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PENSIONS DISPUTES QUARTERLY

JULY 2025



Virgin Media legislation announced

The Government [announced](#) that it would legislate to deal with issues arising from the *Virgin Media* case.

According to the announcement, the relevant measure will allow schemes to obtain, retrospectively, "actuarial confirmation that historic benefit changes met the necessary standard".

The proposed measure could be introduced either via an amendment to the Pension Schemes Bill (discussed below), or via regulations made under section 37 of the Pension Schemes Act 1993. We understand that the Government intends to take the former approach.

Attempt to re-litigate ill-health dispute fails

The High Court [struck out](#) a claim by a scheme member, on the basis that the matter had already been dealt with by The Pensions Ombudsman.

The member had left service due to incapacity. Under the rules of the employer's pension scheme, there was a two-tier ill-health pension, eligibility depending on the degree of incapacity. The trustee paid the member the lower-tier pension but said that he did not qualify for the upper-tier pension, based partly on the trustee's construction of the relevant rule. The member complained to The Pensions Ombudsman. The Ombudsman ruled in favour of the trustee.

The member did not appeal against the Ombudsman's determination. Instead, he began High Court proceedings for a declaration as to construction of the relevant rule.

In a preliminary hearing, the Chief Master of the High Court found that construction was among the issues which the Ombudsman had dealt with in his determination. The determination was final and binding, subject to the right of appeal which the member had not exercised.

Accordingly there were no reasonable grounds for the member's claim. On that basis, among others, the claim was struck out.

Money purchase underpin – "corrective construction"

The High Court determined that an underpin provision in scheme rules should be construed contrary to a literal interpretation of the relevant words. The judgment, handed down following an uncontested summary judgment application, is a rare example of the Courts using "corrective construction" to, in effect, fix a drafting error.

The rules had at all times provided for a conventional "1/60ths" final salary (**FS**) pension. However, in 1992 an underpin was added. The underpin provision stated that a member's FS pension would if necessary be increased so as not to be less than a notional money purchase account: twice the member's contributions, adjusted for investment returns.

The question before the Court was how the underpin provision operated. There were two competing constructions:

- the annual FS pension was to be compared with the **total value** of the money purchase account (as the provision, read literally, seemed to require); or
- the annual FS pension was to be compared with the **annual pension** which could be secured using the money purchase account (the approach which had been taken in practice).

The Court interpreted the underpin provision on the second basis, holding that the principle of corrective construction applied. There was clearly a mistake in the wording of the provision (the parties could not have intended the rules to provide for the "total value" approach), and it was clear that the rules should be read as providing for the "annual pension" approach.

Discretionary pension increases: Ombudsman rejects member challenge

The Pensions Ombudsman [turned down](#) a complaint relating to pension increases under a DB scheme.

The scheme's rules provided for annual pension increases in line with RPI capped at 5%, subject to an "uncapping" provision. In years where RPI was greater than 5%, the trustee could, at the request of the employer, calculate the increases as though the cap was 10% rather than 5%. For this purpose, the employer and the trustees were to have regard to an aim agreed in connection with a prior scheme merger, namely to provide increases in line with RPI capped at 10%, subject to the finances of the scheme (the **Stated Aim**).

In 2022 and 2023, RPI was greater than 5%. The scheme was in surplus on an ongoing basis, but there was a significant buy-out deficit. Taking account of the buy-out deficit (among other things), the employer did not make a request under the uncapping provision. Pension increases were therefore capped at 5%. A member complained to the Ombudsman.

The Ombudsman ruled as follows:

- In years where inflation exceeded 5%, the employer had to "genuinely consider" whether a request should be made, having regard to the Stated Aim.
- For Stated Aim purposes, the employer had to take account of two factors: the RPI/10% objective, and the finances of the scheme. The employer had taken account of both factors. The interpretation which the employer had placed on "finances of the scheme" (ie the use of a buy-out yardstick) was not unreasonable.
- In making or withholding a request under the uncapping provision, the employer was subject to the "*Imperial*" duty of good faith. The employer had complied with the *Imperial* duty. It had taken account of an irrelevant factor when reaching its decisions (the adequacy of RPI as a measure of inflation), but that was not fatal. Where a power was non-fiduciary, what mattered was whether a disputed decision was perverse or irrational when considered overall ([Prudential Staff Pensions v Prudential](#)).

Accordingly the Ombudsman did not uphold the member's complaint.

Ombudsman guidance as to overpayments

A [determination](#) of the Deputy Pensions Ombudsman includes general guidance on the Ombudsman's approach to overpayment cases (paragraphs 41-55).

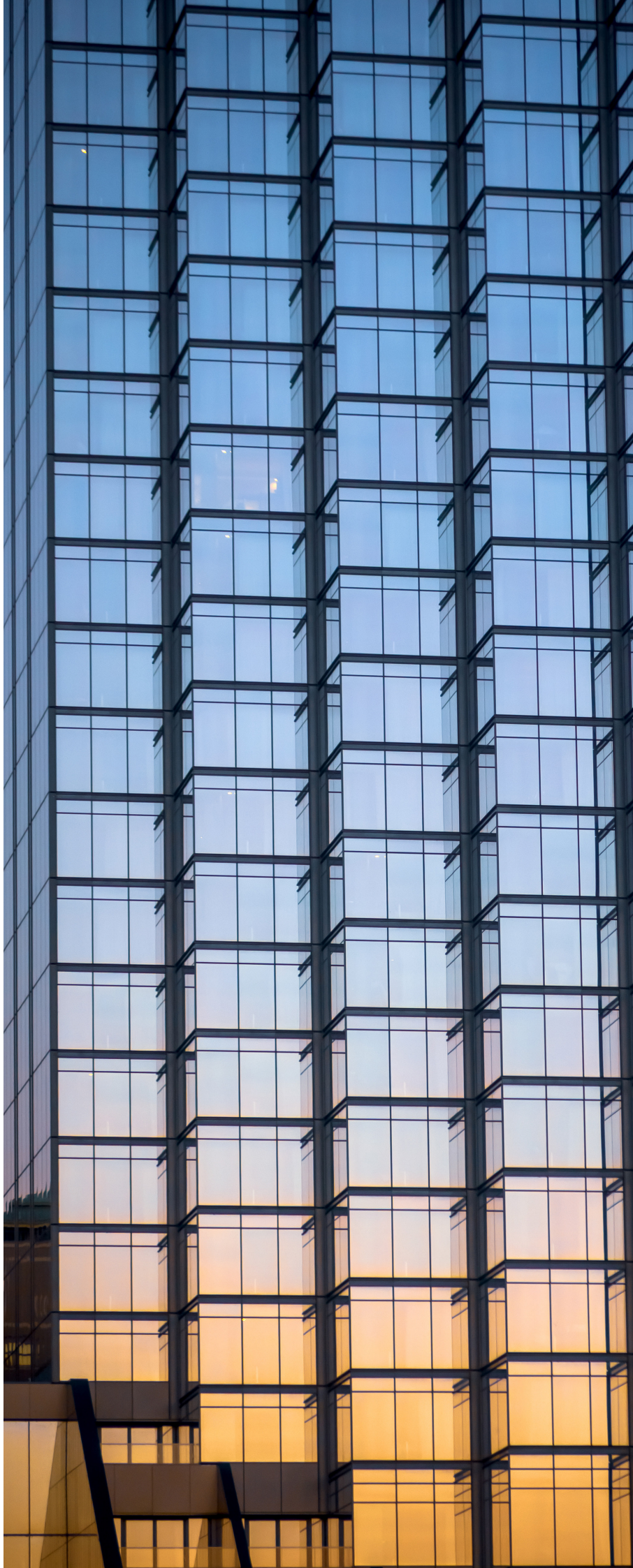
The determination draws on a much fuller determination of The Pensions Ombudsman in relation to the same scheme, reported in a [previous edition of PDQ](#) – referred to as the "lead case".

The guidance covers issues including estoppel, misstatement, laches and recoupment. It is clearly intended for trustees, members and advisers generally, although the Deputy Ombudsman flags that each case will turn on its facts.

Pension Schemes Bill: recoupment of overpaid benefits

The [Pension Schemes Bill](#) was introduced to Parliament and [debated](#). Key measures relate to:

- DC scale and asset allocation, value-for-money, guided retirement and the consolidation of small dormant pots; and
- DB surplus, superfunds and the Local Government Pension Scheme.



The Bill also provides for a change to the Pensions Act 1995, such that trustees will be able to recoup overpaid benefits on the basis of a determination from The Pensions Ombudsman, without the need for a court order. This change will be welcomed across the pensions industry.

Ombudsman's operating model

The Pensions Ombudsman published an [update](#) on the new operating model discussed in previous editions of PDQ.

The new model did not deliver reduced waiting times in 2024/25, mainly because of an unprecedented volume of new complaints.

In 2025/26, the Ombudsman will seek to increase case closures by 4%. Priorities include:

- expedited determinations;
- new processes for jurisdiction decisions and submissions by respondents; and
- the large cohort of complex cases within the system.

Separately, the Ombudsman [explained](#) his approach to the management of cases relating to early retirement terms under the Boots Pension Scheme.

Elsewhere in the Courts

Privilege. The High Court allowed a party to rely on privileged documents which had been disclosed in error, on the grounds that the error would not have been obvious. We discussed the Court's [judgment](#).

"Without prejudice" rule. The High Court held that survey reports obtained for use in potential without prejudice negotiations were not covered by the without prejudice rule, because they were commissioned unilaterally outside of the negotiation process. We explained the implications in a [blog post](#).

Procedural matters. There have been a number of cases about the consequences of delay – when serving a claim form, when complying with an unless order, and when applying to set aside a default judgment. We examined decisions reached in the [High Court](#) and the [Court of Appeal](#).

Litigation funding. The Civil Justice Council published a final report on its review of litigation funding. The report recommends that the Government should legislate to reverse the effect of *Paccar*, and should introduce a new, light-touch, regulatory regime. Separately, the Court of Appeal considered the validity of arrangements which litigation funders have adopted in a bid to sidestep *Paccar*. Find our analysis [here](#) and [here](#).



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. Insiders say that judgment is likely to be handed down in the autumn.

Pension Schemes Bill

Public Bill Committee stage: a group of 17 MPs will scrutinise the Bill's provisions, and propose amendments.

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.

Virgin Media legislation

As mentioned above, the Government has said that it will legislate to address *Virgin Media* issues. Timescales have not been stated, but the DWP may wish to digest the *Verity Trustees* judgment before finalising proposals.

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