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PENSIONS DISPUTES QUARTERLY

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Recent developments

Pension Schemes Act passed

The [Pension Schemes Act 2026](#) received royal assent on 29 April 2026.

Sections 101-108, which came into force immediately, provide a mechanism for *Virgin Media* remediation, as discussed in previous editions of PDQ:

- Trustees can in principle remediate historic 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 must 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" (ie the "reference scheme test" under section 12A of the Pension Schemes Act 1993).
- In some limited circumstances, amendments are excluded from remediation. The exclusions may be relevant where legal proceedings as to validity have been brought before 29 April 2026, or where trustees have taken "positive action" on the basis that an amendment is void.
- Where schemes have been wound up or fallen into the Pension Protection Fund before 29 April 2026, amendments (save as above) will be deemed to have met the confirmation requirement, without the need for retrospective confirmation.

Section 121, which comes into force on 29 June 2026, amends section 91 of the Pensions Act 1995, so that trustees can recoup overpaid benefits on the basis of a determination from The Pensions Ombudsman, without having to obtain a court order.

FRC issues guidance on *Virgin Media* remediation

The Financial Reporting Council published [guidance](#) for actuaries on *Virgin Media* remediation. The guidance encourages actuaries to take a proportionate approach to retrospective confirmation. Key points are outlined below.

- Certainty is not required. Instead, an actuary should reach a reasoned and justifiable conclusion, based on relevant facts and circumstances after taking a proportionate approach to the gathering of data.
- Actuaries must work on the basis that the reference scheme test (**RST**) was met immediately before a relevant amendment was made, and consider only whether the amendment itself would have prevented the scheme from meeting the RST.
- In some cases, it may be evident from an amendment that confirmation can be given; for example, if the amendment did not reduce benefits, or affected only benefits unconnected with the RST (eg ill-health pensions or lump sum death-in-service benefits).
- In other cases, additional information may be needed. Relevant information might include documents relating to the amendment, such as advice or trustee minutes; RST confirmations or certificates which post-date the amendment; or (where there is a question as to earnings patterns) industry norms or confirmation from the employer.

The guidance includes hypothetical case studies, which illustrate possible approaches.



TPR publishes *Virgin Media* guidance for trustees

Following the publication of the Financial Reporting Council's guidance on *Virgin Media* remediation, The Pensions Regulator published [guidance](#) for trustees.

TPR's guidance provides an overview of potential issues arising from the *Virgin Media* case; the remediation power; and the relevant responsibilities of trustees. The guidance also includes practical tips.

The focus is on process rather than substance; TPR emphasises that, as regards remediation, it has no statutory role to play. The guidance does however echo some of the pragmatic points made by the FRC.

Financial Ombudsman: changes proposed

The Government published a [consultation response](#) confirming that it would push ahead with its proposed overhaul of the Financial Ombudsman Service. The Financial Ombudsman and the Financial Conduct Authority launched a [consultation](#) on changes which they propose to make in the meantime.

The Government's proposed changes include a modified version of the "fair and reasonable" test which the Ombudsman applies, and a 10-year longstop for complaints. The necessary primary legislation will be introduced when time allows.

The Ombudsman and the FCA have identified near-term changes which can be made within the existing framework, to increase predictability, certainty and transparency. Among other things, they propose to change the factors which are prescribed for the purpose of the "fair and reasonable" test, and the grounds on which complaints may be dismissed.

Data Act introduces new "complaints" requirement

A new requirement as to data protection complaints will apply from 19 June 2026, under the [Data \(Use and Access\) Act 2025](#).

Data subjects will have the right to make a complaint to controllers if they believe there has been a breach of data protection law. Controllers will have to acknowledge complaints within 30 days, and respond "without undue delay".

The Information Commissioner's Office has published associated [guidance](#).

Court approves amendment as to use of DB surplus

The High Court made a "blessing" order in favour of the trustees of a hybrid pension scheme. The Court confirmed that the trustees could make a clarificatory [amendment](#), as to the use of DB surplus for DC provision, and could enter into an associated agreement: *HSBC Bank Pension Trust (UK) Ltd plc v HSBC Bank UK Ltd* (unreported).

There were three hard-closed DB sections in the scheme. All three had substantial surpluses on a technical provisions basis.

The amendment and agreement provided that, for a four-year period, the employer under each section could use surplus to fund DC contributions, subject to certain safeguards. The principal employer and the trustees felt that cross-subsidy was permissible under the existing rules, but there was some uncertainty and they wished to put the matter beyond doubt.

It is estimated that the largest section has a surplus of £2.8bn on a low-risk funding measure, and that DC cross-subsidy will use about £152m of this per year.

Over the four-year period, the principal employer and the trustees will seek to reach agreement as to how residual surplus under the largest section will be used when the scheme is wound up.

The Court [reportedly](#) concluded that the decision to amend the rules was legally appropriate, had been reached by a proper process, and was one which, in the circumstances, the trustees could reasonably take.

Court confirms transferred member not entitled to early retirement benefits

The High Court dismissed an appeal from a determination of The Pensions Ombudsman, in a case involving the Electricity (Protected Persons) Pension Regulations: *McKavney v Serco Group PLC* [2026] EWHC 508 (Ch).

Under the Regulations, the appellant (**MK**) enjoyed pension protections where his employment was transferred within the electricity industry. Prior to 2012, MK was employed by Serco and was a member of Serco's scheme. In 2012 his employment was transferred under TUPE to a Serco subsidiary, ESRC, which was subsequently sold to AMEC. MK joined AMEC's scheme for future service but did not take a transfer from the Serco scheme.

In 2015, ESRC made MK redundant at age 56. The AMEC scheme paid him an unreduced early retirement (**UER**) pension, but he was told that he did not qualify for one under the Serco scheme. MK complained to TPO, arguing that he had qualified for a UER pension in 2012 when his employment was transferred and ESRC was sold.

Under the Serco scheme's rules, a UER pension was payable if an active member was compulsorily retired due to redundancy or reorganisation, or if a member left pensionable service in those circumstances. TPO found against MK, concluding that the conditions in the rules had not been met.

The High Court upheld TPO's determination. MK had not been "compulsorily retired" in 2012, as that phrase naturally described an involuntary termination of employment, not a change of employer under TUPE. There had been no redundancy or reorganisation as contemplated by the rules, nor had MK's service ended. Furthermore, a construction whereby active members enjoyed UER rights on a TUPE transfer would have been inconsistent with the transfer right provided for in the Regulations, which informed the Court's construction of the rules.

Court supports trustees' right to recover legal costs

The High Court found in favour of the trustees of a family trust, as regards the costs of prior legal proceedings: *Smith v Campbell* [2026] EWHC 144.

In the prior proceedings, beneficiaries had asked the Court to remove the trustees, alleging misconduct and a breakdown in relations. The Court held that the alleged misconduct did not warrant removal, but that two of the four trustees should be removed on "breakdown in relations" grounds.

In a subsequent hearing, the Court ruled that:

- The trustees should not bear the beneficiaries' costs, because the beneficiaries had been only partially successful, and had not complied with court rules as to pre-action correspondence and mediation. Accordingly no order for costs was made.
- The trustees could meet their own costs from the trust, under section 31 of the Trustee Act 2000. This statutory indemnity allows trustees to recover from trust assets any "expenses properly incurred ... when acting on behalf of the trust". Similar principles apply under court rules (CPR 46.3). The trustees' costs in this case had not been improperly incurred. It had been reasonable and proper for the trustees to defend themselves against the misconduct allegations, and they had tried, reasonably

and in good faith, to address the beneficiaries' concerns about a breakdown in relations. Where there was doubt about whether costs had been properly incurred, trustees were to be given the benefit of the doubt.

Elsewhere in the Courts

Limitation. The Court of Appeal considered the circumstances in which the parties to proceedings may be changed once the limitation period has expired. Our commentary can be found [here](#).

Privilege. The High Court found that legal advice privilege could extend to "intra-client" communications. We [discussed](#) the judgment. And we [examined](#) another case, in which the court considered whether a company could assert privilege against a former director in respect of advice which she had seen when in office.

Expert determinations. We [reported](#) a Court of Appeal decision, which considered the limited circumstances in which an expert determination may be vitiated by manifest error.

Notice periods. A Privy Council decision provided guidance on assessing reasonable notice for the termination of commercial contracts. For details, see our [blog post](#).

AI and privilege. We [discussed](#) an Upper Tribunal ruling which considered the use of artificial intelligence in legal proceedings. The Tribunal observed that uploading confidential documents to public AI tools would waive privilege and breach client confidentiality.

AI and court documents. The Civil Justice Council launched a consultation on the use of AI to prepare court documents, in particular witness statements. We [outlined](#) the main proposals.

Other AI issues. We launched a [podcast series](#) on disputes and AI, and [discussed](#) the use of AI for disclosure.

Contract law. Our [annual briefing](#) looks at key contract cases from 2025. We consider the lessons for those drafting or managing commercial contracts.

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 in Q2 2026.

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