

Pensions litigation briefing

December 2025

Sackers' pensions litigation team reviews recent case law and developments, examining the practical lessons for trustees and employers



Pensions litigation briefing

December 2025

Abbreviations

DB: Defined benefit

FAS: Financial Assistance Scheme

ICO: Information Commissioner's Office

IDRP: Internal dispute resolution procedure

PPF: Pension Protection Fund

SPA: State pension age

TPO: The Pensions Ombudsman

TPR: The Pensions Regulator

Electronic format

You can access electronic copies of all our publications at:

www.sackers.com/knowledge/

Environment

In line with our approach to corporate social responsibility (CSR), we monitor closely the number of copies printed of this publication. The paper and print manufacturing has been done in compliance with ISO14001 environmental management standards. Our paper, Revive 100% silk is derived from 100% pre and post-consumer waste, which is certified for FSC® chain of custody.

For more information on our CSR policy, please visit our website at www.sackers.com/about/csr

Overview

“Welcome to the end of year edition of our Pensions Litigation briefing. It often feels like December comes around far too soon and while it tends to be a very busy period, I hope it brings with it an opportunity to reflect on the year and to take some time to rest, even just for a few minutes!

We kick off this briefing with a look at the work of TPO in the latest financial year and what he's seeing and saying about member complaints. Many challenges remain for both him and his Deputy PO in terms of an ever-increasing volume of cases. However, there are encouraging signs in relation to managing the workload and bringing in measures to cope with the demand, as well as publicising how the industry can help itself and members generally by effective and constructive use of IDRP and informal resolution in appropriate cases.

From a Sackers' perspective, we would like to thank all of you who attended our Pensions Litigation webinar in September, where we looked at themes and trends emerging from TPO across a range of different topic areas. In this briefing, we summarise some of the main points which came out of our webinar, as well as practical takeaways for those dealing with member complaints.

We also look at issues arising from the proposed legislative intervention, via the Pension Schemes Bill, to address certain alterations to pension schemes which might otherwise fall foul of the Virgin Media decision. Finally, we wrap up with thoughts on a recent ruling and regulatory action by the ICO.

From all at Sackers, we wish you season's greetings and hope you have a wonderful Christmas and New Year.”



Arshad Khan

Senior Counsel, pensions litigation

arshad.khan@sackers.com

In this issue

Pensions Ombudsman update	3
Highlights from our Pensions Litigation Webinar	4
Virgin Media remedy	6
Cases round-up	7

Pensions Ombudsman update

TPO published its annual report and accounts for 2024/25 earlier this year with some interesting facts and figures.

New claims increase by over 35% from 2023/24

9,610

New complaints



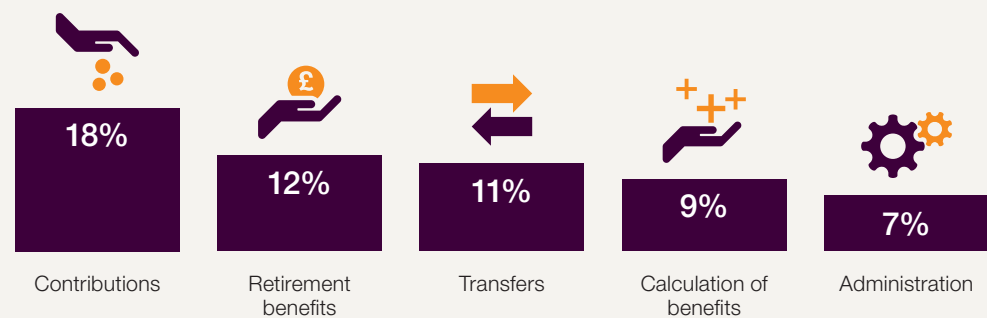
9,435

Complaints closed

Most closures were due to the application being premature or invalid. A key reason for this being that, since October 2024, applicants must have exhausted their scheme's internal complaints process, including its IDRP, before bringing a complaint to TPO.

What do the complaints relate to?

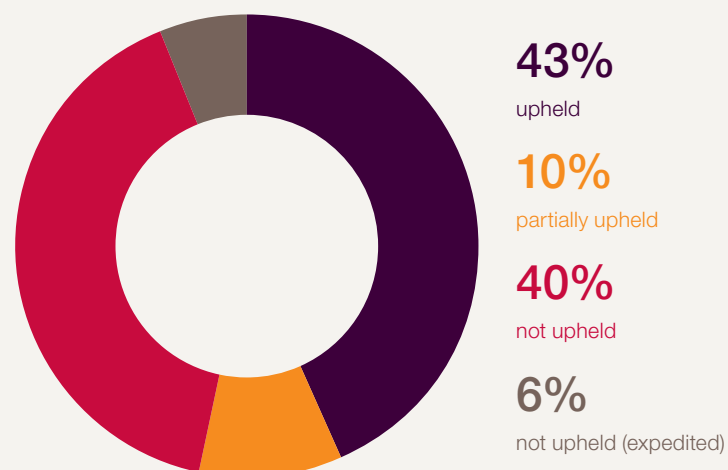
This year saw a new entry into the top five issues, disputes about the calculation of benefits. There has also been an increase in the proportion of complaints about retirement benefits generally.



Source: Subject matter of closed pension complaints (top 5), from [The Pensions Ombudsman Annual Report and Accounts 2024-25](#)

Outcome of TPO formal determinations

While determinations increased, the proportion of cases requiring a determination fell from 42% in 2023/24 to 33%



Source: Outcome of determinations, from [The Pensions Ombudsman Annual Report and Accounts 2024-25](#)

Highlights from our Pensions Litigation Webinar

We were delighted to run our annual Pensions Litigation Webinar this autumn. We talked clients and industry colleagues through a number of dispute topics ranging from overpayments and transfers to general maladministration and discretionary decisions, including decisions to buy in and buy out.

While we don't have time in this publication to cover all areas of discussion or interest, we wanted to pick a few of the main themes and highlights.

Overpayments

TPO is building up a body of robust legal and factual principles for trustees and members to understand how it will approach overpayment cases.

While each case will naturally depend on its particular facts, there are clear markers being seen to show what members need to demonstrate to resist lawfully attempts to recover overpayments, as well as what is expected of trustees to evidence and investigate during the IDRPs.

As part of the IDRPs, the clear expectation is that:

1. trustees should explore potential defences that a member might raise to having to repay an overpayment, whether in part or in full, so that there is factual evidence in this regard by the time the case reaches TPO
2. trustees should consider the affordability of a recoupment plan and look at evidence of the member's overall income and expenditure rather than make assumptions
3. trustees should not start to recoup the sum overpaid from the member's ongoing pension if the member disputes the overpayment.

Discretionary decisions

We looked at a number of areas where trustees make decisions that affect the financial position of a member or beneficiary. These include:

death benefits

ill-health cases

discretionary pension increases

surplus repayment

We also spotlighted on the position of employers who may have the power to make discretionary decisions on some matters, depending on the wording of the trust deed and rules. The position of employers is different from trustees – the employer is typically not in a fiduciary relationship with the scheme's beneficiaries. Generally speaking, this means that:

- employers are entitled to have regard to their own interests when exercising a discretion
- from a pensions perspective, an employer has no duty to engage in a negotiation with members or to reach a substantively "fair" decision.

TPO has indicated its expectations of trustees in overpayment IDRPs

Employer position differs to that of trustees

Highlights from our Pensions Litigation Webinar cont.

Effective communications help to mitigate the risk of member complaints

Buy-ins and buy-outs

Complaints to do with risk transfer activity are increasing, for example, we have seen complaints from members unhappy with decisions to buy in or buy out.

Luckily there is no difference between the principles that apply in this particular sphere of activity and those that apply when trustees are making discretionary decisions more generally.

In terms of practical takeaways, while these sorts of complaints probably cannot be avoided altogether (because they can raise emotive issues for members), trustees can help to mitigate this risk by communicating as effectively as possible with members in the lead-up to any risk transfer activity. Sometimes when members complain in this area it's because they don't fully understand what the trustees are doing or what it means for the security of their pensions.

Maladministration

Maladministration can cover many kinds of error or oversight, neglect or poor service experienced by a member.

A topical area of complaints in practice is around information given (or not given) to members who ask questions about their benefits or options of the scheme administrator.

Dos



- be clear
- be consistent
- be correct
- consider what is the best channel for communication with the member
- keep a paper trail and/or send a follow-up email after discussing a matter on the phone.

Don'ts



- stray into giving advice or hinting at what decision a member should take
- be tempted to say "if I were you, I would do.."
- overlook the benefit of signposting to members that they should take their own financial advice about what's best for them.

Virgin Media remedy

Recent changes will bring the remedy into force from Royal Assent

Last year, the Court of Appeal confirmed in [Virgin Media](#) that a written actuarial confirmation (a “section 37 confirmation”) was required in respect of schemes that were contracted-out on a DB basis on or after 6 April 1997, where an alteration to a scheme’s rules affected certain pension benefits attributable to past or future service benefits. Without such a confirmation, confirming that the scheme would continue to satisfy an overall quality test known as the “reference scheme test” (“RST”), the amendment would be void.

Measures aimed at addressing issues arising from Virgin Media were first included in the Pension Schemes Bill (“the PSB”) in September 2025.

Simply investigating potential problems should not fall foul of the exclusions

Proposed remedy



A purported amendment will be “potentially remediable” if:

- the alteration could not be made unless the requirements (as they stood at the time) were met
- the scheme trustees or managers treated the relevant amendment as valid
- no “positive action” (eg notifying members of a change to benefits) has been taken by the trustees or managers on the basis that they consider the alteration to be of no legal effect due to its non-compliance with the section 37 confirmation requirements, and
- it is not otherwise excluded from the scope of the proposed remedy.

To validate an in-scope amendment, broadly, trustees/managers must obtain a written confirmation from the scheme actuary that, on the assumption that the alteration was validly made, in their opinion it is reasonable to conclude that it would not have prevented the scheme from continuing to satisfy the RST (“the RST Confirmation”).

Exclusions

An amendment will not be covered by the proposed remedy where it is / was the subject of certain legal proceedings to which the trustees or managers are / were a party.

If trustees have potential legal proceedings and/or a settlement in train, they should speak to their legal advisers to determine whether it is appropriate or possible to take steps to ensure the remedy will remain available.

Special cases

Where a scheme has wound-up or gone into the PPF or FAS before the measures come into force, any potentially remediable alteration will be treated as having been validly made.

Areas of uncertainty

Whilst we expect further detail in regulations and actuarial guidance, under the current drafting uncertainties remain, including:

- investigation – determining whether any of a scheme’s amendments are “potentially remediable” may not be straightforward in all cases
- obtaining an RST Confirmation – how easy will it be for actuaries to provide and what information will they require to do so?
- impact of transfers-in of relevant contracted-out benefits – although subject to an extent to the terms of the transfer, where the transferring scheme is still ongoing (so the winding-up special case provision does not apply), the receiving trustees may be dependent on the transferring trustees taking steps to address any potentially remediable alterations.

On the current PSB drafting, uncertainties remain

Cases round-up

Trustees should review their cyber security

ICO fines Capita for data breach

In October 2025, the [ICO issued a fine of £14m to Capita](#) for failing to ensure the security of personal data related to a breach in 2023 that saw hackers steal millions of people's information.

The ICO's investigation found that Capita failed to implement appropriate technical and organisational measures to safeguard the data they held. While this decision does not require trustees to take any particular actions, they should:

- ensure they are prepared to answer any member queries about the breach
- review their own cyber security, see our [Hot Topic](#) for details.

Spirit (Legacy) Pension Trustee Limited v Alexis

This [case](#) concerned a TPO decision in which TPO found that the rules of the Spirit (Legacy) Pension Scheme ("the Scheme") entitled "Mrs A" to a bridging pension until the age of 66. The Scheme's trustee maintained that her entitlement ceased at age 65.

Background

Broadly, "bridging pensions" are temporary, higher or additional pensions paid by occupational pension schemes to "bridge" the gap between a member drawing their scheme pension and becoming entitled to their state pension. Their exact nature will depend on the rules of the scheme.

Facts

Mrs A was informed that her bridging pension would be payable until "SPA". The meaning of SPA was not explained. Under the Scheme's rules, "SPA" had "the meaning given by the rules in paragraph 1 of Part I of Schedule 4 to the Pensions Act" ("the PA95"). Originally intended to equalise SPA between men and women, this section of the PA95 was later used to increase SPA from 65 to 66.

Following the Government's increases to SPA, Mrs A was not entitled to her state pension until the age of 66. When she realised her bridging pension would cease at 65, she complained, ultimately taking her case to TPO. TPO upheld her complaint.

High Court judgment

The case turned on whether the Scheme's definition of SPA was "dynamic", encompassing subsequent amendments to the PA95, including those which increased Mrs A's SPA to 66, or "static" such that it should have the meaning of the original PA95 provisions.

The judge found that the definition of SPA should be interpreted as being static, making Mrs A's SPA 65 for the purposes of the bridging pension.

Addressing the impact of this interpretation on the aim of the bridging pension, the judge observed that the bridging pension was already "an imperfect bridge" due to the nature of its calculation. The fact that a static reading of the definition might compound this imperfection did not, in his view, militate in favour of a dynamic reading.

TPO upheld Mrs A's complaint

Correct interpretation held to be "static"

“ Comment

This is an interesting case, with the judge helpfully setting out the reasons behind their decision. However, as with most pensions cases, the decision turns on its specific facts and circumstances, as well as the particular rules of the scheme.

Contact

Our market leading pensions litigation team is highly ranked by both Legal 500 and Chambers UK. Our team of pension litigators has a “deep understanding of the market” (Legal 500, 2025) and is experienced in handling cases before TPR, the High Court and TPO, and acts for both claimants and respondents in all forms of pensions litigation.

Sackers is the UK’s leading commercial law firm for pension scheme trustees, employers and providers. Over 60 lawyers focus on pensions and its related areas. For more information on any of the articles in this briefing, please get in touch with Peter or any of the team below, or your usual Sackers’ contact.



Peter Murphy

Partner

D +44 20 7615 9568

E peter.murphy@sackers.com



Arshad Khan

Senior Counsel

D +44 20 7615 9563

E arshad.khan@sackers.com



James Bingham

Partner

D +44 20 7615 9597

E james.bingham@sackers.com



Amy Difford

Senior Associate

D +44 20 7615 9039

E amy.difford@sackers.com



Sarah Donnan

Associate

D +44 20 7615 9592

E sarah.donnan@sackers.com



Mahima Vekaria

Associate

D +44 20 7615 9048

E mahima.vekaria@sackers.com

Sign up



Stay up to date with all the latest legal and regulatory developments affecting pensions and retirement savings by signing up to our free publications on www.sackers.com/knowledge/.

These include our weekly round-up, 7 Days, Alerts where topical issues are covered in depth, and Briefings which give practical commentary and perspectives on essential issues.

Recent publications



Our [Quarterly briefing – December 2025](#) highlights significant developments in pensions, covering key areas such as pensions reform, regulatory developments, new legislation and cases.