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PENSIONS DISPUTES QUARTERLY

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Virgin Media: remediation measures published

Government amendments to the [Pension Schemes Bill](#) included measures to address issues arising from the *Virgin Media* case (clauses 100-107).

Trustees will in principle be able to remediate amendments which might otherwise be void for lack of actuarial confirmation, by obtaining confirmation on a retrospective basis.

For an amendment to be remediated, the scheme actuary will need to confirm in writing that, in their opinion, "it is reasonable to conclude that [the amendment] would not have prevented the scheme from continuing to satisfy the statutory standard".

In some limited circumstances, amendments will be excluded from remediation. The exclusions may be relevant where legal proceedings as to validity are already underway, or where trustees have taken "positive action" on the basis that an amendment was void.

Where schemes have already been wound up or fallen into the PPF, amendments (save as above) will be deemed to have met the confirmation requirement, without the need for retrospective confirmation.

The proposed measures include provisions to support actuaries in making appropriate assumptions. The Financial Reporting Council has [announced](#) that it will produce guidance.

As drafted, the measures will come into force two months after the Pension Schemes Bill receives royal assent – likely to be in Q2 2026.

Further information can be found in our [blog post](#).

"Bridging pension": Court determines effect of statutory reference

The High Court [allowed](#) an appeal against a determination of The Pensions Ombudsman about a member's bridging pension.

Under the scheme's trust deed and rules (**TD&R**), adopted in 2001, a pension supplement was payable until the member reached "State pension age". The TD&R said that that term "has the meaning given by the rules in ... Schedule 4 to the Pensions Act 1995 (rules for the equalisation of pensionable ages for men and women)".

Under the Pensions Act 1995 as originally enacted, the member's SPA (her actual age of entitlement under the State scheme) was 65. However, the Pensions Act 2011

amended the 1995 Act, such that the member's SPA rose to 66.

The question was whether "State pension age" for the purpose of the TD&R was static (ie based on the 1995 Act as originally enacted) or dynamic (ie based on the Act as amended from time to time).

TPO ruled that "State pension age" was dynamic.

The High Court disagreed. Looking at the TD&R definition, the judge held that:

- The reference to "the rules in ... Schedule 4 to the Pensions Act 1995" was a convenient shorthand. The shorthand technique did not suggest that the drafter meant to refer to the 1995 Act as amended from time to time.
- If a dynamic meaning had been intended, it could have been achieved more simply, eg by referring to actual receipt of a State pension.
- The bracketed words in the definition referred only to the equalisation of SPAs between men and women. This indicated that the definition was not meant to encompass other future increases to SPA.

Accordingly, the proper construction was the static one. The member's "State pension age" for the purpose of the pension supplement was 65, even though her SPA had increased to 66.

Court blesses winding-up proposals

The High Court [approved](#) steps which trustees proposed to take in connection with the winding-up of a DB scheme.

The scheme was a mature arrangement with just five active members. Almost all benefits had been bought in, effectively with an insurer in the employer's corporate group (a "captive"). Besides the buy-in policy, the trustees held assets, essentially surplus, of c.£40m.

The employer had power to wind up the scheme, but:

- on winding-up, the buy-in would terminate and the captive would be liable to make a termination payment to the trustees;
- under prevailing market conditions, the termination payment would far exceed the cost of buying out benefits, such that the surplus would increase from c.£40m to c.£120m; and
- the trustees had power to use surplus to augment benefits on winding-up.

In the circumstances, the employer was unwilling to wind up the scheme. The trustees were therefore unable to use the existing surplus to augment benefits.

The employer and the trustees decided in principle to vary the buy-in arrangement so that the termination payment would match the cost of buying out benefits. The employer would then wind up the scheme.

The trustees decided in principle that, on winding-up, they would use the existing surplus to augment all members' benefits proportionately. The expected uplift for each member was about 27%.

The trustees sought the Court's approval for their in-principle decisions, as regards both variation/winding-up and the use of surplus.

While emphasising that its role was not to consider the merits of the decisions, the Court gave its approval. The trustees had taken account of all relevant considerations and had ignored the irrelevant. The decisions were ones which reasonable trustees could properly have reached.

TPO rulings in transfer delay cases

The Pensions Ombudsman issued a series of determinations in cases where pension transfers had been delayed. Several of the cases date back to 2020-22, when transfer values were volatile and administrators were affected by the covid-19 pandemic.

General principles espoused by TPO include the following:

- Although trustees are not obliged to accept transfers-in, where they choose to do so, they owe a [duty of care](#) to would-be transferees.
- There were [significant challenges](#) for the pensions industry in the aftermath of the pandemic. Processing transfer requests might therefore have taken longer than normal.
- An administrator's failure to respond within timescales specified in a [service level agreement](#) does not, in itself, amount to maladministration.
- Where a breach of duty could be shown, the appropriate remedy might include compensation for [investment returns foregone](#), or [adjustment](#) of the relevant transfer value.





TPO rulings in transfer regret cases

The Pensions Ombudsman issued lengthy determinations in two cases where members had lost money after transferring to scam schemes. The transfers in question pre-dated the launch of the current "flags" regime.

In both cases, the transferring trustees had carried out basic checks and had sent the usual "scorpion" leaflet. But [Mr D](#) and [Mrs T](#) argued that the trustees should have done more, by way of due diligence and/or warnings.

TPO ruled that:

- The members had had statutory transfer rights. The trustees had therefore had a duty to make transfer payments on their behalf.
- The right to transfer to an occupational pension scheme was not dependent on the member being an "earner", as [Hughes v Royal London](#) might seem to suggest.
- The trustees had not owed a duty of care to the members as regards due diligence or warnings. Such a duty would have conflicted with the statutory duty to make the transfer payments, and would have been inconsistent with case-law, including [Philipp v Barclays Bank](#).
- The position might have been different if the trustees had voluntarily assumed responsibility for due diligence. But trustees did not assume responsibility just because they carried out basic checks.
- TPO was not obliged to adopt the same approach as either the Financial Ombudsman Service or previous Pensions Ombudsmen.

Accordingly TPO did not uphold the members' complaints. There was no finding of maladministration on the part of the trustees.

TPO report and accounts

The Pensions Ombudsman published its [2024/25 report and accounts](#). The report includes information about TPO's performance; an update on its new operating model; and case studies covering key determinations.

TPO closed 9,435 cases over the year: 73% at the assessment stage (mostly on the basis that applications were invalid), 16% by resolution, and 11% by adjudication. 351 determinations were issued, with 53% of complaints fully or partly upheld. Although closure rates increased, waiting times remain long – typically 12 months for allocation to assessment, and a further 12 months for allocation to adjudication (where applicable).

Elsewhere in the Courts

Disclosure. The Court of Appeal ordered extended disclosure of documents relevant to the construction of a professional indemnity policy. Find our comments [here](#).

Privilege. The Privy Council held that the so-called "shareholder rule" (to the effect that a company cannot assert privilege against its own shareholders) forms no part of English law. We [examined](#) the implications.

Contract formation. The Court of Appeal found that an exchange of emails had created a binding contract, even though the emails referred to preparation of a formal agreement. We discussed the case in a [blog post](#).

Directors' responsibilities. We reported on cases concerning directors' [fiduciary duties](#) and the [consequences](#) where those duties are breached.

Dishonest assistance. A Supreme Court judgment, summarised [here](#), clarified the remedies available for dishonest assistance in a breach of trust.

Looking forwards

Validity of amendments – *Verity Trustees v Wood*

A case as to the validity of historic amendments to TPT (an industry-wide pension scheme) was heard by the High Court in February and March 2025. The case covered many different matters, including issues arising from Virgin Media and questions as to severance. We expect judgment to be handed down before the end of the year.

Pension Schemes Bill

Committee stage in the House of Commons is now complete; see above as to the *Virgin Media* amendments. The Bill will now move to report stage. The whole House will debate the Bill, and further amendments may be proposed.

We expect the Bill to complete the parliamentary process by Q2 2026. The Government has published a [roadmap](#) which explains when measures are likely to take effect.

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