

Pensions litigation briefing

May 2026

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



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Abbreviations

DB: Defined benefits

DC: Defined contribution

FRC: Financial Reporting Council

HMRC: HM Revenue and Customs

ICO: Information Commissioner's Office

IDRP: Internal dispute resolution procedure

PSA26: Pension Schemes Act 2026

TPO: The Pensions Ombudsman

TPR: The Pensions Regulator

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Overview

“Welcome to the spring edition of our pensions litigation briefing. Like spring there is much anticipation in the air in the pensions disputes world, with the Pension Schemes Act 2026 having recently received Royal Assent. In this edition we look at the latest industry guidance in relation to remediable alterations dealing with the *Virgin Media* decision as well as other measures emerging from the new legislation.

We kick off this briefing, however, with a practical look at the need for trustees, as data controllers, to establish and implement a data protection complaints process which will be a new legal requirement from 19 June 2026. Although it may bear some similarities to pension schemes' existing IDRPs, there are some key practical points and actions for trustee to consider when they come to setting up their data protection complaints process.

TPO has been going to great lengths in recent times to help members and schemes alike understand its approach to dealing with recovery of overpayment cases. TPO will expect trustees to take account of its recently published overpayments factsheet and we look at how schemes can bring this into play when dealing with overpayment complaints.

We also take a look at standstill agreements, what they are and how they are used in litigation by pension schemes to preserve potential legal claims against former or current professional administrators or advisers. And we wrap up with a look at a couple of interesting recent decisions from TPO which each upheld the member's complaint and required substantive remedies to be paid.

Last but by no means least, we hope you all have a wonderful spring and a great summer.”



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Data protection complaints

From 19 June 2026, scheme members (or any other person whose personal data is processed by a pension scheme) may make a complaint to the trustees (as the data controller) if they consider that there has been an infringement of the data protection legislation in respect of their personal data. Trustees will need to have a process for handling data protection complaints and facilitate the making of these complaints.

This is part of a wider package of changes to the data protection regime, being brought into force in phases (see box below).

Other key data protection changes

Various other data protection changes have come into force already, including:

- **data subject access requests** – amendments to the process for managing these requests, including revised time limits for response to requests in some situations (see the ICO's [updated guidance](#) on subject access requests)
- **overseas transfers** – a simplified test for transferring personal data to third countries and international organisations (see the ICO's [revised international transfers guidance](#))
- **enhanced ICO powers** – including a new power to require an individual to attend an interview and answer questions.

Later this year, the ICO is expected to be replaced by the Information Commission.

What will trustees have to do?

Trustees will have to:

- ✓ give members a way of making complaints – this could include providing a complaint form that people can submit either electronically or in writing
- ✓ acknowledge a complaint within 30 days of receipt
- ✓ take appropriate steps to respond to complaints, including making enquiries, without undue delay and keep people informed about progress
- ✓ tell people the outcome of their complaints without undue delay.

Trustees will also need to inform data subjects of their right to complain directly to them (as well as to the ICO) in privacy notices and when responding to subject access requests.

ICO complaints guidance

The ICO has published useful [guidance](#) to help data controllers prepare for the changes. Given the variety of organisations that are covered by the guidance, it is deliberately flexible, to enable data controllers to put in place a process which is workable for them and the data subjects.

Data protection complaints and IDRP

All schemes must have an IDRP in place. This generally deals with complaints about benefits, eg pension entitlement, calculation of benefits and the decisions made by trustees, as well as poor administration service. In contrast, the data protection complaints process will be dealing with data protection related complaints, such as holding incorrect data about a member or a data protection breach.

Data protection complaints cont.

It is possible that some complaints may fall under both regimes, so trustees will need to think about how they are going to manage this.

From a process perspective, a key question for trustees is whether to:

- integrate data protection complaints into the IDRPs (with some tweaks), or
- run a separate data protection complaints process, with its own form and decision-making route.

When considering how to manage data protection complaints, trustees should consider how common they are in comparison to pension benefits complaints (ie those which typically fall within the IDRPs). If a scheme has experienced no or very few data protection gripes or complaints but a greater number of IDRPs complaints, it might favour keeping the two processes separate.

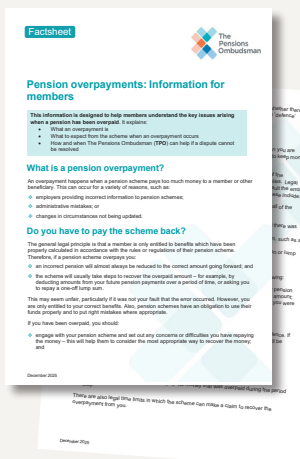
In addition, as a matter of logistics and timing, some schemes may simply wish to have a separate data complaints process in place for June 2026 and then see whether it would be preferable to evolve that process and to integrate it within the IDRPs as practice and experience dictates in the ensuing period.

⚙️ Trustee actions

To help prepare for the changes, trustees should:

- consider who will have authority to decide data protection complaints and what input might be needed from administrators, specialist in house teams or professional advisers
- decide how the new process will sit with your IDRPs and any existing complaints process, eg whether to integrate data protection complaints into IDRPs (with some tweaks) or run a separate process
- put in place and update relevant documents, eg a new data protection complaints process, the IDRPs, other data protection documents (eg privacy notice, data protection policy and any internal process guides for dealing with complaints)
- ensure members know about the new complaints process and where to go next. Typically, data protection complaints will go to the ICO, not TPO
- keep a record of data protection complaints, especially as trustees may need to report numbers to the ICO.

TPO overpayments factsheet



TPO has published a [factsheet](#) to help members and other beneficiaries of pension schemes understand overpayments. It hopes that the information will help both parties to work together to agree whether, how and over what period an overpayment should be recovered and so, in turn, “allow disputes to be resolved at the earliest possible stage”.

Schemes should consider sharing the factsheet with members when informing them of an overpayment or when a member queries the scheme’s attempt to reclaim an overpayment, so members have a “better understanding of this complex area”.

In practice, sending the factsheet to members can be used as a “neutral” explainer to support early engagement and evidence gathering (particularly around any change of position or financial hardship arguments), helping trustees justify a fair repayment plan and hopefully reduce the risk of an IDRPs/TPO escalation.

Standstill agreements

Pause the clock on limitation periods

When a claim is made against someone in the courts, there are a number of potential defences available to them, including “limitation”. Most claims must be brought within a specified time limit, often referred to as the “limitation period”.

Limitation is a complex area of law and the length of the limitation period depends on the type of claim and the facts of the case. However, the basic point is the same: once the limitation period has expired, the defendant can usually rely on limitation as a complete defence.

To guard against limitation expiring while discussions or investigations continue, parties sometimes enter into a **standstill agreement**, which effectively “pauses” time running for limitation purposes for an agreed period.

What is a “standstill agreement”?



- A contract between the relevant parties, which applies in England and Wales, but not Scotland.
- It agrees how time will run for limitation purposes for a defined period (for example, stopping time running, or extending the deadline).
- Typically, the potential defendant agrees not to rely on limitation during the standstill period and the potential claimant agrees not to start legal proceedings during that period.
- Because the legal effect depends on the wording, the parties should be clear (before signing) what the agreement is intended to achieve and when it will end. This will enable the claimant to know how long it has to complete any investigations or take appropriate advice.

How are they used in practice?

Pensions-related claims can be complex and may only come to light many years after the relevant events. As a result, limitation and potential litigation can be a live issue when trustees or employers are also considering how to address the underlying problem (eg if benefits have been underpaid or overpaid as a result of the issue coming to light).

A standstill agreement can be useful where there is a potential claim but the claimant is not yet ready to issue proceedings. It can preserve their position while giving the parties time to investigate, exchange information and explore settlement. Standstill agreements can also be used where parties expect relevant legal or regulatory developments and want to avoid issuing proceedings prematurely.

Why would a potential defendant agree to a standstill agreement?

The benefits to the claimant are fairly clear: they can continue investigating without having to incur the cost of issuing proceedings immediately. However, there can be advantages for a potential defendant too. For example, a standstill agreement may avoid the parties becoming entrenched in formal litigation, provide time to investigate and narrow the issues, and support a negotiated outcome (which may be cheaper than court proceedings).

It can also help preserve relationships (for example, where the defendant is a current scheme provider or adviser) or avoid any negative publicity through a public court claim. Whether a potential defendant is willing to enter into a standstill agreement will often depend on how strong they consider the claim to be and the potential quantum.

Standstill agreements in pensions



Standstill agreements can be used in a variety of pensions related disputes. In practice, we most often see them in the context of potentially invalid scheme amendments and professional negligence claims against advisers. Where a potential claim is being considered and limitation may be in play, it is generally sensible to discuss a standstill agreement well in advance of the relevant deadline. This gives time to negotiate terms before limitation becomes critical.

Give parties more time to investigate

Pension Schemes Act 2026

Covering a wide range of measures, the PSA26 received Royal Assent on 29 April 2026. It introduces a package of measures which are intended to modernise the pension system, drive economic growth and improve retirement security. It also aims to consolidate the DC market in the interests of efficiency and enabling increased investment in the UK economy. The Government's aim is that all measures are in place by the end of 2030.

What does the PSA26 cover?



Beyond the proposed Virgin Media remedy (see below), the PSA26 includes a range of other measures including:

- changes to the treatment of DB scheme surplus, including a new statutory framework enabling surplus to be paid to sponsoring employers in prescribed circumstances
- the establishment of a permanent legislative regime for DB superfunds, replacing existing interim arrangements
- a value for money framework for DC schemes
- new mechanisms to consolidate small deferred DC pots, and
- re-establishes TPO's ability to enforce determinations in overpayment cases without the need for trustees to also obtain a court order.

Virgin Media remedy

In the [Virgin Media case](#), the Court of Appeal confirmed that, for DB schemes contracted out on or after 6 April 1997, certain amendments affecting past or future service benefits were void unless supported by a written actuarial confirmation. To address the uncertainty created by this decision, provisions in the PSA26 are intended to retrospectively validate affected amendments where specified conditions are met. The remedy came into force on 29 April 2026, when the PSA26 received Royal Assent.

An amendment will be potentially remediable where trustees treated it as valid at the time, have not taken positive action on the basis that it was ineffective, and it is not otherwise excluded from the scope of the remedy.

To use the remedy, trustees must obtain written confirmation from the relevant scheme actuary that, on the assumption the amendment was validly made, it would not have prevented the scheme from continuing to satisfy the reference scheme test. The FRC has published technical [guidance](#) to help actuaries provide the retrospective confirmation.

Legislative remedy for Virgin Media issues

TPR guidance



TPR has published [guidance](#) relating to the proposed remedy, which reminds trustees of their statutory duties and sets out TPR's expectations for complying with the legislation. If trustees wish to use the remedy they should:

- ✓ speak to their scheme actuary to establish whether they have sufficient information. Trustees are not expected to carry out exhaustive searches before their actuary undertakes the remediation work
- ✓ agree a practical and realistic timescale for work with the scheme actuary, and discuss the timing with sponsoring employer(s)
- ✓ ensure relevant records are retained until the matter can be resolved, and
- ✓ consider any potential funding impact of validating affected amendments.

TPO determinations

Keep clear records of transfers out

Mrs R (CAS 13126 Z0N2)

Mrs R was a deferred member of the HSBC Bank (UK) Pension Scheme (the “Scheme”), with benefits accrued between 1972 and 1990. Many years later, when Mrs R contacted the Scheme’s administrator, she discovered that their records showed that she had transferred her benefits out of the Scheme in 1992 to an insurer (now part of Sun Life Financial of Canada (UK) Limited (SLFC)). However, Mrs R had no memory of requesting or consenting to the transfer, nor did SLFC have any record of her.

The complaint was brought against both the Scheme trustee and SLFC, with Mrs R asking that one or other accept liability for paying her pension.

TPO upheld the complaint against the trustee finding that, on the balance of probabilities, Mrs R’s pension benefits had not been validly transferred out of the Scheme. Although the Scheme’s records indicated that a transfer had taken place, the trustee was unable to produce clear documentary evidence of a valid transfer. In particular, TPO noted reliance on internal ledger entries and HMRC records which were inconsistent and did not demonstrate that Mrs R’s benefits had been lawfully discharged.

“ Comment

This determination is a stark reminder that trustees must be able to evidence a completed and lawful transfer. Internal accounting records or HMRC data, without supporting transfer documentation, may be insufficient to discharge trustee liability, with evidential gaps likely to be resolved in the member’s favour.

Mr K (CAS 81099 B2P1)

Mr K moved employment from a role participating in the Tyne and Wear Pension Fund – Local Government Pension Scheme (LGPS) to the National Health Service Pension Scheme (NHSPS). This meant he was eligible to transfer his LGPS benefits into the NHSPS on Public Sector Transfer Club terms, subject to strict time limits.

Mr K relied on his employer to complete the necessary administrative steps. Delays by the employer meant the relevant documentation was not completed in time, and Mr K lost the opportunity to transfer on Club terms.

TPO upheld the complaint against the employer, finding that the employer owed contractual and common law duties to take reasonable care to avoid foreseeable harm, and that its failure to act in a timely manner caused Mr K to lose the opportunity to complete a Club transfer. The employer was held liable for any resulting financial loss, as well as for distress and inconvenience.

“ Comment

This determination underlines the risks where time critical pension transfers depend on employer action. Delays in administrative processes can result in loss of chance claims and financial liability, even where the transfer itself is never completed.

Contact

Our market leading pensions litigation team is highly ranked by both Legal 500 and Chambers UK. Our team of pension litigators have 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.

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