

## PENSIONS ON AIR PENSIONS PODCAST June 2025

<b>Dan Schaffer</b>	<p>Hello and welcome to the June episode of the Slaughter and May pensions podcast, Pensions on Air.</p> <p>I'm Dan Schaffer, one of the three pensions partners here at Slaughter and May and I'm once again joined by Catrin Young, a Senior Knowledge Lawyer in our team.</p> <p>Catrin, what's happened recently that our clients should know about?</p>
<b>Catrin Young</b>	<p>Well, I am so pleased to report Dan there has been a lot. Last Thursday, the 5 June, the Government at long last laid the Pension Schemes Bill before Parliament and also issued an interesting press release about Virgin Media.</p>
<b>Dan</b>	<p>Indeed, we were sat at a pensions conference hosted by Wilberforce Chambers when both came out and there was a palpable buzz of excitement throughout the room and some quick re-writing of presentations. So, let's start with the big one – releasing surplus or surplus sharing for DB schemes. What did the Bill say about that?</p>
<b>Catrin</b>	<p>Well Dan, listeners may be aware that currently most schemes are only able to refund surplus if they passed a resolution before April 2016 enabling them to do so. In addition, the scheme needs to be fully funded on a buy-out level and the trustees must be satisfied that a refund is in the best interests of members. The Bill:</p> <ul style="list-style-type: none"><li>• Repeals the requirement to have passed that resolution before April 2016 to retain a power to distribute ongoing surplus;</li><li>• Provides trustees with a statutory power to amend scheme rules to include a power to refund ongoing surplus or remove constraints in an existing power (trustees will need to consider carefully whether they <u>should</u> exercise this power);</li><li>• Allows for regulations setting out additional conditions which will prescribe the minimum funding levels before surplus can be released and a requirement to notify members and could also include a requirement for employer consent.</li></ul>
<b>Dan</b>	<p>Interesting. So, what has the Government said about the funding threshold at which surplus can be extracted? And will Trustees still have to show that returning surplus to the employer is in the best interests of members as in my experience there haven't been any refunds of surplus on the current basis?</p>
<b>Catrin</b>	<p>The threshold is not prescribed in the Bill but will follow in Regulations. But the Government has said it's minded to change this to low dependency funding. Analysis carried out by the Pensions Regulator estimated that as at 30 September 2024, 49.3% of the UK's 4,818 DB schemes were in surplus on a buy-out basis but 75% were in surplus on a low dependency basis,</p>

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	<p>amounting to surplus assets of £163 billion. Adopting the lower funding threshold will, therefore, make refunds available to a lot more schemes.</p> <p>It's also confirmed that the Regulations will remove the requirement for trustees to satisfy themselves that a refund of surplus is in the interests of members. They will instead need to consider whether a refund is in line with their general fiduciary duties to scheme beneficiaries. The change in wording does reflect current case-law that there is no standalone duty to act in the best interests of members, it's simply an expression of the duty for trustees to exercise their powers for the purposes of the trust.</p>
<b>Dan</b>	<p>The change in language there is really interesting as it talks about beneficiaries. Once we have the Regulations, it will all need to be looked at very carefully and who knows if it will be seen as a watering down from the existing position.</p> <p>There will be a lot of focus on covenant and ensuring any potential for risk is properly addressed. It opens up some interesting questions for trustees as to what it means for any impact on members and beneficiaries which may or may not include the employer.</p>
<b>Catrin</b>	<p>Indeed, and it's a change in emphasis for the Regulator too. On 3 June, the Regulator published a blog and guidance for trustees and employers on the new models and options for DB schemes and there is a really interesting change in tone in that document from what we have previously seen from the Regulator.</p> <p>The whole messaging is that they recognise there's a real shift in the funding levels of schemes and that we're now moving into a land of surplus from a land of deficits. And they certainly seem to be very supportive of the whole government agenda on this.</p> <p>Most starkly, it says "A scheme being materially overfunded, for a long period of time, with no plan to distribute excess funding to members or the sponsor, may not be in the best interests of members or the sponsor and may indicate poor governance controls".</p> <p>So, a clear drive to encourage trustees to think about and make decisions about what to do with any surplus.</p>
<b>Dan</b>	<p>Yes, and trustees are already thinking about that although it's worth emphasising the importance of taking advice as this is guidance from the Regulator, it's not the law.</p> <p>Is there anything regarding how any surplus should be used?</p>
<b>Catrin</b>	<p>There are no proposals for restrictions on how any surplus is used but the Government does say that the potential for members to benefit from any surplus must remain a key consideration for trustees.</p> <p>We also know that DWP is working with TPR on guidance which may set out more detail around how it's expected all of this is going to work.</p>
<b>Dan</b>	<p>What about timescales for all of this? When is it all going to come into force?</p>

<b>Catrin</b>	<p>Not until the end of 2027 Dan. The Government published a roadmap which sets out the timetable for implementing all the changes contained in the Pension Schemes Bill. That says that the new surplus provisions will not come into force until 2027 so plenty of time for employers and trustees to hold discussions and agree principles in the meantime.</p>
<b>Dan</b>	<p>And we know trustees and sponsors are already thinking about this as part of their valuation discussions and we are seeing concerns already about not overfunding schemes and avoiding trapped surplus so useful to have that roadmap and those timescales in mind.</p> <p>Now the Regulator has also published its latest annual funding statement. Was there anything else of interest in there that we should bring to listeners' attention?</p>
<b>Catrin</b>	<p>It focuses on covenant assessment and provides some clarification of what the Regulator expects.</p> <p>It reminds schemes that low dependency (which is what schemes are now aiming for) is not no dependency and that covenant support will be required until the scheme is transferred to another entity or wound-up. It also clarifies that schemes should take a proportionate approach both to covenant assessment and determining the level of risk it can support.</p> <p>There was also more on the somewhat ambiguous concept of a look through guarantee.</p>
<b>Dan</b>	<p>Yes. But it's worth reminding listeners that the concept of a look-through guarantee is not in Part 3 or the Regulations. It's a word or invention in TPR's commentary and not the law and it now features in the statement of strategy document, of which we now have the final version. What should clients be thinking about in relation to that?</p>
<b>Catrin</b>	<p>Yes, you're right Dan. It gets a mention in the Code but most of the detail as to what the Regulator considers to be a look through guarantee is in the covenant guidance, which is obviously even lower status than the Code.</p> <p>We also know what in the Regulator's view, as confirmed in its latest Annual Funding Statement, a standard PPF guarantee is not a look through guarantee. But, as you say, everybody's going to need legal advice really to confirm that - I think that that's something that needs to be looked at very carefully.</p>
<b>Dan</b>	<p>Indeed, legal advice will be key here. The Chair of Trustees is going to have to sign the statement of strategy and Part 1 is going to have to be agreed by the employer.</p> <p>Both sides will want to know that what they have done is legally compliant so it will be for the lawyer to review the inputs from the covenant adviser, the actuarial adviser and the investment adviser and advise that what's been done is legally compliant and what has been included in the boxes in the statement of strategy is sufficient in terms of evidence to meet the requirements of the Regulations. Lawyers will have to take views to help our clients understand what this concept actually involves. Anything else, Catrin?</p>

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<b>Catrin</b>	<p>Yes, there has been a whole lot more in the Bill, the Government's final report on the first stage of the Investment Review and its consultation response in relation to DC investment and default funds. There were some pretty interesting proposals on master trust and personal pension default funds, as well as further detail on value for money and decumulation requirements for DC. There was also a lot more on the Government's consolidation agenda including at long last the legislative framework for DB superfunds, DC megafunds and small pots.</p> <p>The Investment Review contained some interesting comments about investment and how this ties in with the new Mansion House Accord. Under that Accord a number of the largest workplace pension providers agreed to target investment of 10% of their main DC default funds in assets that the Government wants us to in such as infrastructure, property and private equity by 2030, with 5% of this being earmarked for investment in the UK. However, in the interests of time, I'm going to leave those to next time.</p>
<b>Dan</b>	<p>Oh yes, we can't over excite our listeners. We've got to leave something for our esteemed colleagues Charles Magoffin and Karen Mumgaard who will be hosting the next podcast in July as we are both away so listeners will have to wait until next time for more on those topics.</p> <p>It really has been a very exciting episode and we could finish there but we're not going to. There's been one further area of excitement and that's Virgin Media. What do we have to tell our listeners about that?</p>
<b>Catrin</b>	<p>Well, that announcement came out on the same day as the Pension Schemes Bill and was unexpected. The Government issued a short but potentially very significant press release.</p> <p>It said that the Government recognises the need for "<i>clarity around scheme liabilities and member benefit levels in order to plan for the future</i>" and "<i>will therefore introduce legislation to give affected pension schemes the ability to retrospectively obtain written actuarial confirmation that historic benefit changes met the necessary standards.</i>" This is extremely welcome and will presumably be done using the existing regulation making power in the relevant legislation although we don't know when those regulations will be available to work through.</p>
<b>Dan</b>	<p>Yes, very welcome indeed although giving retrospective confirmation for something that is historic won't necessarily be that easy for the scheme actuary. It's likely to require some intense legal analysis before actuaries can give that confirmation. So, we will have to wait for the Regulations and see how practice develops.</p>
<b>Catrin</b>	<p>Yes and trustees will still need to do the initial groundwork and look to see if they are missing any actuarial confirmations that were required under legislation at time. The High Court's judgment in the case of Verity Trustees v Wood, which we discussed on last month's episode, will provide further guidance on whether actuarial confirmation was needed for certain scheme changes, including on a scheme closure or in relation to benefits which were not part of the contracted-out regime. Judgment is expected to</p>

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	<p>be handed down in the Autumn (although no date has been given by the court).</p> <p>Once those investigations are complete and you know if you have a problem, then the wording of the regulations will be key to see if the power can be used by the scheme actuary to fix things.</p>
<b>Dan</b>	<p>Great summary of where we are with the Pension Schemes Bill and Virgin Media Catrin. That's it for this episode and as I said, it won't be us next month will it?</p>
<b>Catrin</b>	<p>No, it won't. Whilst I'm away on holiday, you're off on sabbatical.</p>
<b>Dan</b>	<p>Indeed, I will be on a 6 week sabbatical which I am going to spend in Brittany. We'll be going to Jersey as that's the place where I fell in love with trust law. When I get to Brittany I'll be doing a lot of training for a triathlon which I am doing in September in Hampshire with my youngest son. So, a lot of swimming, running and cycling. Course I'll miss pensions so I look forward to being back with you Catrin in August.</p>
<b>Catrin</b>	<p>Well, maybe Dan, we could invite listeners to submit some questions for you to answer when you get back - whether travel related, triathlon related or pensions related.</p>
<b>Dan</b>	<p>Ooh, now that's a nice idea.</p> <p>Thanks again all for joining in and listening. If you would like to hear more, you can subscribe to the podcast. Our next episode will air in a month's time and it will be Charles Magoffin and Karen Mumgaard.</p> <p>You can subscribe to the Pensions on Air show within the Slaughter and May podcast channel on your preferred podcast platform. If you have any comments, please leave us a review.</p>