

## UK PENSIONS UPDATE 5 in 5 – March 2025

Welcome to our newsletter: "UK Pensions Update: 5 in 5" where we deliver to you what you really need to know about the 5 key developments in UK pensions from the last quarter – digestible within 5 minutes!

### 1 Reforms to surplus rules expected

According to a [recent press release](#), the government is advancing proposals to reform the rules on access to defined benefit (DB) scheme surpluses. The press release was published at the end of January and specifically refers to lifting restrictions on how well-funded schemes that are performing well will be able to invest surplus. The specific details of any such reforms are, at this stage, unknown, but it appears the government will be publishing a response to the February 2024 consultation on "[Options for Defined Benefit Schemes](#)" published under the Sunak Conservative government.

The proposals under that consultation were focused on:

- Introducing a statutory override power to allow schemes to amend their rules to facilitate the extraction of surplus funds.
- Exploring potential changes to the authorised payments regime to allow trustees to use surplus funds for one-off payments to members more easily, without the need to permanently increase benefits.
- Considering new criteria for permitting the extraction of surplus.

These reforms are part of a broader strategy to stimulate economic growth, and the final report of the first phase of the pensions investment review (which includes proposals to create Canadian and Australian style defined contribution (DC) megafunds and consolidate the Local Government Pension Scheme (LGPS) funds) is also due to be published this Spring.

### 2 Updates in relation to Virgin Media

The Institute of Chartered Accountants in England and Wales (ICAEW) recently issued [guidance](#) on Virgin Media<sup>1</sup> aimed at sponsors and their auditors following the issues raised by the Court of Appeal. (Please see the [September 2024 edition of the UK: Pensions Update](#) and the [June 2023 edition of the UK: Pensions Update](#) for more details on the case).

In the guidance, the ICAEW acknowledges that, following the ruling, many schemes are adopting a "wait and see" approach before starting detailed investigations in anticipation of uncertainties in the case being resolved, either through the outcome of future court cases or a Department for Work and Pensions (DWP) intervention. However, the general message from the ICAEW is that trustees should not "do nothing" and even if detailed investigations have not been initiated, trustees should be aware of what amendments have been made to their schemes and understand what each amendment does, as well as whether an actuarial confirmation would have been required.

On 27 February, a DWP spokesperson [confirmed](#) that no final decisions have been made by the DWP in relation to the uncertainties flowing from the Virgin Media judgment. The DWP says it is "actively considering" next steps and will provide an update in due course.

### 3 PPF updates onerous contracts guidance

The Pension Protection Fund (PPF) has published an updated version of its [guidance](#) on the PPF's power to modify contracts, originally published in 2010. The most recent version was published in February and followed more substantive updates made in October 2024.

The guidance helpfully confirms that the PPF has not, to date, identified any term it would wish to disapply or vary using its statutory powers (which, when the PPF assumes responsibility for a pension scheme, give the PPF a very broad power to disapply a term or condition in a contract (or substitute a term or condition with one that it considers to be reasonable) where the PPF considers the relevant term or condition to be "onerous"). The guidance also notes that it has "on a number of occasions" entered into irrevocable deeds with counterparties confirming that it will not exercise these powers.

The guidance also updates the template drafting included within it for the PPF-specific additional termination event which is recommended for inclusion in ISDA agreements to bring it up-to-date with the current legislation regarding the PPF assessment process

<sup>1</sup> *Virgin Media Ltd v NTL Pension Trustees II Ltd & Ors* [2024] EWCA Civ 843

(essentially to reflect the fact that there are different conditions for a transfer of a scheme in different circumstances). These updates will also be relevant for other contracts with termination events based on the wording contained in the 2010 guidance e.g. bulk annuity purchase agreements.

#### 4 Pension fund clearing exemption update

In January, HM Treasury published its [response](#) to the [call for evidence](#) originally published in November 2023, seeking input on the current exemption for UK pension funds from clearing certain derivative contracts. (See the [December 2023 edition of the UK: Pensions Update](#) for further information).

In the response, HM Treasury confirms that the exemption should be maintained for the longer-term. The government will be passing secondary legislation to override the current expiry date of the exemption (18 June 2025) and to remove any further time limit on the exemption. The new policy will be kept under review.

#### 5 DB Funding Code comes into force

The Pensions Ombudsman recently [upheld](#) the complaint of Mr H<sup>2</sup>, a member who transferred to a new scheme on the promise that he would be granted mirror image benefits to those in his former scheme. The decision is fairly lengthy

and whilst fact-specific, considers a number of key legal principles. In particular, the Ombudsman concluded:

Although the benefits promised to Mr H had never been documented by way of rule amendments, there was an enforceable contract between Mr H and his former employer to procure that he was offered mirror image benefits in the new scheme<sup>3</sup>.

Failure to take steps to implement the amendments (the employer had a unilateral amendment power) amounted to a breach of the employer's implied duty of good faith.<sup>4</sup>

The Ombudsman was not prevented<sup>5</sup> from investigating a dispute where a limitation defence under the Limitation Act 1980 (**1980 Act**) was put forward (as an investigation would be necessary to see if the defence was well founded). In any event, here, the Ombudsman ruled that the contractual obligation was a continuing one and breached only at the point where the trustees sought to claw-back "overpayments" from the member and therefore would not have been time-barred under the 1980 Act (or the Ombudsman's own three-year timeframe<sup>6</sup>). Regardless, the 1980 Act would only prevent a damages claim and not a claim for specific performance as was being made in this case.

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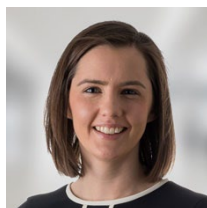
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<sup>2</sup> CAS-50353-Y4X5

<sup>3</sup> Applying *SouthWest Trains v Wightman* [1997] OPLR 249.

<sup>4</sup> Applying *Imperial Group Pension Trust v Imperial Tobacco* [1991] 2 All ER 597 and *IBM UK Holdings v Dalgleish*.

<sup>5</sup> Applying *Arjo Wiggins Ltd v Henry Thomas Ralph* [2009] 079 PBLR.

<sup>6</sup> Prescribed under regulation 5 of the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996.