

Virgin Media – help is on its way

Matthew Swynnerton considers the implications of the DWP's recent announcement and the TPT litigation on the Virgin Media case

On 5 June 2025, the DWP announced that the government will introduce legislation to deal with issues arising from the Virgin Media v NTL Pension Trustees judgment.

The DWP has acknowledged the industry uncertainty that has arisen from the July 2024 Court of Appeal judgment upholding the High Court ruling that a failure to obtain a section 37 written, actuarial confirmation (Confirmation) in relation to an amendment to a salary-related, contracted-out scheme invalidated that amendment in relation to both past and future service rights. As a result, where defined benefit schemes have made amendments between April 1997 and April 2016 affecting salary-related contracted-out rights, and there is no evidence of a Confirmation having been provided, those amendments will be void for past and future service. The ruling was a landmark decision of industry-wide significance.

A cross-industry group, including members of the Association of Pension Lawyers, the Association of Consulting Actuaries and the Society of Pension Professionals, has been working with the DWP for some time in the hope that it would intervene in the form of overriding regulations. Hopes were raised in February this year when Hansard reported

Torsten Bell indicating he was aware of the issue and that the DWP was actively considering it.

The recent DWP announcement shows that was not mere lip service. It states that the legislation will give affected pension schemes the ability to retrospectively validate amendments by obtaining written actuarial confirmation that historic benefit changes met the necessary standards.

It remains to be seen when the legislation will be passed (we understand this may be in the Autumn) and what form it will take when it is.

In the meantime, schemes that are currently in the process of buying out face a dilemma – should they pause the wind-up until the legislation is passed so that they can address any Virgin Media issues and ensure that the correct benefits are insured and minimise residual risk?

Ongoing schemes, many of which had been adopting a “wait and see” approach in relation to DWP intervention, may now want to review their schemes’ governing documents for s.37 Confirmations in order to identify which amendments may need to be retrospectively validated once the Regulations have been passed. Notwithstanding the proposed legislation, uncertainties arising from Virgin Media will inevitably remain: Which amendments do trustees need a certificate for? What can they do in relation to amendments where the actuary is unable to retrospectively validate the amendment?

Help in relation to some of these issues may also be on its way in the form of a significant High Court judgment, expected this autumn. The Pensions Trust (TPT) litigation lasted an epic six weeks back in February and March and covered some of the key issues emanating from the decision in Virgin Media.

The Pensions Trust is an industrywide scheme, established in 1946, for non-associated employers primarily in the charities, voluntary and social housing sectors. A huge and complex scheme

with an unusual structure, it has over 50 ‘schemes’ established for the employees of one employer or group of employers. The claim was brought by the trustees of The Pensions Trust in 2023 and the Court has been asked to determine several issues relating to its administration and the construction of certain governing provisions. The issues and questions put before the Court were so numerous that they were divided into five groups and tried as distinct mini-trials.

One of those mini-trials relates to points arising from the decision in Virgin Media. Key questions examined by the Court included the following: What constituent elements of a pension are subject to the requirement for a Confirmation for an alteration of them to be effective? Which specific examples of amendments require Confirmation? Does closure to accrual require Confirmation (note that it may not be possible for an actuary to retrospectively validate such an amendment, if in scope, unless this type of change is specifically addressed in the new Regulations)?

It is also worth noting that The Pensions Trust trial will consider questions unrelated to Virgin Media but still of significance to the industry. These include the effective introduction of amendment powers, the scope of fetters on amendment powers, pro-rating of pension increases and revaluation, severance, and the nature of pension ‘rights’.

We expect the judgment to be truly wide-ranging and it promises to be a tour de force of notable, recent and historic pensions judgments. Will the TPT judgment and the new legislation be the knights in shining armour trustees have been hoping for? We will have to wait until the autumn to find out.



Written by DLA Piper partner, Matthew Swynnerton, and knowledge lawyer, Megan Sumpster

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