



HERBERT SMITH
FREEHILLS
KRAMER

PENSIONS DISPUTES QUARTERLY

JANUARY 2026



Virgin Media: remediation measures refined

Amendments were made to the *Virgin Media* remediation measures in the Pension Schemes Bill, at report stage in the House of Commons.

Most notably, the amendments narrow down the (already limited) circumstances in which a potentially invalid amendment will be deemed non-remediable by virtue of prior legal proceedings or "positive action" by trustees.

Under clause 100 of the [Bill as amended](#), prior legal proceedings may render an amendment non-remediable only if they have been brought in a UK court, are to determine a dispute as to scheme rules, and involve (as parties) the trustees and one or more members or beneficiaries. This will mean that negligence proceedings brought against a third party who advised trustees on a relevant amendment – where the validity of the amendment may be in issue – will not render the amendment non-remediable. Nor will a complaint to The Pensions Ombudsman.

A further amendment means that the remediation provisions will now come into force when the Bill receives royal assent, rather than two months later.

Amendment fetter did not prevent hard-closure

The High Court held that an amendment which hard-closed a DB scheme (ie terminated pensionable service) was not prevented by a fetter on the scheme's amendment power: [3i plc v Decesare & Ors \[2025\] EWHC 3023 \(Ch\)](#).

The scheme was hard-closed in February 2010, although a salary link was maintained for members who were in pensionable service at the time.

The sponsoring employer asked the Court to determine whether the amendment infringed a fetter prohibiting amendments which would:

"diminish ... the accrued rights or interests of any Member or other person in respect of benefits already provided under the [scheme]"

The Court held that the potentially broad word "interests" was qualified both by the word "accrued" and by the reference to "benefits already provided under the [scheme]".

Accordingly (and in contrast to the position in the *BBC* case), the fetter was concerned only with amendments which would diminish past service benefits. It did not prevent hard-closure on the 2010 basis.



The case arose against the background of a proposed return of surplus to the employer; the trustee was concerned, following the decision in *BBC*, that members might have accrued unintended benefits. The judgment is a helpful reminder of the need to determine the meaning of words in their context, and of the danger of relying on prior cases where differently-worded fetters have been construed by the courts.



Scheme documents: validity and *Virgin Media* issues settled; rectification granted

The High Court approved a proposed settlement as regards the governing documents of a DB scheme, and also made an order for rectification: [Places for People Pension Trustee Ltd v Places for People Group Ltd & Ors \[2025\] EWHC 3371 \(Ch\)](#).

Various amendments had purportedly been made to the scheme between 1993 and 2011, mostly with a view to reducing benefits. However, concerns about the amending documents had later emerged:

- **Validity:** Some of the documents might not have been properly executed.
- **Virgin Media:** Some of the amendments might have been void for failure to obtain "section 37" confirmations from the scheme actuary.
- **Drafting issues:** Some of the amendments (as drafted) had effects which were said to have been unintended, eg improving benefits rather than reducing them.

The trustee, the employers and a representative beneficiary had negotiated a proposed settlement, under which:

- the amendments would be assumed to have been valid (subject to rectification of the drafting issues); but
- members would be granted additional benefits, calculated on a "probabilistic" basis, ie based on the assessed chances of each of the amendments being invalid.

The trustee applied to Court for:

- a representation order, such that, on an "issue by issue" basis, stakeholders would be represented either by the trustee or by the representative beneficiary, depending on where their interests lay;
- approval of the proposed settlement; and
- rectification as regards the drafting issues.

The Court granted the representation order and approved the proposed settlement. The parties had reached the settlement via a rigorous process, on a sensible basis (the probabilistic approach), and with due regard to the different stakeholders. They had arrived at an eminently reasonable outcome which fairly addressed the interests of everyone affected. Accordingly the Court was satisfied that the settlement was "for the benefit of all the represented persons" (CPR 19.9(6)).

The Court also granted the rectification order. The rectification claim was not opposed by the representative beneficiary, and was amply supported by evidence; eg given the scheme's direction of travel during the relevant period, it was unlikely that benefit improvements would have been intended, nor had the ostensible improvements been costed, announced or implemented.



This is another example of parties (and the courts) finding pragmatic solutions to issues arising from potential drafting or execution errors. The well-established approach which a court will take when asked to approve compromise agreements is helpfully summarised in the judgment.

Tax deduction disallowed for schemes set up to avoid tax

The Court of Appeal upheld rulings against employers who had set up unfunded retirement benefit schemes: [AD Bly Groundworks and Civil Engineering Ltd & Anr v HMRC \[2025\] EWCA Civ 1443](#).

Under the schemes, the employers committed to pay pensions to directors upon retirement. The terms were such that the employers' aggregate commitments were equal to 100% of pre-tax profits in the first year, and 80% of pre-tax profits in the second year. The effect was to eliminate or substantially reduce profits, meaning that, on the face of it, little or no tax would be payable.

HM Revenue & Customs disallowed tax deductions for scheme liabilities, saying that the schemes were established for tax avoidance, and therefore the liabilities were not (as required by the Corporation Tax Act 2009) incurred wholly and exclusively for the purpose of trade.

The First Tier and Upper Tier Tribunals upheld HMRC's decision. The Court of Appeal dismissed an appeal by the employers. The First Tier Tribunal had found that the employers set up the schemes in order to reduce tax, and that the provision of pensions was at best incidental. The Tribunal's conclusion on the point was "unimpeachable".

WASPI judicial review claim withdrawn

The Government [announced](#) that it would reconsider whether compensation should be paid for failures in communicating changes to State pension age. The WASPI campaign group reportedly [withdrew](#) its claim for judicial review after receiving various Government commitments.

"Moral hazard": TPR intervention reports

The Pensions Regulator published intervention reports relating to the [Box Clever](#) and [Northern Foods](#) pension schemes. The reports cover the steps which TPR took pursuant to its moral hazard powers, the associated litigation, and the outcomes achieved.

Box Clever was a joint venture between various companies including ITV. Box Clever bought a business from ITV, and relevant employees became members of its DB scheme. Box Clever subsequently failed and the scheme entered PPF assessment.

In 2020, TPR issued a financial support direction (**FSD**) to ITV, requiring it to provide support for the Box Clever scheme. TPR was not satisfied with the offer which ITV made in response. Accordingly TPR proposed to impose a contribution notice (**CN**) for failure to comply with the FSD, and issued a warning notice to that effect in 2022. Under the proposed CN, ITV would have been liable to make good the scheme's entire buy-out deficit. Following discussions between TPR, ITV, the trustees and the PPF, a settlement was reached, whereby all members of the Box Clever scheme were transferred to ITV's scheme which will provide their benefits in full.

Northern Foods had been acquired by a group called BHL. The acquisition was funded by borrowing, and BHL subsequently sold various Northern Foods subsidiaries in order to refinance the debt. Northern Foods' DB scheme received only limited mitigation. Some of BHL's transactions over the relevant period were with another group owned by the same shareholders, BPO. The transactions were on an arm's length basis, but accounted for a material proportion of BPO's profits.

TPR was concerned that support for the Northern Foods scheme had been eroded. In 2024 it issued a warning notice to both BHL and BPO, seeking financial support for the scheme. Negotiations followed, which resulted in a package of measures to support the scheme, including a change of sponsor, a funding plan to deliver low-dependency by 2034, and guarantees from both BHL and BPO.

TPO blog post: new operating model

The Pensions Ombudsman published an [update](#) on its new operating model. In the first six months of 2025/26, case closures rose by 14%. Although there was also an increase in the number of new applications, TPO is confident that it can achieve a material reduction in waiting times over the next few years.

The update outlines proposed future changes to drive efficiency and reduce demand, including:

- publishing information to support early dispute resolution;
- streamlining the process for jurisdiction decisions; and
- asking respondents for a formal response to complaints at an earlier stage.

TPO publishes overpayment factsheet

The Pensions Ombudsman published a [factsheet](#), to help members understand the issues which arise in overpayment cases.

The factsheet:

- explains that, where pensions are found to have been overpaid, trustees will almost always reduce future payments to the correct level, and will usually take steps to recover past overpayments;
- outlines the defences to recovery which, "in limited circumstances", may apply: change of position, estoppel and laches; and
- describes the sort of evidence which a member would need to provide in order to support a defence.

Elsewhere in the Courts

Breach of duty. We [summarised](#) a Supreme Court judgment which clarified the law as to compensation for breach of fiduciary duty.

Breach of contract. We highlighted two Court of Appeal cases concerning repudiatory breaches of contract. In [the first](#), the Court considered whether a breach was capable of remedy. [The second](#) highlights the need for an innocent party to communicate acceptance of a repudiatory breach, if it wishes to bring the relevant contract to an end.

Onerous contract terms. A Court of Appeal ruling provided guidance as to the "red hand rule", in a case where an onerous clause had been incorporated by reference in an insurance policy. We covered the case in a [blog post](#).

Service. The Court of Appeal confirmed that a defendant is not obliged to take any steps in proceedings unless a claim form is validly served in time. Find our summary [here](#).

Disclosure. The High Court ruled that documents held by third parties, appointed by claimants to assist in litigation, were within the claimants' practical control for disclosure purposes. We [outlined](#) the implications.

AI and privilege. An [article](#) by HSF Kramer lawyers provides guidance on navigating privilege issues when using AI tools and agents.

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. Judgment has not yet been handed down.

Pension Schemes Bill

The Bill is now with the House of Lords. Committee stage is scheduled for January 2026.

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

Key contacts



Antonia Pegden
Partner
London
T +44 20 7466 2530
antonia.pegden@hsfkramer.com



Samantha Brown
Managing Partner
London
T +44 20 7466 2249
samantha.brown@hsfkramer.com



Dan Saunders
Of Counsel
London
T +44 20 7466 2036
dan.saunders@hsfkramer.com



Richard Evans
Knowledge Counsel
London
T +44 20 7466 6320
richard.evans@hsfkramer.com

For a full list of our global offices visit [HSFKRAMER.COM](https://www.hsfkramer.com)