PENSIONS DISPUTES QUARTERLY

JULY 2026

Recent developments

Court comments on pension valuation and expert evidence in insolvency case

The High Court dismissed a claim that an intra-group restructuring, involving the release of pension liabilities, amounted to a transaction at an undervalue (**TUV**) for the purpose of the Insolvency Act 1986: *Cohen v Co-operative Group Ltd* [2026] EWHC 1228 (Ch).

Under the restructuring, a distressed entity, SSL, transferred properties to other group companies. The other companies funded the acquisition of the properties by withdrawing share capital from SSL. One of the companies replaced SSL as statutory employer under a DB pension scheme, via a flexible apportionment arrangement. 15 months after the restructuring, SSL entered administration.

The Court held that the withdrawal of share capital was supported by consideration, namely the moneys originally subscribed for the shares. That being so, neither the withdrawal nor the restructuring had been at an undervalue.

Whilst that disposed of the TUV claim, the Judge went on to make obiter comments in respect of two pensions-related points:

- **How to value, for TUV purposes, the release of SSL from its pension liabilities**. The DB scheme was prudently funded and significantly de-risked. Against that background, the judge said that using a buy-out measure would "fly in the face of reality and common sense". The appropriate measure was the ongoing funding cost – the higher of outstanding deficit reduction contributions and the technical provisions deficit. That was consistent with how the parties would have approached the matter in an arm's-length negotiation.
- **Expert evidence as to employer covenant**. The judge was not convinced that expert evidence as to covenant was (in this case at least) necessary or appropriate. The Court needed actuarial evidence as to funding, but it was "well arguable" that, beyond that, the decisions to be made were matters either of law or of commercial common sense.

Deeds rectified to remove "Courage" fetter

In an unopposed application, the High Court granted rectification of deeds governing a DB scheme, to remove a *Courage*-type fetter on the amendment power: *Soufflet Bairds Malt Ltd v Dear* [2026] EWHC 1480 (Ch).

The parties had adopted replacement deeds and rules in 2004 and then again in 2012. The 2004 deed included a fetter on the amendment power which had not previously appeared: the scheme could not be amended in a way which would "affect or prejudice ... benefits already accrued or secured". Similar wording was included in the 2012 deed.

The Court was satisfied that both deeds were intended to be consolidation or housekeeping exercises. The parties had not intended to introduce the fetter in 2004, or to endorse it in 2012. There was compelling documentary evidence to that effect. In particular the guidance from advisers on the draft 2004 deed, upon which the parties were expected and entitled to rely, stated that existing fetters on the amendment power were preserved, but made no mention of a new fetter.

Virgin Media guidance finalised

The Financial Reporting Council finalised its guidance for actuaries on *Virgin Media* remediation, and The Pensions Regulator finalised its guidance for trustees.

Both documents reflect the passing of the Pension Schemes Act 2026 but are otherwise almost identical to the interim versions, discussed in the April 2026 PDQ.

The FRC guidance encourages actuaries to take a proportionate approach to remediation, and includes case studies. TPR comments on the role and responsibilities of trustees, but emphasises that it has no statutory function as regards remediation.

TPO forfeiture ruling builds on Axminster case

The Pensions Ombudsman upheld a complaint about forfeiture of unclaimed benefits, on the basis that forfeiture was not within the letter of the relevant scheme rule: CAS-85140-P4M5.

A member's widow, Mrs P, had been paid a pension from 1996, but payment had for some reason stopped in 2001. The matter was raised by Mrs P's estate following her death in 2020. The trustees paid some of the relevant arrears, but purported to forfeit those which dated back more than six years (or eight years for GMP), on the basis of the scheme's rule 25(b):

> "**Forfeiture**
>
> Any monies payable ... and not claimed within six years from the date on which they were due to be paid may at the Trustees' discretion may [sic] be used for any of the purposes of the Plan."

The Ombudsman held that the purported forfeiture was invalid. Rule 25(b) did not provide for beneficiaries' rights to be extinguished; it merely allowed the trustees to use unclaimed funds for other purposes.

The Ombudsman's conclusion was based in part on the "Axminster" case, discussed at some length in his determination. Whilst there were differences between rule 25(b) and the relevant rule in Axminster (eg rule 25(b) was headed "Forfeiture"; the Axminster rule was headed "Power to apply unclaimed moneys"), overall the two were "strikingly similar".

Trustee not liable for gains foregone in overpayment case

The Pensions Ombudsman dismissed a member's claim for compensation in connection with an overpayment under a small self-administered scheme: CAS-46648-S4N0.

On retirement, the member opted to receive the maximum possible pension commencement lump sum (**PCLS**), and to take the remainder of his benefits via drawdown. The scheme's independent trustee and administrator miscalculated and overpaid the PCLS.

When the overpayment came to light, the trustee paid the associated tax charge on the member's behalf. However, the member argued that he had suffered a loss, because, but for the trustee's error, the overpaid money would have remained in his drawdown account, where it would have benefited from investment returns.

The Deputy Ombudsman held that there was no recoverable financial loss. The decision to withdraw the maximum possible PCLS, rather than remaining invested, had been the member's, and the numbers supplied by the trustee had been only one piece of information used by the member for his decision. The trustee was not required to check whether maximising PCLS was in the member's interests, or to provide guidance on the matter.

TPO sets out plans for the year

The Pensions Ombudsman published its 2026/27 corporate plan and an associated blog post.

Changes to TPO's operating model paid dividends in 2025/26, with a 14% increase in case closures relative to 2024/25.

TPO has recently secured additional funding from the Government. Its plans for 2026/27 include:

- expanding its casework resource;
- developing a new case-handling protocol and application process;
- piloting the use of AI (for case summaries, but not decision-making);
- publishing more guidance on common topics; and
- increasing its use of the "lead case" procedure, to help manage systemic pressures.

TPO to consider pension increase complaint using "lead case" process

The Pensions Ombudsman announced plans to investigate a complaint as to the Nissan Pension Plan. The complaint concerns decisions not to award discretionary pension increases in the last three years. TPO will treat it as a "lead case", given the number of members affected.

TPO overhauls factsheets

The Pensions Ombudsman published new versions of four factsheets: Ill health pensions, Death benefit lump sums, Incorrect information about your pension and How to complain about your pension.

Elsewhere in the Courts

Privilege. An Upper Tribunal decision illustrates that privilege may attach to the question of whether legal advice has been sought on a particular topic. We discussed the decision in a blog post. We also updated our Handy guide to privilege, covering new topics including the use of AI.

Paralegals etc. The Court of Appeal confirmed that unauthorised individuals may perform tasks which amount to the conduct of litigation, provided that an authorised person retains responsibility. Find our analysis here.

CPR and mediation. We highlighted a High Court case which sheds light on the circumstances in which a refusal to mediate may be considered unreasonable.

Class actions. At the Government's request, the Law Commission will consider whether the enforcement of consumer laws could be strengthened through the introduction of a class action regime. We explained the terms of reference.

Disclosure. The Disclosure Review Working Group is considering changes to simplify the disclosure regime under Practice Direction 57AD. Our bulletin provides further information.

High Court structure. We reported plans to "modernise" the High Court by creating a new Business and Property Division, probably in Q4 2026.

Podcasts. Catch up on recent developments with our commercial litigation podcasts, available 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. Reports indicate that the trustee has applied to add back *Virgin Media* issues which were withdrawn from the claim prior to the passing of the Pension Schemes Act 2026. We understand that the application will be heard in July 2026. In view of this development, it may be some time yet before judgment is handed down.

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

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