a higher standard of care than the ordinary prudent man of business.²⁵

The incorporation of AI into trust administration does not diminish the significance of the duty of care, and any operational role that AI assumes remains subordinate to the trustee’s personal responsibility. Trustees must acknowledge that their reliance on AI may influence their judgment, yet the ultimate duty of care remains their exclusive responsibility. When employing AI, trustees should critically assess whether its use affects the standard of ‘care and skill’ expected of them, and whether their actions align with what an ordinary business person would do in comparable circumstances, noting that the law takes knowledge and experience into account.

Duty not to delegate

Together with the duty of care, the duty not to delegate is a fundamental, overarching principle. Historically, trustees could not delegate their functions under *delegatus non potest*

delegare.²⁶ This rigid rule, however, did not align with the requirements of modern trusteeship, which frequently necessitates specialist input.²⁷ Pursuant to the Trustee Act 2000, trustees may now delegate certain functions to other legal persons, including agents,²⁸ nominees,²⁹ and custodians.³⁰ This also includes the ability to appoint agents to undertake asset management functions.³¹

If AI is used in trust administration, it may function as the trustee’s *de facto* agent. However, because the law assumes that delegates are legal persons capable of holding responsibility, AI cannot legally hold or exercise a trustee’s discretion. ‘Operational’ tasks can permissibly be performed by AI, but discretionary tasks cannot, as these require human decision-making. This distinction reinforces the central argument of this article: AI can augment trustees’ administration but cannot replace the human judgment required by fiduciary duties. Ultimately, the law will not allow trustees to diminish their responsibilities by saying that they delegated certain tasks to AI.

Beneficiary-focused duties

A trustee must act impartially, ensuring that ‘inconsistent rights’ do not emerge between the same class of equitable interests.³² Hudson observes that this duty requires trustees to act fairly amongst beneficiaries, and more broadly, to keep an ‘even hand’ between different classes of beneficiary, such as life tenants and remaindermen.³³ This is well illustrated in *Nestlé v National Westminster Bank plc* [1993] 1 WLR 1260.³⁴ There, the defendant bank, as sole executor and trustee, misinterpreted its powers and failed to review the trust’s investments.³⁵ The plaintiff, a remainderman solely and absolutely entitled to the fund, claimed that the bank had not treated the beneficiaries equally; on the facts, however, the claim failed because the plaintiff was unable to prove any actual loss.³⁶ The even-handed principle demonstrates the skilful handling required of trustees in their fiduciary capacity. An AI might optimise returns numerically, but it cannot appreciate the equitable requirement of fairness across different classes of beneficiaries—this requires human insight and judgment.

Indeed, the duty to act impartially extends to ensuring equality in the value of trust property.³⁷ In *Lloyds Bank plc v Dukar* [1987] 1 WLR 1324, the testator’s estate was divided into 80ths, due to partial intestacy and a deed of family arrangement.³⁸ The trust property constituted 999/1000 shares in a private company owning a luxury hotel in Torquay, valued at some £3 million.³⁹ The testator’s wife was bequeathed

²¹ *ibid*, s 1(1).

²² *Speight v Gaunt* (1883) 9 App Cas 1 (Earl of Selbourne LC).

²³ *Learoyd v Whitley* (1887) 12 App CAS 272.

²⁴ Trustee Act 2000, s 1(1)(a)–(b).

²⁵ *Bartlett v Barclays Bank Trust Co Ltd (No 1)* [1980] Ch 515 (Brightman J).

²⁶ Graham Virgo, *The Principles of Equity & Trusts* (5th edn, Oxford University Press 2023) 445.

²⁷ *ibid*.

²⁸ Trustee Act 2000, s 11.

²⁹ *ibid*, s 16.

³⁰ *ibid*, s 17.

³¹ *ibid*, s 15.

³² *Stephenson (Inspector of Taxes) v Barclays Bank Trust Co Ltd* [1975] 1 WLR 882, 889 (Walton J).

³³ Alastair Hudson, *Equity & Trusts* (9th edn, Routledge 2017) 316.

³⁴ *Nestlé v National Westminster Bank plc* [1993] 1 WLR 1260.

³⁵ *ibid*, 1275–1276 (Staughton LJ).

³⁶ *ibid*, 1280.

³⁷ *Lloyds Bank plc v Dukar* [1987] 1 WLR 1324.

³⁸ *ibid*, 1329.

³⁹ *ibid*.

46/80ths of the shares, and five other beneficiaries held 34/80ths.⁴⁰ When the wife died, her entire estate passed to the first defendant, who requested the transfer of the shares to him.⁴¹ The court held that trustees must treat all beneficiaries equally and, while a beneficiary may call for their share of divisible personalty, this does not override the trustee's fiduciary duty.⁴² Ultimately, transferring the shares would have given the first defendant more than 46/80ths of the total value, due to the premium value afforded to a controlling interest in the company.⁴³ Therefore, to ensure fairness, the shares were instead sold on the open market.⁴⁴ Such nuanced determinations, as per *Dukar*, are beyond AI's current capabilities.

Trustees also have a continuous duty to keep and render accounts. This duty has been described as one of the most significant, as it is non-excludable under trust instruments.⁴⁵ As such, trustees must maintain accurate accounts and, when requested, promptly provide this information to beneficiaries;⁴⁶ failure to do so may amount to wilful neglect and can give rise to personal liability.⁴⁷ On occasion, trustees may also be asked to produce information for the beneficiaries' legal or financial advisors.⁴⁸ AI can support this duty by keeping meticulous records of transactions, meetings, and administrative processes, ensuring trustees can readily discharge their obligation to account. Fortunately for trustees, case law, including *Re Beloved Wilke's Charity* [1851] SC 20 LJ Ch 558⁴⁹ and, more significantly, *Re Londonderry's Settlement* [1964] Ch 918 confirms that trustees have discretion and are not bound to disclose their reasons for any conclusion at which they may arrive.⁵⁰ It is interesting to think about how AI's role in trust administration may interact with this duty in the future. While the technology may strengthen compliance with the duty, its opacity ('black box' problem) and the potential for erroneous outputs ('hallucinations') are highly problematic and show that trustees must exercise independent judgment.

Property-focused duties

Alongside the beneficiary-focused duties, trustees' obligations relating to trust property further demonstrate that AI must remain operational. Within this batch of duties, trustees are required to preserve and safeguard trust assets. Hudson identifies this duty as having two key features: (i) ensuring that no harm comes to any property which is held on trust

and (ii) considering the utility of individual assets and the need to maximise assets' value.⁵¹

With respect to ensuring that no harm comes to the trust property, several cases are worthy of citation. *Buttle v Saunders* [1950] 2 All ER 193 illustrates that on the sale of trust property, trustees have an overriding duty to obtain the 'best price' possible.⁵² However, the court recognised that trustees could reasonably refuse a higher offer in certain circumstances.⁵³ Naturally, AI tools may assist trustees in identifying the best possible price, but trustees cannot solely rely on algorithmic output. Indeed, AI might define the optimal 'highest offer' to mean one that produces the greatest numerical return. Usually, it would not be wrong to do that, but as the court acknowledged in *Buttle*, that may not always be the most desirable outcome for the trust, the settlor's wishes, or the beneficiary. There are sometimes other contextual factors at play. For instance, circumstances may dictate a trustee to accept a lower offer because the higher bidder has financial difficulties or is a reputational risk. Not only could such matters delay or derail the sale, they could also go against the settlor's wishes, which are paramount. Again, this is an example of nuanced decision-making that remains beyond AI's reach.

Similarly, *In re Brogden* (1888) 38 Ch D 546 demonstrates that, to protect trust property, trustees must actively pursue the payment of trust funds.⁵⁴ If they are not paid within a reasonable time, the trustee must thereafter enforce payment via legal proceedings.⁵⁵ As with the *Buttle* principle, high-level deliberation, judgment, and discretion are necessary from trustees when determining whether or not to act. It is clear that the rule in *Re Brogden* may, among other things, be disregarded in instances where such action would prove ineffective or indeed injurious to the trust.⁵⁶ Thus, deciding whether to litigate, compromise, or write off a claim is quintessentially one for the human trustee.

As well as safeguarding trust property, trustees have a 'general power of investment'⁵⁷ under the Trustee Act 2000.⁵⁸ In exercising their power of investment, trustees must apply the standard investment criteria (SIC).⁵⁹ The SIC must also be applied when the trustee conducts a review of the trust's investments, which is required 'from time to time' to consider if variation is necessary.⁶⁰ The SIC enforce trustees to question whether investments are both 'suitable' and 'diverse'.⁶¹ Additionally, trustees must also obtain 'advice' when

⁴⁰ *ibid*, 1330.

⁴¹ *ibid*.

⁴² *ibid*, citing *Snell's Principles of Equity* (28th edn, Sweet & Maxwell 1982).

⁴³ *ibid*, 1331.

⁴⁴ *ibid*.

⁴⁵ Hudson (n 33) 361.

⁴⁶ *Pearse v Green* (1819) 1 Jacob & Walker 135; *Armitage v Nurse* [1998] Ch 241, 261.

⁴⁷ *Springette v Dashwood* (1860) 2 Giff 521.

⁴⁸ Hudson (n 33) 361.

⁴⁹ *Re Beloved Wilke's Charity* [1851] SC 20 LJ Ch 558.

⁵⁰ *Re Londonderry's Settlement* [1964] Ch 918.

⁵¹ Hudson (n 33) 315.

⁵² *Buttle v Saunders* [1950] 2 All ER 193.

⁵³ *ibid*.

⁵⁴ *In re Brogden* (1888) 38 Ch D 546.

⁵⁵ *ibid*, 565. It is noteworthy that the case also dealt with the ability of executors paying legacies *de bonis propriis*, effectively allowing them to admit assets and shield legatees from creditors' refund claims.

⁵⁶ See, for instance, *Ward v Ward* (1843) 49 ER 822.

⁵⁷ Trustee Act 2000, s 3(2).

⁵⁸ *ibid*, s 3.

⁵⁹ *ibid*, s 4(1).

⁶⁰ *ibid*, s 4(2).

⁶¹ *ibid*, s 4(3)(a)–(b).

exercising their duty and considering variation.⁶² It is important to note that an AI's advice would not constitute the proper advice under the statute—such an adviser needs to be licensed under the Financial Services and Markets Act 2000.⁶³ Ultimately, while market analysis tools may assist trustees by identifying suitable investment opportunities,⁶⁴ these algorithms lack the capacity and contextual judgment to advise a trustee whether a given investment is the right one for the trust fund. In this domain, a major concern is that AI tools may optimise short-term growth and create an unduly concentrated portfolio, thereby breaching the duty to diversify in line with the SIC. Trustees must avoid over-reliance on AI, understand the specific needs and demands of their funds, and adopt a 'portfolio' approach to investing.⁶⁵

Further complications in this area can be seen around so-called 'ethical investing'. In *Cowan v Scargill* [1985] Ch 270, Sir Robert Megarry VC held that the beneficiaries' 'best interests' are by their nature 'financial'.⁶⁶ But this position has been somewhat obviated for charitable trusts, where the funds' charitable objectives must be considered.⁶⁷ Most recently, *Butler-Sloss v Charity Commission* [2022] Ch 371 confirmed that a charitable trust's investment strategy can consider environmental, social, governance (ESG) factors.⁶⁸ Although AI-powered financial and market analysis tools can highlight valuable investment insights for trustees,⁶⁹ their capabilities are limited. An AI tool may prioritise, for instance, financial gain over important ethical or reputational risks that are highly relevant to the trust's objectives. Ultimately, trustees must exercise their own judgment, informed by proper advice, to ensure investments align with their statutory duties and the purposes of the trust.

The exercise of trustee judgment is also crucial under the duty to distribute trust property in accordance with the trust's terms and the rights of *sui juris* beneficiaries.⁷⁰ Failure to conduct this duty, e.g. by a mistaken or premature distribution, may amount to a breach of trust.⁷¹ Again, AI has an operational role to play in the proper administration of this duty: it can assist trustees, for instance, in calculating individual entitlements amongst a large class of beneficiaries. Nonetheless, the technology cannot tell a trustee when the best time is to make a distribution, or whether a particular distribution may

accurately reflect the settlor's intentions. On such matters, ultimate responsibility remains firmly with the human trustee.

Duty of loyalty

The duty of loyalty is broader than the trustee-specific duties set out above, applying not only to trustees but to all fiduciaries. It is a relationship-based obligation that stems from the fiduciary relationship between trustees and beneficiaries; thus, all trustees are fiduciaries. It goes without saying that AI cannot be a fiduciary because it does not have legal personality,⁷² nor does it fit into the recognised categories of fiduciary,⁷³ a point emphasised by Gudkov.⁷⁴ Like other trustee obligations, fiduciary doctrine emphasises human judgment and sets clear limits on AI's role. While definitions vary, a fiduciary is generally understood to be someone who acts for another in a relationship of trust and confidence.⁷⁵ It is said that the 'irreducible core' of fiduciary responsibility is *loyalty* owed to one's principal.⁷⁶

In *Bray v Ford* [1896] AC 44, loyalty was further distilled into two main rules: the 'no-profit' rule and 'no-conflict' rule.⁷⁷ These rules are applied strictly to humans and carry a moral dimension that attaches to the consciences of trustees. In *Keech v Sandford* (1726) 25 ER 223, the Court of Chancery addressed the lease of a market, whereby the lessor refused to renew the lease to the infant beneficiary.⁷⁸ The trustee, subsequently taking the lease for himself, was obliged to account to the beneficiary for the profits made in breach of loyalty, and in particular, the no-profit rule.⁷⁹ King LC emphasised the strict moral imperative: 'This may seem hard, that the trustee is the only person of all mankind who might not have the lease: but it is very proper that rule should be strictly pursued, and not in the least relaxed'.⁸⁰ Similar cases demonstrating the moral assessment inherent in human judgment include *Boardman v Phipps* [1967] 2 AC 46⁸¹ and *Regal (Hastings) v Gulliver* [1942] 1 All ER 378.⁸²

Trustees must ensure that AI tools used in trust administration do not compromise their duty of loyalty. AI may not recognise subtle or emerging conflicts of interest when carrying out its tasks, and, without legal personality, it cannot be held accountable for breaches. For instance, if AI recommends investing in a company in which a trustee personally holds shares, the AI may fail to flag a conflict, but the trustee remains fully accountable under the duty of loyalty.

⁶² *ibid*, s 5.

⁶³ Matthew Stubbins, *Equity and Trusts* (CILEX Education 2024) 316.

⁶⁴ Brown (n 3).

⁶⁵ Virgo (n 26) 426–427.

⁶⁶ *Cowan v Scargill* [1985] Ch 270, 287 (Sir Robert Megarry VC). However, Megarry VC's judgment is more nuanced than it first appears, see: Lloyd Brown, 'Cowan v Scargill and the fiduciary duty of investment has the nature of the investment duty changed and what is currently driving "socially responsible investing" in pension schemes?' (2020) 26(8–9) *Trusts & Trustees* 978.

⁶⁷ *Harries v Church Commissioners for England* [1992] 1 WLR 1214.

⁶⁸ *Butler-Sloss v Charity Commission* [2022] Ch 371 (Michael Green J). It is noteworthy that in that case the investment policy specified a targeted rate of return, which was in line with market capital growth rates.

⁶⁹ Brown (n 3).

⁷⁰ Hudson (n 33).

⁷¹ *Ashby v Blackwell* (1756) Eden 299; *Eaves v Hickson* (1861) 30 Beav 136.

⁷² Gudkov (n 15), s 1.1.

⁷³ Law Commission, *Fiduciary Duties of Investment Intermediaries* (Law Com No 350, 2014).

⁷⁴ Gudkov (n 15), s 2.

⁷⁵ *Bristol and West Building Society v Mothew* [1996] Ch 1, 16–18 (Millet LJ).

⁷⁶ *Bray v Ford* [1896] AC 44 (Lord Herschell).

⁷⁷ *ibid*.

⁷⁸ *Keech v Sandford* (1726) 25 ER 223.

⁷⁹ *ibid*.

⁸⁰ *ibid*, 223–224.

⁸¹ *Boardman v Phipps* [1967] 2 AC 46.

⁸² *Regal (Hastings) v Gulliver* [1942] 1 All ER 378.

LESSONS FROM OTHER SECTORS

The above discussion has shown that AI is confined to an operational role in trust administration, and that trustees should carefully consider how the technology can be safely used in carrying out both their trustee-specific and broader fiduciary duties. This approach, which prioritises trustee discretion and human judgment, limits the extent to which AI can assume decision-making roles.

The first-person approach is visible, too, in other analogous sectors. In the UK financial services industry, AI adoption is widespread, exceeding the initial uptake predictions by both the Bank of England (BOE) and Financial Conduct Authority (FCA).⁸³ In areas closely related to the trustee investment duty, AI is commonly applied in fraud detection and money laundering, credit scoring and risk assessment, chatbots for customer service automation, cybersecurity, algorithmic trading, and portfolio management.⁸⁴ The FCA encourages the use of ‘fast-moving technology like AI’ to ensure growth and competitiveness, but maintains accountability and governance requirements for senior managers⁸⁵ through the Senior Managers and Certification Regime.⁸⁶ Through that regime, humans are still ultimately accountable.

Similarly, AI is being used in medical decision-making, supporting clinical tasks such as diagnostic imaging, treatment planning, and patient monitoring.⁸⁷ AI can interpret X-rays, MRIs, and CT scans with high accuracy, often outperforming humans.⁸⁸ Khogali has recognised two areas of potential liability: clinical negligence and product liability.⁸⁹ Even with regulatory safeguards like the Medicines and Healthcare products Regulatory Agency’s (MHRA) ‘AI Airlock’—a sandbox for AI testing before broader rollout—⁹⁰ ultimate responsibility for clinical decisions remains with medical practitioners.⁹¹

A different approach has been adopted for autonomous vehicles under the Automated Vehicles Act 2024, where drivers are assured that, when the vehicle is in ‘self-drive’ mode, they will not be held responsible for any accidents.⁹² Instead, responsibility is assigned to insurers, software developers, and

manufacturers.⁹³ However, cross-sectoral differences are inevitable and reflect the ‘decentralised’ approach to AI regulation that the UK government advocates.⁹⁴ In the absence of sector-wide guidance, the duties confirm that trustees remain ultimately responsible for any breaches, even if AI is used to perform operational tasks.

PRACTICAL TAKEAWAYS

This section outlines some key practical considerations for trustees when engaging with AI, as follows:

- First, AI is not a legal person and only offers operational assistance in trust management. Therefore, trustees must understand that legal accountability for any actions remains with them. The discussion of the trustee duties in this work has clearly shown that nuanced judgment and discretion must remain human-led.
- The ‘black box’ problem and the risk of ‘hallucination’ are clear limits for AI, and trustees must learn that they stand on a knife-edge if they solely rely on AI outputs. To obviate the risks, trustees must cross-check AI’s suggestions and, as Felin et al. stress, instigate a ‘first person perspective’.
- When discharging specific duties, trustees must remember that excessive reliance on AI may lead to a ‘super-trustee’ effect and distort decision-making, echoing Li’s analogy in corporate boards. In truth, trustee obligations demand specialist knowledge, an appreciation of settlor intent, and sensitivity to the trust’s particular demands.
- Given the above points, trustees should also consider the type of AI system being deployed—for instance, open versus closed large language models (LLMs) or retrieval-augment generation (RAG) systems.⁹⁵ They should assess the particular system’s suitability, reliability, and transparency, noting that some models’ reasoning processes are opaquer and less secure than others. Indeed, AI may create data protection issues and must be used in accordance with the Information Commissioner’s Office (ICO) guidance.⁹⁶

⁸³ Bank of England, *Artificial Intelligence in UK Financial Services* (BOE, 2024) <<https://www.bankofengland.co.uk/report/2024/artificial-intelligence-in-uk-financial-services-2024>> accessed 12 September 2025.

⁸⁴ *ibid.*

⁸⁵ Financial Conduct Authority, ‘AI and the FCA: our approach’ (FCA, 9 September 2025) <<https://www.fca.org.uk/firms/innovation/ai-approach>> accessed 12 September 2025.

⁸⁶ Financial Conduct Authority, ‘Senior Managers and Certification Regime’ (FCA, 5 July 2015) <<https://www.fca.org.uk/firms/senior-managers-certification-regime>> accessed 12 September 2025.

⁸⁷ ‘How AI Is Being Used to Benefit Your Healthcare’ (Cleveland Clinic, 5 September 2024) <<https://health.clevelandclinic.org/ai-in-healthcare>> accessed 12 September 2025.

⁸⁸ *ibid.*

⁸⁹ Ahmed Khogali, ‘AI in healthcare: how could liability arise?’ (Law Society of Scotland, 19 June 2023) <<https://www.lawscot.org.uk/members/journal/issues/vol-68-isue-06/ai-in-healthcare-how-could-liability-arise/>> accessed 12 September 2025.

⁹⁰ ‘UK MHRA leads safe use of AI in healthcare as first country in new global network’ (gov.uk, 24 June 2025) <<https://www.gov.uk/government/news/uk-mhra-leads-safe-use-of-ai-in-healthcare-as-first-country-in-new-global-network>> accessed 12 September 2025.

⁹¹ Caroline Catherman, ‘Are doctors liable when AI makes a mistake? Malpractice experts weigh in’ (Healthcare Brew, 1 April 2025) <<https://www.healthcare-brew.com/stories/2025/04/01/doctors-liable-ai-mistake-malpractice>> accessed 12 September 2025.

⁹² Automated Vehicles Act 2024.

⁹³ Department for Transport, Centre for Connected and Autonomous Vehicles and The Rt Hon Mark Harper, ‘Self-driving vehicles set to be on roads by 2026 as Automated Vehicles Act becomes law’ (gov.uk, 20 May 2024) <<https://www.gov.uk/government/news/self-driving-vehicles-set-to-be-on-roads-by-2026-as-automated-vehicles-act-becomes-law>> accessed 12 September 2025.

⁹⁴ Department for Science, Innovation & Technology, ‘A pro-innovation approach to AI regulation’ (gov.uk, 3 August 2023) <<https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper>> accessed 12 September 2025; Department for Science, Innovation & Technology, ‘A pro-innovation approach to AI regulation: government response to consultation’ (GOV.UK, 2024) <<https://assets.publishing.service.gov.uk/media/65c1e399c43191000d1a45f4/a-pro-innovation-approach-to-ai-regulation-amended-governement-response-web-ready.pdf>> accessed 12 September 2025.

⁹⁵ Raed Hijer, ‘Handling the Generative AI Disparity: Closed-Source vs. Open-Source Models’ (Dell Technologies, 22 June 2025) <<https://www.dell.com/en-uk/blog/handling-the-generative-ai-disparity-closed-source-vs-open-source-models/>> accessed 12 September 2025; ‘What is Retrieval-Augmented Generation?’ (Amazon Web Services, 2024) <<https://aws.amazon.com/what-is/retrieval-augmented-generation/>> accessed 12 September 2025.

⁹⁶ Information Commissioner’s Office, ‘Guidance on AI and data protection’ (ico, 15 March 2023) <<https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/artificial-intelligence/guidance-on-ai-and-data-protection/>> accessed 12 September 2025.

- Risk management strategies (e.g. professional liability coverage, indemnity funds, or insurance) can assist in reducing potential liability when using AI in trust administration.⁹⁷

By observing these considerations, trustees can responsibly leverage AI while upholding the human-centred principles underpinning trusts and fiduciary law.

CONCLUSION

This article has tested the extent to which AI can assume responsibility in trust administration. Responding to proponents of the artificial fiduciary theory, it has been shown that AI can only assume operational responsibility within a trust context. The trustee-specific and broader fiduciary obligations demonstrate that trustees remain ultimately accountable for their

actions. The discussion has highlighted how trustee decision-making in the age of AI continues to rely on human judgment. Throughout, the work has shown that AI can assist trustees, but they must exercise caution when using the technology. In practice, AI is ill-suited to resolving nuanced matters that require ethical and moral judgment—decisions that remain the exclusive province of human trustees in fulfilling the obligations of their office.

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⁹⁷ Gudkov (n 15); Khogali (n 89).

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