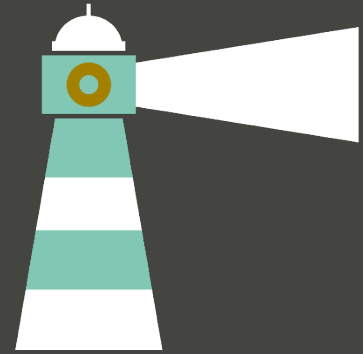


What's Happening in Pensions

Issue 119 – December 2025



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Virgin Media legislative fix: Further changes to the proposed Virgin Media legislative fix have been made in the latest version of the Pension Schemes Bill which is now in the House of Lords. It is anticipated that the legislative power will be available for schemes to use from 6 April 2026.

Other forthcoming legislative changes: We cover the latest developments from the Pension Schemes Bill, the Finance (No.2) Bill and more on pre-97 increases for PPF/FAS members, small pot consolidation, DC 'megafunds', inheritance tax on unused pensions and death benefits and surplus payments to members.

Trustee investment duties: The Pensions Minister has announced that the Government will consult on statutory guidance to give trustees reassurance that when investing in members' best interests, they may take into account broader systemic risks and opportunities to their investments.

Developments in Collective Defined Contribution (CDC): The Government has made regulations to introduce unconnected multi-employer or commercial CDC schemes, with effect from 31 July 2026. The Pensions Regulator has also issued an accompanying "new-look" CDC Code of Practice for consultation. A further consultation on the introduction of "retirement CDC" or "decumulation only CDC" closed on 4 December 2025.

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PENSIONS RADAR: You may also be interested in the latest edition of [Pensions Radar](#), our quarterly listing of expected future changes in the UK law affecting work-based pension schemes.

SUSTAINABILITY MATERIALS: Our [Sustainable finance and Investment Hub](#) includes a section on [ESG and sustainable finance issues for pension schemes and their sponsors](#).

Changes to tax relief on pension contributions made through salary sacrifice from 2029

The Chancellor's second [Autumn Budget](#) on 26 November contained one significant change for pensions - the decision to cap National Insurance contribution (NIC) tax relief on pension contributions made through [salary sacrifice](#) from April 2029. Our [Budget briefing](#) set out our initial thoughts. On 4 December, the Government introduced the [National Insurance Contributions \(Employer Pensions Contributions\) Bill](#) which sets out the primary legislation for this change. Press reports suggest that despite the change not coming into force until April 2029, the Government was under pressure to produce legislation well before then to reassure markets.

The Bill brings salary sacrificed pension contributions within the optional remuneration arrangement (OpRA) regime, first introduced in April 2017. The OpRA rules removed the tax and NIC advantages of salary sacrifice and other arrangements for a wide range of benefits in kind including car parking, private medical insurance, some company cars and school fees. Contributions to registered pension schemes and qualifying overseas pension schemes, tax exempt childcare, childcare vouchers, cycle to work schemes and ultra-low emission cars are currently carved out from the regime so they continue to benefit from both tax and NIC savings under properly implemented salary sacrifice arrangements.

The Bill removes this exemption for pension contributions from 6 April 2029 with further details to be set out in regulations, the timescale for publication of which is uncertain. NIC relief on pension contributions made through salary sacrifice will be capped each year so that it is only available for contributions up to a prescribed limit. This contribution limit is set at £2,000 for the 2029/30 tax year and the Bill requires any regulations to lower this limit in subsequent years to be laid before Parliament. Salary sacrificed pension contributions above £2,000 will be subject to employer and employee NICs, like other employee pension contributions.

HMRC has [confirmed](#) it will engage with industry and employers on the design and operation of the limit. It is envisaged that the regulations will set out how and when the new NICs charges will be collected.

The [OpRA rules](#) are widely drafted and it appears that any agreement under which an employee has a choice between cash and pension contributions will be caught, meaning that flexible benefit and cash allowance packages will also be impacted. Unlike when the OpRA rules were first introduced, there do not appear to be any transitional provisions for existing salary sacrifice arrangements but given the long lead in time perhaps this is to be expected.

The change only applies to arrangements that are made via salary sacrifice so full NIC relief will still be available in respect of normal employer contributions. It is also worth noting that pension contributions (whether made via salary sacrifice or not) are still an effective way for employees to reduce their annual income to retain eligibility to tax free childcare and to avoid the personal allowance taper.

Practical next steps

Given the long lead-in time, employers offering salary sacrifice for pension contributions do not need to make immediate changes to payroll systems and update employee communications. However, they may wish to investigate the future increased cost to their business and plan for how this will be met, particularly where any saving in employer NICs is shared with employees.

Once the Bill is finalised, the draft regulations have been published and industry has been given the opportunity to comment, employers will be better placed to review their overall remuneration package and consider what changes may need to be made.

Virgin Media legislative fix

As covered in [WHIP Issue 118](#), in September, the Government introduced amendments to the Pension Schemes Bill to address issues arising from the Court of Appeal's [decision](#) in the *Virgin Media* case. By way of reminder, the decision called into question the validity of past alterations made to salary-related contracted out occupational pension schemes, without the prior actuarial confirmation required being given (see our [alert](#) and [Q&As](#) for further detail on the decision).

The latest version of the [Pension Schemes Bill](#), which received its second reading in the House of Lords on 18 December and will now move to Committee stage in January, makes further changes to the proposed mechanism. The mechanism will enable affected pension schemes to retrospectively obtain written actuarial confirmation that historical benefit changes met the necessary standards where they meet the conditions to be a "*potentially remediable alteration*".

Broadly, these conditions are:

- where the alteration would have needed an actuarial confirmation when it was made
- since the amendments was purportedly made, the trustees have treated it as a valid alteration
- no "*positive action*" has been taken by the trustees on the basis that they consider the alteration to be void, and
- it is not excluded from the scope of remediation due to any question as to the validity of an alteration having been determined in "*qualifying legal proceedings*" or where such a question was an issue in such proceedings issued before 5 June 2025, including settled proceedings.

As before, schemes will be treated as having taken "*positive action*" where trustees have notified members in writing that they consider a historic alteration to be void and confirmed that they will administer the scheme on that basis. However, in a welcome change, schemes that have taken any other steps in relation to the scheme's administration (due to concluding a historic alteration to be void) which has or will alter payments to or in respect of members will only be treated as having taken "*positive action*" where members received notice in writing.

A change has also been made to the definition of "*qualifying legal proceedings*" so that claims that do not determine a dispute as to the rules of the scheme (e.g. professional negligence claims) and claims brought outside the UK courts (e.g. the Pensions Ombudsman and tribunal complaints) will not constitute "*qualifying legal proceedings*". Any proceedings must include the trustees and a representative beneficiary as a party to the claim.

The provisions will come into force as at the date the Bill receives Royal Assent as opposed to two months later as originally proposed. For schemes that are in the process of winding-up, wind-up must be complete by that earlier date if they are to avoid having to obtain retrospective actuarial confirmation.

The Government is hoping the Bill will have a smooth passage through the House of Lords and is targeting an in-force date of no later than 6 April 2026. However, the Lords may have other plans with concerns raised at the second reading primarily relating to the failure of the Bill to address pensions adequacy and the controversial mandation provision which gives the Government power to effectively force master trusts and GPP 'megafunds' to invest a proportion of their assets in particular assets in the UK (see [What's Happening in DC - the Pension Schemes Bill special](#)). To quote Baroness Coffey, "*It is going to be an interesting time in Grand Committee. I am afraid there will be a lot of amendments*".

Practical next steps

With the Virgin Media legislative fix potentially being available for schemes to use from 6 April 2026, trustees of ongoing schemes who have not already done so may wish to check whether or not actuarial confirmations were given for historic benefit rule amendments and identify any alterations that may need to be remedied by obtaining retrospective written actuarial confirmation. Legal advice will be needed when conducting this review.

Scheme actuaries are awaiting publication of technical guidance to support them in providing such confirmations. We are also still awaiting the outcome of *Verity Trustees v Wood* in which the High Court is considering further questions in this area. Trustees intending to use the legislative remedy should keep an eye on both these developments before taking any action but may wish to consider including the workstream into their scheme business plan and budgets.

Other forthcoming legislative changes

The Autumn Budget contained a veritable pick and mix of other forthcoming legislative changes, some of which have been legislated for in amendments to the [Pension Schemes Bill](#) and others in the [Finance \(No.2\) Bill](#). The Finance (No.2) Bill received its second reading in the House of Commons on 16 December and now moves to Committee stage. These changes include:

PPF/FAS compensation to provide for pre-97 increases

An unexpected announcement in the Autumn Budget was that from 1 January 2027, eligible members of the Pension Protection Fund (PPF) and Financial Assistance Scheme (FAS) will be provided with increases linked to the Consumer Prices Index capped at 2.5% a year, on benefits earned before April 1997. By way of reminder, members of eligible defined benefit schemes who lost all or part of their pension following the insolvency of their scheme's employer are eligible to receive compensation from the PPF or FAS. The compensation payable is set out in legislation and currently does not provide for increases on pensions earned by service before 6 April 1997.

Crucially, to avoid situations where members receiving compensation might be better off in the PPF than outside it, such increases will only be paid where the governing documentation of the original transferring scheme provided for a **right** to pre-1997 increases. The relevant provisions are somewhat convoluted and have been included in amendments to the Pension Schemes Bill.

Where a scheme's rules provided for GMP increases, the part that relates to GMP accrued between 1988 and 1997 will be increased by a percentage to be set out in forthcoming regulations. Where a scheme's rules provided for increases on **all or part of** any non-GMP benefit accrued before 6 April 1997, members will receive increases linked to the Consumer Prices Index, capped at 2.5% a year, irrespective of the level of pre-97 increases provided for in the rules. Where it is unclear whether a scheme's admissible rules provided for mandatory pre-1997 increases (perhaps because they have been lost) the PPF will pay pre-97 increases as if there had been such a requirement.

The Pension Schemes Bill has also been amended to revoke the power to collect the PPF administration levy. The administration levy is used to pay the PPF's running costs and is calculated by reference to the number of scheme members. Its collection has been suspended since 1 April 2023.

Consolidation of small pots

As covered in [What's Happening in DC - the Pension Schemes Bill special](#), the Bill contains power for the Government to introduce regulations for the consolidation of deferred DC pots of less than £1,000, potentially from 2030. The last Government proposed the 'multiple default consolidator' model originally provided for in the Bill, under which a new centralised body would, in the absence of a member's choice, be responsible for allocating members to a particular consolidator. Following representations made by the Department of Work and Pensions and Pensions UK, the Bill has been amended to allow for either the centralised clearing house model originally proposed or a federated model, being a decentralised, industry-delivered system under which schemes and consolidators would exchange data directly. The Government will continue to explore both options.

DC 'megafunds'

The Pension Schemes Bill includes provisions amending the quality requirements for automatic enrolment qualifying schemes which are designed to ensure that DC master trusts have a main scale default arrangement of £25 billion by 2030. Minor amendments have been made to the Bill to clarify the circumstances in which assets in connected schemes can count towards the scale requirement. Furthermore, the amendments provide that transition pathway relief (which is available on application to the Pensions Regulator where a scheme's main scale default arrangement has assets of £10bn but the trustees can show they can reach the required scale by 2035) will be repealed five years after the relief becomes available.

Inheritance tax on pensions

Sections 63 to 68 of the [Finance \(No.2\) Bill](#) contain the provisions announced by the Government in last year's Budget to bring unused pensions and certain death benefits payable from a pension into a person's estate for inheritance tax (IHT) purposes, for deaths on or after 6 April 2027. For more on these changes see [WHIP Issue 113](#) and [WHIP Issue 117](#).

One of the more hotly discussed aspects of the proposal has been who should have the responsibility and liability to report and pay IHT on unused pension funds and death benefits to HMRC – the deceased individual's personal representatives or the pension scheme's trustees or administrators. In its [consultation response](#) published in July, the

Government confirmed that responsibility would fall on personal representatives. However, following concerns raised by the private client industry that they do not have control over pension scheme assets, the Bill has been amended so that where personal representatives reasonably expect IHT to be due, they will have the power to direct pension scheme administrators to withhold 50% of the taxable benefits for up to 15 months from the date of death. Scheme administrators will then be directed to pay the IHT from the withheld benefits before making payment to beneficiaries. This will not apply to exempt beneficiaries (surviving spouses and civil partners), benefits under £1,000 and continuing annuities.

Surplus payments to members

The Pension Schemes Bill contains measures to make it easier for employers to access surplus from ongoing DB schemes from 6 April 2027 (see [WHIP Issue 117](#)). Regulations detailing the conditions that must be met before surplus can be released are yet to be published and will be subject to consultation. However, given the various references to "surplus sharing" in the Government's "Options for Defined Benefit Schemes" [consultation response](#), there has been speculation that the draft regulations may require trustees to consider paying some or all of any surplus to members as a pre-condition to returning surplus to an employer.

In a further move to facilitate surplus sharing, [HMRC's Pension Schemes Newsletter 175](#) published on 27 November confirmed that the Finance Bill 2026/7 will include provision to allow direct lump sum payments of surplus to members or beneficiaries where scheme rules permit and subject to trustee discretion. The payments will be treated as authorised and taxed as income. Payments will only be permitted where the scheme is in surplus on the same funding basis as payments to employers (currently buy-out but expected to reduce to low dependency funding under the forthcoming regulations).

It is proposed that member payments will be subject to certain conditions including that the member must be above normal minimum pension age (currently 55 but due to increase to 57 from 6 April 2028). It isn't clear from the newsletter why such an age restriction is considered necessary and whether such payments will be permitted where schemes are in wind-up as well as where they are ongoing.

Comment

The most interesting of these changes are those relating to surplus and whether and how it should be used to benefit members. The question of whether surpluses should be used to provide members of defined benefit schemes with discretionary pre-1997 increases is one that many schemes are currently grappling with. The Government's decision to limit pre-1997 increases to PPF schemes whose rules required such increases should not place sponsors and trustees of schemes whose rules provide for discretionary increases under additional pressure to award them. Nevertheless, the question of how scheme surpluses can and should be used remains an important hot topic and the tidying up of tax legislation to ensure surplus payments to members and beneficiaries are authorised removes another barrier to schemes doing so.

Trustee investment duties – the one that didn't make it?

None of the non-Government supported amendments to the Pension Schemes Bill made it into the version passed to the House of Lords. However, the Pensions Minister did announce a concession in relation to an amendment tabled by Liam Byrne MP to clarify pension scheme investment duties under s.36 Pensions Act 1995. The amendment was supported by Share Action, the responsible investment charity, to give trustees clarity that when investing in members' best interests, they may take into account broader systemic risks and opportunities to their investments, the positive (and negative) impacts of investments (including impacts on members' standards of living) and the ability, where appropriate, to take account of members' views.

Whilst the Pensions Minister decided not to hardwire any clarifications into primary legislation, he did announce that he will be putting forward legislation to give the Government power to issue statutory guidance on the topic. When making the announcement, the Minister said "*there are advantages to consulting more fully and retaining an ability to be responsive to future developments*"

The guidance will set out how trustees can comply with their existing investment duties when considering the above factors and will set out what is meant by systemic risk and standards of living. Importantly, the guidance will be about

giving "added confidence to trustees that they can invest in the long-term interests of members **and our society**" but will not require them to so invest. The guidance will be fully consulted upon and the Minister will set out a timetable for introducing primary legislation and draft guidance in the coming months. He has also already confirmed that he will arrange a series of industry round tables early in the new year with a view to engaging a wide range of stakeholders in the production of the guidance.

Comment

Primary legislation is needed to give the Government power to issue statutory guidance in relation to trustee investment duties. It will be interesting to see whether the statutory guidance will be restricted to clarifying trustees' ability to take environmental, social and governance considerations into account when selecting and making investments or whether it will also address the factors trustees should take into account when deciding whether to invest in particular asset classes, including in the UK, to align with the Bill's controversial mandation provision.

We can anticipate a range of views being submitted in response to this consultation. This may include a view that statutory guidance of this nature is unnecessary given that many believe there is sufficient scope in the existing law to take account of climate change and other systemic risk when investing. On a more detailed note, when giving trustees reassurance that investments can be made "in the long-term interests of our society" a particular point to look out for will be whether the guidance sees this as limited to cases where benefiting society is a corollary outcome of a financially driven investment approach, or whether trustees may treat social benefit as an end in itself.

Collective defined contribution (CDC) developments

On 23 October, the Government published its [response to consultation](#) on unconnected multi-employer or commercial CDC schemes, alongside draft regulations. The [regulations](#) were made on 15 December and will come into force on 31 July 2026. It also issued [a consultation paper](#) on the use of CDC as a retirement option for members of DC schemes – referred to as "retirement CDC" but also known in the industry as "decumulation only CDC". That consultation closed on 4 December 2025.

The regulatory regime for connected and unconnected multi-employer CDC schemes bears many similarities to the defined contribution master trust regime. Schemes will:

- Need to be authorised by the Pensions Regulator. The authorisation criteria will include requirements that those involved with the scheme meet "fit and proper persons" requirements
- Have to satisfy the Pensions Regulator that their business strategy is financially sound
- Need to appoint a scheme proprietor who cannot be the trustee. The scheme proprietor will have responsibility for the preparation and maintenance of the scheme business plan, its continuity strategy and will also have to approve the scheme's viability report. They will be liable to meet the scheme's set up costs, the costs of implementing any continuity options and the scheme's costs where its administration charges are insufficient.

Two key differences between unconnected multi-employer CDC schemes and single connected employer CDC schemes are those relating to sectionalisation and promotion and marketing. In connected employer CDC schemes, like Royal Mail's, benefits with different characteristics, such as accrual rates, contribution rates or retirement ages, must be offered by a new section. However, given that a key feature in the design and success of CDC schemes is the pooling of longevity and investment risk, for unconnected multi-employer CDC schemes, a new section will only need to be created where a change in investment strategy results in materially different benefits or materially different expected adjustments. This is a nebulous test and will be a key point for employers and providers to consider in scheme design.

As unconnected multi-employer CDC schemes will be offered by commercial providers, there are strict provisions governing the marketing and promotion of such schemes. Communications cannot be unclear or misleading and information given to employers about a scheme and its target benefits must be realistic.

TPT Retirement Solutions is the first and so far only commercial provider to have [announced its intention](#) to provide an unconnected multi-employer CDC solution, with a target launch date of early 2027.

The Government's proposals as to how it sees retirement CDC working are set out in the [consultation document](#). Retirement CDC schemes will allow DC members to transfer their pot into a pooled fund at retirement which will provide for an income for life, adjusted annually based on investment performance and scheme sustainability, to be managed by the scheme's trustee. Points to draw out from the consultation include:

- Retirement CDC schemes could be provided within a section of a master trust or a section of an unconnected multi-employer CDC scheme
- Crucially, trustees of DC schemes will not be required to provide a default pension solution within their own scheme and will be able to transfer members into another retirement CDC scheme if it is not reasonably practicable to offer such a solution in their own scheme and if it would provide a better outcome for members
- Initially, retirement CDC schemes will only be available to trustees of existing DC schemes. Retirement CDC will not be available to individuals via the retail market although this will be kept under review by the Government
- Existing transfer provisions will be amended to permit trustees to make transfers into retirement CDC schemes without member consent, with such transfers to be priced on an actuarial equivalence basis. The Government also proposes allowing retirement CDC schemes to apply different pricing and benefit adjustments to different cohorts depending on when members joined the scheme. The aim is to ensure that different cohorts are not advantaged or disadvantaged as a result of collective fund experience prior to the date of joining.

Section 57 of the [Finance \(No.2\) Bill](#) includes provisions to enable unconnected multi-employer CDC schemes to apply to HMRC to become registered pension schemes and to allow HMRC to refuse to register or de-register a CDC scheme which has not been authorised by the Pensions Regulator. These provisions will come into force at the same time as the [regulations](#).

Finally, on 18 December, the Pensions Regulator [launched a consultation](#) on a "new-look" [CDC Code of Practice](#) that will amend the existing CDC code which applies to single and connected employer CDC schemes. The updated code of practice will cover the authorisation and supervision of unconnected multi-employer or commercial CDC schemes.

The draft code sets out:

- how to make an application for authorisation
- the matters the Regulator will take into account when considering applications
- the Regulator's expectations for the conduct and practice of those who must comply with the obligations set out in legislation.

The Code is expected to come into force at the end of July 2026, on the same day as the [regulations](#). The Regulator anticipates being able to accept applications for unconnected multi-employer CDC schemes from the beginning of August, meaning that such schemes could be operational in early 2027. The consultation closes on 13 February 2026.

Comment

We welcome the ongoing development of CDC schemes by the Government and are excited to see whether other commercial providers will follow TPT and confirm that they will be launching an unconnected multi-employer CDC scheme. Crucial to the success of retirement CDC will be the timing of the introduction of the requirements on DC scheme trustees to design default pension benefit solutions (on which see [What's Happening in DC - the Pension Schemes Bill edition](#)). The Government has indicated that master trusts will be subject to the new duties from 2027 and other schemes and providers from 2028. However, the Government has been urged to delay these obligations until retirement CDC is up and running so that it can form one of the default pension benefit solutions available to trustees.

High Court ruling on meaning of accrued rights or interests

On 21 November, the High Court handed down judgment in the case of [3i PLC v John Decesare & Ors](#) holding that a restriction in the scheme's rules which prevented amendments which would diminish members' accrued rights or interests did not protect future service.

The case was brought by 3i PLC who, having given notice to wind-up the 3i Pension Plan (the Plan) in February 2023, were looking to receive a return of surplus of approximately £83 million. However, the Trustees (who had the power to distribute any surplus on wind-up) were concerned that in light of the decision of the Court of Appeal in *British Broadcasting Corporation v BBC Pension Trust Limited* (see [WHiP Issue 110](#)), the Plan's closure to accrual on 5 April 2011 may have been invalid. Had the amendment been held to be invalid, this would have increased the Plan's liabilities and reduced the surplus available to be returned to the employer.

The Plan's amendment power prevented amendments which would "*diminish any pension already being paid under the Plan or the accrued rights or interests of any Member or other person in respect of benefits already provided under the Plan*". It was accepted by all parties that the restriction protected past accrued benefits and the closure deed had maintained a link to final salary in respect of pensionable service before 5 April 2011.

The question, therefore, related to the meaning of the word "*interests*" and whether, as in the BBC case, it protected future service benefits. In BBC, the wording "*no such alteration or modification shall.. take effect as regards the Active Members whose interests are certified by the Actuary to be affected thereby*" was held to protect future service benefits.

Smith J held that the BBC case confirmed that the meaning of a particular clause ultimately turns on its own interpretation, even if it might enjoy certain "*family resemblances*" with others of the same type used elsewhere. In the BBC case, the use of the word "*interests*" was untethered whereas in the Plan, the word "*interests*" featured in a composite phrase qualified by the words "*already provided under the Plan*". The judge held that, "*There is nothing in the composite phrase to suggest that the relevant "interests" are concerned with future service accrual. To the contrary, and reinforced by the word "accrued" before "rights or interests", its focus is very much on what has already occurred*". The natural and unambiguous meaning of the restriction permitted amendments to terminate or reduce the rate of future accrual meaning that the 2011 closure deed was valid.

Comment

The judgment is a helpful reminder that the word "*interests*" in a restriction in a scheme amendment power will not always protect future service benefits. The meaning of a particular restriction turns on its own interpretation which involves an analysis of the key words in their particular context. Trustees and sponsors concerned about the validity of past amendments should obtain legal advice on the interpretation of their own scheme amendment power.

Pensions Ombudsman - pre-2021 transfers and overpayments

Against the background of a historical backlog of cases and an increased volume of new applications year on year, the Pensions Ombudsman has developed a series of initiatives to help limit demand for its services. These include:

- the use of a representative "lead case" where the Ombudsman identifies an industry-wide issue, or a scheme-specific issue affecting multiple members, and
- requiring scheme internal dispute resolution processes to be completed before an application can be made.

Continuing this aim, there have been two further helpful developments from the Pensions Ombudsman, which are designed to assist schemes in dealing with complaints relating to due diligence in relation pre-2021 transfer cases and pension overpayments.

Whilst determinations of the Pensions Ombudsman are not binding on future cases, the Ombudsman has recently issued a series of determinations on the scope of trustee due diligence requirements in relation to pre-2021 transfers, on the basis that the approach taken in those determinations will likely inform the Ombudsman's approach to similar cases.

Furthermore, on 16 December, the Pensions Ombudsman published a new [factsheet](#) designed to help members to understand the key issues that arise when a pension has been overpaid so that disputes can hopefully be resolved at an earlier stage. The Ombudsman is asking schemes to share this information with members, ideally when informing them of an overpayment, or when a member queries or challenges a scheme's attempt to reclaim an overpayment, so that members have a better understanding of this complex area.

Pre-2021 transfers

Following on from the pre-2021 pensions liberation case of [Mr D v British Steel Pension Scheme](#) (covered in [WHiP Issue 118](#)), the Deputy Pensions Ombudsman has taken the same position in relation to two other complaints. Both members complained that the trustees had failed to carry out sufficient due diligence on transfers made to scam arrangements before the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 came into force on 30 November 2021.

The first case of [Mrs T v HBOS Final Salary Pension Scheme](#) involved the same or similar scam as that of Mr D. Both Mr D and Mrs T received an unsolicited call from the same unregulated adviser who persuaded them to transfer their benefits into a small self-administered pension scheme (SSAS). Whilst the transfers were made to two different SSASs, both had the same administrator and invested in the same Cape Verde Islands resort.

The second case of [Mr R v Merlin Pension Scheme](#) involved a similar fact pattern, with the member receiving a cold call from a different unregulated entity offering a free pension review, following which he was persuaded to transfer to a qualifying recognised overseas pension scheme. As with Mr D, both members were provided with the Pensions Regulator's warning note and "Scorpion Leaflet" on pension liberation along with their CETV quotation. The transfers subsequently went ahead, following confirmation of the receiving schemes' registration with HMRC and that the members had a right to a statutory transfer.

The Deputy Ombudsman dismissed both complaints holding that, other than ensuring the transfer met the legislative requirements for a transfer, there was no wider legal or regulatory duty on the trustees to undertake additional due diligence. By way of reminder, before December 2021, the legislative requirements for a transfer were that:

- the receiving scheme met the definition of an occupational pension scheme
- the member was acquiring "*transfer credits*" in the receiving scheme, and
- the receiving scheme was able to receive contracted-out rights and was either a "*registered pension scheme*" or a "*qualifying registered overseas pension scheme*".

Mrs T raised an additional interesting argument, claiming that she did not have a right to a statutory transfer as she had no "*earnings*", with "*transfer credits*" being defined under the statute as "*rights allowed to an earner under the rules of an occupational pension scheme*". The Deputy Ombudsman disagreed, finding that the reference to "*earner*" described **the type of rights** that should be granted to the member in the receiving scheme and did not require the transferring member **to be** an earner. In so doing, the Deputy Ombudsman declined to follow the High Court's 2016 decision in *Hughes v The Royal London Mutual Insurance Society Limited* on the basis that the parties in that case had adopted an agreed assumption and there had been no judicial argument or consideration of the point.

Most recently, the Deputy Pensions Ombudsman has published another interesting determination in the case of [Mr S v BMW \(UK\) Operations Pension Scheme](#), this time in relation to a pre-2021 non-statutory transfer. Once more, the Deputy Ombudsman dismissed the complaint holding that, other than ensuring the transfer was paid in accordance with scheme rules, there was no wider legal or regulatory duty on the trustees to undertake additional due diligence on the receiving scheme.

Whilst Mr S had initially requested a CETV quotation for a statutory transfer, he had not returned the paperwork within the required statutory three-month period. On receiving further information regarding the receiving scheme, the Trustee nevertheless paid the transfer outside the three months. The Deputy Ombudsman held that the transfer had proceeded as a discretionary transfer under the scheme's Trust Deed and Rules and that there was nothing perverse or unreasonable in the exercise of the trustee's discretion. Further, there was no duty of care on trustees to carry out the due diligence suggested in the Pension Regulator's 2013 Fraud Action Pack in respect of pre-2021 statutory or non-statutory transfers.

The Deputy Ombudsman also made some further comments about when trustees may have assumed a duty to a member to carry out additional due diligence, a point also discussed in the case of Mr D v British Steel Pension Scheme (see [WHiP Issue 118](#)). She held that such a duty is unlikely to arise where the trustee knew the member was being advised by an IFA and it was reasonable for the trustee to assume the member was relying on that advice or where the member was sent the Scorpion leaflet and had been asked to confirm that they had read it.

Practical next steps

Both these developments will be welcomed by trustees and their advisers. The principles outlined in this recent spate of determinations on pre-2021 transfers to liberation schemes are a valuable source of reference for trustees dealing with complaints in relation to similar issues. Trustees seeking to claim overpayments from scheme members and beneficiaries should speak to their administrators to ensure that the Ombudsman's factsheet is included with all communications on the subject.

DWP launches consultation on improving scheme trusteeship and governance

Just in time for Christmas, on 15 December, the Department for Work and Pensions launched a [consultation](#) on improving scheme trusteeship and governance. The consultation aims to develop an improved understanding of the issues facing trustees of all types of scheme - DB, DC, CDC and DB superfunds – and considers now is an opportune time to do so given the number of forthcoming changes to be implemented under the Pension Schemes Bill. The consultation seeks to "*identify potential risks and future challenges and establish what systemic or regulatory changes may be needed*".

The consultation seeks views in relation to five key areas:

- **Good governance:** what good governance looks like, what are the barriers to good trusteeship and managing conflicts of interest (particularly amongst professional trustees with multiple appointments and sole corporate trustees)
- **Trusteeship:** whether further controls are needed to ensure trustees act in members' interests, how Government and regulators can help schemes attract diverse and talented trustees, whether limits are needed on length of trustee appointments and whether there is a role for a public independent trustee to step in when no one else is able to act and, in certain circumstances, as an alternative to the Pensions Regulator's current statutory power to appoint and remove trustees
- **Skills and knowledge:** whether the Pensions Regulator should set statutory higher standards for professional trustees and, if so, what these should be, what more can be done to support lay trustees particularly with regards to training and whether lay trustees should be accredited
- **Member voice:** how can the Government ensure trustee boards take member views into account when making decisions. Views are being sought on examples of best practice
- **Administration:** the benefits and challenges of introducing mandatory minimum standards for administrators, whether administrators should be registered with the Pensions Regulator and subject to its regulatory oversight, the risks of DC consolidation to administrators and the role the Regulator should take in reducing the risks arising from administration providers exiting the market.

The deadline for responses is 6 March 2026.

Comment

Whilst much of the consultation builds on the outcome of the Government's [call for evidence](#) in November 2023, it does contain some new and potentially controversial ideas, specifically those relating to limiting the length of trustee appointments, removing the Pensions Regulator's statutory power to appoint trustees from its independent register in certain circumstances and increasing regulatory oversight of third party administrators. Professional trustees and administration providers in particular should consider responding to the consultation.

Improving your scheme data: your New Year's resolution

On 18 November, the Pensions Regulator issued [a plea to trustees](#) to treat member data as their most strategic asset and to make improving data quality a key priority, given the impending 31 October 2026 statutory deadline for connection to

the pensions dashboards ecosystem. Whilst the Regulator's industry engagement has shown that significant progress has been made, some trustees are reportedly placing too much reliance on administrators. Furthermore, improving value data (being the data used to calculate benefits) is often overlooked.

The Regulator has published [updated guidance](#) setting out practical steps and good practice for trustees. It reminds trustees that whilst they may delegate the maintenance and monitoring of member data to their scheme administrators, they are legally responsible and accountable for the quality of the data they hold. As such, trustees should:

- ensure their administrators have adequate controls and processes in place to maintain good quality data
- obtain regular data reports from the scheme administrator
- report their latest data scores to the Regulator in the scheme return
- consider data quality regularly at board meetings
- reflect data quality on the scheme's risk register
- make relevant decisions required by administrators promptly and effectively
- ensure that sufficient resource and budget is allocated to resolve data issues as they arise
- ensure that data is processed in accordance with data protection legislation and the [Information Commissioner's Office guidance](#), and
- where appropriate, put in place an improvement plan.

The Pensions Administration Standards Association has recently published a number of resources to help trustees in this task including [The 6 Data Quality Dimensions for Pension Scheme Member Data guidance](#), a [Data Improvement Plan template](#) and the guidance note, [Data \(Use and Access\) Act 2025 Unpacked - six key areas for pension schemes](#).

Practical next steps

Trustees who do not want to find themselves on Santa's naughty list should make following the steps set out in the Regulator's guidance a key priority for next year. Even if schemes have introduced and implemented a data improvement plan, the Pensions Regulator expects data reviews to be undertaken at least annually. Maintaining quality data not only constitutes good governance but also reduces the likelihood and risk of member complaints.

Some final goodies from the bottom of Santa's stocking!

The last couple of months have been a particularly busy time for pensions developments so, in case you may have missed anything, we have included a short round-up of some other recent developments.

- On 17 November the Pension Protection Fund launched its [2026/27 levy consultation](#). As expected, it has proposed a zero PPF levy for conventional DB schemes and has devised a mechanism to ensure this will be the case irrespective of whether the Pension Schemes Bill becomes law before the 31 March 2026 deadline for finalising the levy rules. Schemes will not be sent an invoice but will still need to complete a s.179 valuation and include Tier 3 asset information in scheme returns. Consultation closes on 5 January 2026.
- On 9 December, the Pensions Regulator published [revised administration guidance](#). It replaces previous guidance and applies to all schemes.
- On 10 December, the Financial Times [published a letter](#) sent from the Financial Conduct Authority's (FCA) Chief Executive, Nikhil Rathi, to the Prime Minister in which he said the FCA will consult next year on the pension charge cap "so consumers are not disincentivised from investments due to higher performance fees". Currently, under [COBS 19.6](#) all contributions to default funds within personal pension or stakeholder schemes used for auto-enrolment are subject to an annual pension charge cap of 0.75% of funds under management. It seems from the [FCA's Regulatory Initiatives Grid](#) published on 11 December that the FCA intends to exclude performance fees from the 0.75% cap, thereby aligning the position between default funds under contract-based arrangements and trust-based schemes.

- On 11 December, the FCA published [near-final rules for targeted support to consumers in pensions and retail investments](#). These largely follow the rules consulted upon earlier in the summer (see [WHiP Issue 117](#)). The new rules are expected to take effect from 6 April 2026, with firms being able to apply for permission to provide targeted support from March next year. The following points are worth noting:
 - **Guided retirement:** The FCA expects to publish a discussion paper on the framework for implementing guided retirement in spring/summer 2026, alongside the Department for Work and Pensions (DWP) consultation on its corresponding policy. It intends to clarify the interaction between targeted support and guided retirement as part of this. In the meantime, the FCA has described how they envisage the two regimes "working in tandem" and how the "Government's objective through guided retirement is for DC consumers to benefit from a simpler process and less risky decision making as they approach retirement. Targeted support will complement this by helping individuals to be actively supported so they feel confident to make their own choices on how to access their pension benefits in a way that works for them."
 - **Annuities:** Firms will still not be able to provide annuity quotations as part of their "ready-made suggestions", but they will be able to direct consumers to whole of market annuity brokerages. Similarly, while firms will still need to direct consumers to MoneyHelper's annuity comparison tool (a form of "soft break"), the FCA will not require a mandated break between targeted support and annuity sales journeys.
 - **Pension consolidation:** The FCA has also provided reassurance concerning the guidance that pension schemes can provide in relation to consolidation: "We know firms are already making consumers aware of the option of consolidating when accessing their pension. Firms are describing the key factors that may be relevant to a consolidation decision. We want firms to feel confident to support consumers in this way. Such guidance could be provided before or in parallel to a targeted support journey, provided the guidance is not integral to the ready made suggestion".
- On 11 December, the FCA also launched [a consultation](#) on rules to support consumers using digital pension planning tools and those making non-advised decisions to transfer DC pensions. The FCA is concerned that non-advised consumers are at risk of making decisions to transfer based on incomplete information, resulting in them:
 - unknowingly giving up valuable benefits (e.g. guaranteed investment returns, loyalty bonuses or protected pension ages); and/or
 - transferring to products that do not meet their needs (e.g. because they offer fewer decumulation options or incur higher charges than their existing scheme).

The FCA is therefore proposing to introduce new rules for FCA-regulated providers, in their capacity as both existing pension providers (ceding schemes), and where they arrange potential new pensions (engaging firms). It is proposed that such providers will not be able to instruct a transfer until they have gathered and presented the consumer with the minimum necessary information to compare the receiving and ceding schemes so that they can make an informed decision as to whether to transfer. The provider will need to obtain the individual's written consent to gather their pension details from ceding schemes and signpost the availability of advice and guidance when providing information.

Whilst the rules will not apply to trustees of occupational schemes, the FCA notes that it has drafted its proposals to be compatible with all DC pension types. The FCA is in discussion with the DWP about these proposals and notes that the DWP will consider whether similar requirements for occupational pension schemes will be beneficial.

- On 18 December the DWP published its [annual review](#) of the automatic enrolment and qualifying earnings band for 2026/7. As expected, the thresholds have been retained at their 2025/6 levels meaning that the automatic enrolment earnings trigger remains at £10,000. The lower earnings limit of the qualifying earnings band remains at £6,240, with the upper earnings limit staying at £50,270.

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