

## PENSIONS ON AIR PENSIONS PODCAST October 2025

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| <b>Ed Hunnisett</b>   | <p>Hello and welcome back to the Slaughter and May pensions podcast after our summer break.</p> <p>I'm Ed Hunnisett, senior counsel in the pensions team at Slaughter and May and I am delighted to be here to talk all things pensions with Karen Mumgaard, Knowledge Counsel in our team.</p> <p>I had imagined that there might not be much to talk about because of the summer holidays but, just from reading the pensions press in recent weeks, I know that's not the case. One of the things that I have seen a lot about are the new provisions in the Pension Schemes Bill to address Virgin Media issues.</p> <p>I know that these are something that the industry has been campaigning for for a long time – do they deliver everything we wanted.</p>                                                                                                                                                                                                                                                                                                                                                      |
| <b>Karen Mumgaard</b> | <p>Hi Ed – lovely to be here with you. Yes - surprisingly – they mostly do!</p> <p>I'm sure most of our listeners are familiar with Virgin Media, but in case there are any who are not, this is the Court of Appeal decision that confirmed that deeds of amendment can be void if they did not comply with requirements to get actuarial confirmation that the 1997 to 2016 contracting out requirements would continue to be met. This is the case even where the deeds improved member benefits.</p> <p>New provisions in the Bill will allow trustees to write to the scheme actuary and ask them to confirm now that the amendment would not have prevented the scheme from continuing to satisfy the contracting-out requirements. If the actuary can give that confirmation, the amendment will be treated as always having been valid.</p> <p>The actuary will have quite a lot of discretion in relation to the information they take into account in giving the confirmation and the assumptions they use. It's worth being aware that actuarial guidance is coming in relation to these new provisions.</p> |
| <b>Ed</b>             | <p>That does indeed sound incredibly useful. Are any amendments excluded from the scope of the fix?</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Karen</b>          | <p>As you would expect – yes – and it is the exceptions and exclusions that are likely to give the most cause for head scratching.</p> <p>The fix will not be available where “positive action” has been taken on the basis that the trustees consider the amendment to be void. This requires trustees <i>either</i> to have notified members in writing that an amendment is void <i>or</i> to have taken administrative steps to change benefits – so it won't exclude amendments where for example there have been discussions about potential issues or where statements have been included in accounts.</p> <p>Amendments will also be out of scope if the court has already determined any Virgin Media issues in relation to them, or if there were ongoing “legal</p>                                                                                                                                                                                                                                                                                                                                          |

## SLAUGHTER AND MAY/

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|              | <p>proceedings” in relation to such issues on or before 5 June 2025. Legal proceedings for these purposes are not defined and it is not clear for example whether it will include cases before the Ombudsman.</p> <p>It is also worth noting that where a scheme has wound up before the legislation comes into force, in-scope amendments will be treated for <u>all purposes</u> as having complied with the relevant requirements, with no need to request actuarial confirmation.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Ed</b>    | <p>I know that some schemes have already put in place mechanisms to confirm the validity of past amendments and it’s worth saying that those mechanisms should not be affected by proposed fix, and further action should not be needed.</p> <p>And of course, we are still waiting for the decision in Verity Trustees which will undoubtedly have some things to say which will affect decisions whether to seek actuarial confirmations now, including whether closure deeds needed confirmation.</p> <p>Apart from Virgin Media, what else has been happening?</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Karen</b> | <p>There have been a couple of really interesting Ombudsman determinations in relation to trustee obligations on transfers – one of which was included in the last edition of Pensions Essentials and one of which came after.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Ed</b>    | <p>I assume we are talking about historic transfer due diligence before the current transfer conditions came into force in November 2021?</p> <p>As I recall, the statutory requirements in relation to such transfers were minimal but the Pensions Regulator issued guidance in February 2013 about the dangers of pensions scams, and the due diligence which could be undertaken to identify them, together with “scorpion leaflets” aimed at members and the Ombudsman has treated compliance with this as good administrative practice. Is that what the determinations were looking at?</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Karen</b> | <p>That’s exactly what the first determination looks at. It concerned a member who was provided with the scorpion leaflet but claimed that the trustees should have done more due diligence and warned him the receiving scheme could be a scam.</p> <p>The transfer took place before the introduction of the transfer conditions in 2021 and the requirement to check that a member received “appropriate independent advice” on DB to DC transfers. That meant that the legislation only required the transferring trustees to check the receiving scheme was actually an occupational pension scheme, it was registered with HMRC and that the transfer credit would be used to provide rights for earners – and we’ll come back and look at what this means in the second determination. If the member had contracted-out benefits, additional contracting-out checks might also have been required.</p> <p>The Ombudsman said that there was no legislative or regulatory obligation to follow the Regulator’s scams guidance that you mentioned or to provide members with a copy of the scorpion leaflet. There was also no general, duty of care that required such due diligence to be carried out.</p> |

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| <b>Ed</b>    | <p>That sounds like good news for trustees facing complaints from members in relation to historic transfers to scam or liberation vehicles.</p> <p>What about the second determination?</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Karen</b> | <p>As I mentioned, it looked at the requirement that a transfer payment to an occupational pension scheme must be used to provide “rights for earners”. It had been understood, following a High Court decision in <u>Hughes v Royal London</u> that this meant that a transferring member must have earnings - from any source – although not necessarily an employer participating in receiving scheme. This would mean that checking that the member had such earnings should have formed part of the transferring trustees’ due diligence.</p> <p>I have to say, I never thought that was the natural meaning of the wording in the legislation and the Deputy Ombudsman would seem to agree. She pointed out in Hughes the parties had agreed that the provision required the member to be an earner. The judge raised the question of whether the provision actually referred to the character of the rights that the receiving scheme had to provide but neither party wished to argue this.</p> <p>The Deputy Ombudsman said that the correct and logical interpretation of the statutory provision is that it requires the rights to be provided under the receiving scheme to be rights of a type which could be provided to earners – not some odd alternative such as a short term pension. There is therefore no need to look at whether the member had earnings at the date of transfer.</p> <p>The DPO also concluded that there was no general duty on trustees to protect members from or advise or warn them about potential fraud or scams</p> |
| <b>Ed</b>    | <p>That also sounds like good news for both trustees and administrators , particularly as many schemes did not in my experience historically check whether a member had earnings.</p> <p>Speaking of administrators, I seem to have noticed quite a lot out there over the last few months on what the Pensions Regulator expects from administrators and their relationship with trustees. Is there anything that is worth picking out?</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Karen</b> | <p>Administration is definitely a current focus of the Regulator. It has spent the last year engaging with industry to work out what current issues and trends might be and has recently published its insights.</p> <p>The key take home was that improving data should be a priority for everyone and administrators and trustees should prioritise investment in technology, systems and data.</p> <p>There was also a warning that trustees should engage with administrators to ensure that current services are going to be sufficient to handle potentially significantly more member queries when the dashboards come on line. Presumably as a result of members not being shown the pension entitlements on the dashboards that they think they have.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

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| <b>Ed</b>    | <p>It's worth saying for the benefit of our listeners that we currently have no idea when the dashboard go live date is likely to be.</p> <p>Did I also see a case on data protection in a pensions context and is that something that trustees and administrators should be aware of?</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Karen</b> | <p>It is definitely worth mentioning. It related to hundreds of benefit statements sent to incorrect addresses. The High Court had dismissed claims from members for compensation for injury arising from a fear that someone would misuse their data on the basis it could not be shown that anyone had actually opened the statements. It was also argued that members had not been caused any material loss.</p> <p>The Court of Appeal said that it was enough that there had clearly been a breach of the data protection requirements in sending the envelopes to the wrong addresses – there was no need to show that they had been opened.</p> <p>In addition, there was no materiality threshold for damages under data protection law. Members were entitled to compensation for “non-material damage” which could include compensation in relation to “<i>fear of the consequences of an infringement</i>” where it was objectively well-founded and not purely hypothetical.</p> <p>The case has been remitted back to the High Court so we have no idea yet whether any damages will actually be paid but it does drive home the Pension Regulator’s point about the need to ensure that data, including addresses, is accurate and up to date.</p> |
| <b>Ed</b>    | <p>Before we wrap up, is there anything else that should be on trustees’ to-do lists over the coming months apart from making sure scheme admin is up to scratch?</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Karen</b> | <p>There are just two things worth quickly mentioning.</p> <p>The first is that the dates for producing the first own risk assessments for schemes with over 100 members are coming up soon. The exact date will be dependant on the scheme’s year end but the work required is significant so trustees and administrators should ensure that it is well underway.</p> <p>The second relates to schemes with corporate trustees. We have covered the new requirement for directors and persons with significant control to verify their identities a number of times in Pensions Essentials and we now know that those requirements will go live from 18 November this year. This means that corporate trustees need to make sure that they understand what needs to be done and by when.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Ed</b>    | <p>Wow – we seem to have covered a lot of ground. It just goes to show that there is never a dull moment in pensions.</p> <p>Thanks again to all of you for joining in and listening. If you would like to hear more, you can subscribe to the podcast.</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>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

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