

Snapshot

June 2023

Overview

- [Certain amendments to contracted-out defined benefit schemes may be void - Virgin Media Ltd v NTL Pension Trustees II Ltd & Ors](#)
This case held that certain amendments made to contracted-out benefits of occupational defined benefit schemes accrued between 1997 and 2016 are void if there was no actuary's confirmation under Section 37 of the Pensions Schemes Act 1993 (**PSA93**). This case could have potentially far-reaching implications.
- [Revised pensions dashboard deadline](#)
There is now a single mandatory connection deadline of **31 October 2026** by which all in scope occupational pension schemes will need to have connected to a pension dashboard. A staged timetable for connection before this deadline will be set out in guidance.
- [Extending the scope of the PPF](#)
It has been widely reported that the Government is considering extending the scope of the Pension Protection Fund (the **PPF**) to become a consolidation vehicle for "small, poorer performing DB schemes" – i.e. those with sponsoring employers who are financially stressed but which have not yet failed in a way that makes the scheme eligible for PPF assessment.
- [Ombudsman confirms scope of employer's, trustees' and scheme administrator's duties regarding warning members of personal tax implications](#)
The Pension Ombudsman's determination in the case of Mr Y (CAS-44123-K4V8) has reiterated that a sponsoring employer's, trustees' and scheme administrator's duties do not extend to warning members about personal tax implications as a result of options around the taking of benefits.
- [DC pension schemes: government responds to consultation on Long-term Investment for Technology and Science \(**LIFTS**\) initiative](#)
The Department for Business and Trade and HM Treasury have published a response to their March 2023 consultation on the LIFTS initiative. This initiative aims to establish new investment vehicles to "crowd-in" investment from institutional investors, particularly defined contribution pension funds, to the UK's science and technology companies.

In more detail

Certain amendments to contracted-out defined benefit schemes may be void - Virgin Media Ltd v NTL Pension Trustees II Ltd & Ors

This is the long-awaited judgment deciding if amendments made to contracted-out benefits of occupational defined benefit schemes accrued between 1997 and 2016 are valid if there was no actuary's confirmation under Section 37 PSA93.

This case concerned so-called "section 9(2B) rights". These were accrued after April 1997 and were, in effect, designed to be the successor to Guaranteed Minimum Pensions. For contracted-out pension schemes, these were a way of providing benefits out of the scheme in place of the State Second Pension, and instead of through national insurance contributions. The contracted-out regime came to an end in April 2016. Section 9(2B) rights were, therefore, accrued between 1997 and 2016 and were subject to certain protections. There is a provision in the PSA93 which required that alterations to these types of benefits were to be accompanied by a confirmation by the scheme actuary (i.e. a **s37 certificate**) that, if the alteration was made, the scheme would continue to satisfy the "reference scheme test". Such changes could include, for example, changes to the rate such benefits were accrued.

An issue was identified in respect of the National Transcommunications Ltd Pension Plan. A deed of amendment had been executed in 1999 which sought to reduce the rate of revaluation for deferred members' benefits (with effect from April 1997, though it was accepted that the reduction if effective would apply going forwards only). However, the s37 certificate, if it had originally existed, had not been located. The Court was asked to consider three questions:

1. Does Section 37 PSA93 render an amendment made in the absence of a s37 certificate void to any extent? If so, issues 2 and 3 then arise.
2. Would such validity apply to service accrued prior to such an amendment, or would it apply to service after that amendment?
3. Would Section 37 PSA93 have such an effect only in relation to *adverse* alterations to section 9(2B) rights, or in relation to all alterations to such rights?

The court held that:

1. Section 37 PSA93 would render an amendment to rules of a contracted-out scheme which relate to section 9(2B) rights void if the change was made without a s37 certificate.
2. Both past and future services rights are caught by the legislation.
3. Voidness applies to all alterations to section 9(2B) rights and not merely those that would or might adversely affect such rights.

This would mean that, even if the attempted change itself was otherwise unproblematic, the absence of a s37 certificate would render the attempted change invalid, at least until a later change was made with a s37 certificate. The Court has not yet ruled in detail on where this judgment leaves the scheme in question; we understand a 'consequential' hearing is due to be listed. It is hoped that the consequential hearing may provide answers to some questions left unanswered by the judgment.

It is not clear yet whether an application for permission to appeal will be filed – Virgin will have a few weeks to consider this. We will be closely monitoring the case.

Revised pensions dashboard deadline

When the draft pensions dashboard legislation was initially drafted, the intention was for pension schemes to connect to a dashboard in a staged manner from 1 April 2023, with their connection deadline being determined by their size and type. However, in March it was announced that the connection deadlines would be delayed in order to ensure the pensions industry had adequate time to prepare.

New draft regulations (the draft Pensions Dashboard (Amendment) Regulations 2023) have now been laid. A staging timetable is no longer set out in legislation but rather will be set out in guidance. Instead, the regulations provide a mandatory connection deadline of **31 October 2026** by which all in scope occupational schemes will need to have connected to a dashboard. The 'dashboard available point'; the date from which pension dashboards will be available for use by the public, could be earlier than this.

Whilst many have welcomed the delay to allow schemes to prepare fully, there is concern in the industry that if the only mandatory deadline is October 2026, there will be a capacity issue if schemes do not connect in a staged manner in accordance with the guidance which is to be published. The Pensions Regulator (**Regulator**) has also published a [blog](#) noting that "*...the Department for Work and Pensions and The Pensions Regulator expect all trustees and scheme managers to be getting to grips with their member data to avoid competing demands on capacity and other resources. Industry capacity is a big concern, so it's crucial to plan ahead with third parties and ensure they can comply with their dashboard duties*". Trustees of in scope schemes should therefore ensure they continue to get their scheme data into a dashboard ready state.

Extending the scope of the PPF

It has been widely reported (see [this article](#) of 25 May 2023 in the Financial Times) that the Government is considering extending the scope of the PPF to become a consolidation vehicle for "small, poorer performing DB schemes" – i.e. those with sponsoring employers who are financially stressed but which have not yet failed in a way that makes the scheme eligible for PPF assessment.

The driver for such consolidation would, it seems, be to unlock funds currently held by defined benefit scheme trustees for investment in the UK, specifically into start-ups and fast-growing businesses. The Spring Budget earlier this year included reference to using defined contribution scheme funds and LGPS assets to "unlock investment in innovative companies and other productive assets". It appears the scope of such unlocking may be extended to defined benefit scheme funds too.

We have extremely limited detail on what such a scheme might involve. What we know, or at least expect, so far is that entry would be on a voluntary basis; once accepted by the PPF the sponsoring employer(s) would no longer have any liability for the pension scheme, and the trustees would also cease to have a role; the PPF would take control of the scheme's assets, and would become responsible in full for its liabilities.

This of course leaves many answered questions. How will the criteria for entry be determined and assessed? Who will choose whether a scheme enters the PPF consolidation vehicle, the trustees and/or the sponsoring employer? What level of benefits will members receive, full benefits or PPF level benefits? What will happen to any surplus that ends up in the PPF, will members and/or previous employers benefit in any way, or will the surplus become a windfall for the Government? Will levy payers be expected to provide the capital backing for the vehicle, or will it be supported by government guarantee?

The biggest question of all, though, must be whether any such consolidation programme, driven by a desire to promote economic growth, would be in the best interests of pension scheme members.

We will keep you updated with developments and further details as and when they become available.

Ombudsman confirms scope of employer's, trustees' and scheme administrator's duties regarding warning members of personal tax implications

The Pension Ombudsman's determination in the case of Mr Y (CAS-44123-K4V8) on 23 March 2023 has reiterated that a sponsoring employer's, trustees' and scheme administrator's duties do not extend to warning members about personal tax implications as a result of options around the taking of benefits.

The Employer's duty under *Scallly v Southern Health and Social Services Board* (1992) does not extend beyond the employer needing to be aware of the operation of the scheme rules and ensure that it communicates with members appropriately, and does not extend to other extraneous factors. Furthermore, a scheme administrator's duty is to comply with their functions as governed by the Finance Act 2004 and services agreements. In this case, because the member's money purchase annual allowance was triggered as a result of his decision to take his AVC benefits in his chosen form, having been offered multiple forms which could have avoided the trigger, it was the member's responsibility to obtain independent advice.

DC pension schemes: government responds to consultation on Long-term Investment for Technology and Science (LIFTS) initiative

The Department for Business and Trade and HM Treasury have published a response to their March 2023 consultation on the LIFTS initiative. This initiative aims to establish new investment vehicles to "crowd-in" investment from institutional investors, particularly defined contribution pension funds, to the UK's science and technology companies.

In March 2023, the government sought feedback on the options for government support, the qualifying criteria for proposals and the overall approach and timetable for the LIFTS. The government has now published a response to this. It has considered the responses and has worked with the British Business Bank (**BBB**) to develop the design of the initiative. The government will now proceed with the LIFTS call for proposals, which has been published separately by the BBB. The government recognises that "unlocking institutional investment," particularly defined contribution pension capital, is a long-term policy area. The response

emphasises that the LIFTS initiative is part of a wider productive finance agenda on which the Chancellor will provide further statements in the coming months.

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