

Arcadia Group Pension Trust Limited v Smith [2025] EWHC 11 (Ch)

Facts	Decision	Comment
<p>The Arcadia Group Pension Scheme (the “<u>Staff Scheme</u>”) and the Arcadia Group Senior Executives Pension Scheme (the “<u>Executive Scheme</u>”) are both in the process of winding-up. The Staff Scheme was in surplus, but the Executive Scheme was in deficit. The trustee of the Staff Scheme sought Court approval to amend the rules of the Staff Scheme to allow for the merger of the two schemes so that the surplus could be used to secure the full benefits of the Executive Scheme members.</p>	<p>The High Court approved the proposed exercise of the amendment power, allowing the merger to proceed. The Court found that the merger would not deprive any Staff Scheme member of their benefit <i>entitlements</i> but would simply dilute their interest in any <i>discretionary</i> augmentation on winding-up.</p> <p>The Court considered the close relationship between the Staff Scheme and the Executive Scheme – including that (i) around 50% of the Executive Scheme members had been Staff Scheme members who had transferred on promotion and (ii) the fact that a common approach had been adopted to the management of the two schemes.</p> <p>The Court was also influenced by the additional funding provided to the two schemes following the collapse of the Arcadia Group – where the great majority of the additional funding provided by Sir Philip and Lady Green was paid into the Staff Scheme, as it was thought to be less well funded than the Executive Scheme at that time. Favouring the Staff Scheme in this way meant that the Executive Scheme was the effective source of the surplus that had arisen in the Staff Scheme. For further detail, see the decision here.</p>	<p>This case is a good illustration of the principles a Court will follow when scrutinising proposals to allow one scheme’s surplus to fund another’s deficit, albeit the unusual circumstances of the two schemes are likely to limit the case to its facts. All the evidence showed that the two schemes were intended to be funded to the same level, and the Court found it entirely proper for the trustees to aim to equalise the funding levels via a merger which allowed both sets of members to receive their full benefits.</p> <p>The case also shows that Courts will scrutinise how trustees manage their conflicts when taking significant decisions. In this case, the decision was made by the sole unconflicted trustee and was supported by a KC’s opinion.</p>



Mr N (CAS-102084-N1D3): pension increases: trustee’s miscommunication and provision of more generous pension increases did not override scheme rules

Facts	Decision	Comment
Mr N complained about the trustee applying a 3% cap on pension increases, despite receiving communications from 2005 to 2020 that stated the scheme’s increases were capped at 5% a year. This issue arose because the statutory underpin to increases to pensions in payment was reduced from 5% to 2.5% a year for pensions accrued from 6 April 2005. The underpin “bit” to improve the scheme’s 3% p.a. increases before 6 April 2005, but did not bite for service accrued after that date.	The Pensions Ombudsman (the “PO”) dismissed the complaint, noting the trustee must pay the increases specified in the scheme rules, which took precedence over any moral obligations the members may have believed they were owed by the trustees. The misinformation provided amounted to maladministration but did not create a legal entitlement to a 5% annual cap. Mr N suffered no financial loss, having received a higher pension than that he was entitled to, so no award for maladministration was made.	The various changes in the statutory minimum level of pension increases (particularly the change from RPI to CPI), and how they interact with a scheme’s rules, has generated much litigation and many member complaints. It is helpful to have confirmation of the established principle that a scheme’s rules generally override errors in member communications. For more detail, please find the decision here .

Mr H (CAS-50353-Y4X5): pension increases: employer's assurance to provide "mirror benefits" on transfer to new scheme was legally binding

Facts	Decision	Comment
Mr H transferred to a new pension scheme in 1998 as part of an internal reorganisation following assurances from his employer that his benefits under the new scheme would "mirror" those of his previous scheme, which included specific beneficial pension increase terms. Whilst Mr H received an individual letter setting out his special terms, on which he relied when agreeing to transfer to the new scheme, his benefit promises were never documented in the new scheme’s rules. Mr H complained that the employer and the trustee had not honoured the assurances given on transfer.	The PO upheld the complaint, finding a binding contractual agreement existed requiring the employer to provide special pension increase terms. There was also extensive evidence that the Trustee had agreed to implement these special terms when accepting Mr H’s transfer in – so failing to honour them was in breach of trust. The PO directed that the Scheme should provide the promised pension increases, arrears and interest, and that the employer should pay £1,000 for maladministration.	It is clear from this case that the Trustee and Employer, who received extensive advice and a KC’s opinion on pension increases generally, failed to record the fact that Mr H had been promised special terms. The case highlights the importance of recording and implementing any binding special terms, particularly those granted on scheme mergers. For more detail, please find the decision here .

Mr N (CAS-31532-G2Mo): pension liberation: receiving scheme’s recent registration was a “red flag” but not enough to block transfer

Facts	Decision	Comment
Mr N transferred his pension benefits to another scheme after consulting an unregulated advisor. The trustee initially rejected, but later approved, the transfer in 2013. The receiving scheme then went into liquidation, and Mr N claimed that the transferring trustee failed to warn him of potential scams and his benefits should be reinstated.	Whilst sympathetic to the claimant, the Deputy PO dismissed the complaint, finding the trustee had complied with the due diligence obligations in force at the relevant time. The newly registered status of the receiving scheme was a risk factor but insufficient alone to block the member’s statutory right to transfer. Whilst the trustee failed to provide a “Scorpion” leaflet as required, the member had received it from a separate provider before the transfer out was made and had ignored other warnings.	The Pensions Regulator’s (“TPR”) focus back in 2013, when Mr N transferred out, was on preventing individuals accessing benefits before age 55. As Mr N was over age 55 at the time, there was no clear bar to the transfer. Such a transfer could not be made in the same circumstances now, as the unregulated advisor would be a “red flag”. For more detail, please find the decision here .



Draft Regulations: long-term pension fund clearing exemption

Outline

On 17 March 2025, the draft Pension Fund Clearing Obligation Exemption (Amendment) Regulations 2025 (the “Regulations”) were laid before Parliament. Pension schemes using derivative contracts to hedge investment risks have generally not been subject to the obligations under Article 4 of the UK European Market Infrastructure Regulation (“EMIR”), which ordinarily requires such derivative transactions to be cleared through a central regulated counterparty to reduce counterparty risk.

The Regulations reflect HM Treasury's pledge to maintain the pension fund clearing exemption (following its November 2023 Call for Evidence) – by preventing it from otherwise lapsing on 18 June 2025. There will be no further time limit on the exemption, but the Government has noted that it will keep this policy under review.

At the time of writing, the Regulations remain in draft – see [here](#). They will be enacted following Parliamentary approval under the affirmative resolution procedure.

Comment

The continuation of the exemption reflects the Government’s recognition of the potential adverse impact of its removal. This includes concerns as to (i) reducing pension schemes’ ability to invest in productive assets and (ii) the potential for increased pressure on liquidity management (with the consequent increase in financial stability risk).

The move will be welcomed by trustees and pension fund managers who rely on the existing exemption.

Pensions dashboards: connection and approved standards

Outline

Pension dashboards are planned to be online spaces in which consumers can access information about all their pensions (including their State, workplace and personal pensions) in one place. As of 30 April 2025, the first tranche of pension schemes and providers (those with 5,000 or more relevant members) were due to connect to the Money and Pensions Service (“MaPS”) pension dashboard ecosystem. In light of this, two pieces of guidance have been released to assist with that transition.

The Financial Conduct Authority (“FCA”) has published guidance for FCA-regulated pension providers on how these providers can register their connection to the dashboard ecosystem (as it requires a registration code generated by the FCA). The Pensions Dashboards Programme (“PDP”) has also released approved versions of its standards for the operation of pensions dashboards, including standards on data, technical provisions, the code of connection and on reporting. Standards on the design of pension dashboards are still yet to be finalised following the PDP’s consultation in late 2022.

Comment

Pension providers will need to ensure they keep the PDP’s standards in mind when fulfilling their obligations under the pension dashboards legislation. FCA regulated pension providers must have regard to the FCA guidance, which provides a step-by-step breakdown on how to connect to the dashboards ecosystem.

All providers of relevant pension schemes must be fully compliant with the rules on dashboards by 31 October 2026 by the latest.

The FCA guidance can be found [here](#), and the PDP standards can be found [here](#).

Virgin Media: further updates

Outline

On 25 March 2025, Torsten Bell MP, the Minister for Pensions, announced that the Government was “actively considering” its next steps following the *Virgin Media* litigation. It was noted that the impact of the judgment will vary from scheme to scheme, and that the Government was aware of the uncertainty resulting for both schemes and members. See the brief statement [here](#).

By way of reminder, there has been extensive lobbying of the Department for Work and Pensions (the “DWP”) to intervene. It remains unclear whether the DWP will seek to introduce regulations which would retrospectively “bless” invalid scheme amendments (due to lack of a written actuarial confirmation where this was required).

Comment

It seems that, for now, the pensions industry remains in “limbo” – as we await both (i) further updates from the DWP as to possible regulatory intervention and (ii) the outcome of a related Court case (*Verity Trustees Limited v Wood*). Trustees and employers should continue to monitor developments.



ACA Policy Paper Examines Essential Aspects of the DB Surplus Flexibility Regime

Outline

The Association of Consulting Actuaries (“ACA”) has released a [policy paper](#) which outlines the essential components for a new regime allowing occupational DB pension schemes to release surplus funds. This initiative follows the Chancellor’s announcement, in January 2025, of the Government’s intentions to permit well-funded DB schemes to release surplus. The ACA’s paper identifies critical areas for the legislative framework and guidance, including member protections, trustee roles, and potential flexibilities or restrictions on surplus usage, such as supporting an employer’s pension obligations in a different trust. The paper also advocates for a gradual release of surplus funds to mitigate the risk of large, one-off payments and ensure a stable and predictable release process.

Comment

The ACA’s policy paper is a timely response to the Government’s proposed reforms, providing a comprehensive framework that balances the interests of various stakeholders in DB pension schemes. The suggestion for a gradual release of funds reflects a cautious approach and trustees and employers should continue to monitor further updates from the Government.

HM Treasury's Action Plan for Regulators to Support Growth and TPR Response

Outline

On 17 March 2025, HM Treasury unveiled an [action plan](#) aimed at reforming regulation to bolster economic growth and innovation. The plan addresses the complexity and burden of existing regulations, pledging to reduce uncertainty and challenge excessive risk aversion, and also sets out key pledges from various regulatory bodies, including TPR. TPR’s commitments include reviewing capital reserve requirements for master trusts, developing an innovation framework, reducing unnecessary regulatory burdens, and encouraging schemes to invest in productive assets. These initiatives are designed to have a tangible impact on growth and investment within the next 12 months.

TPR responded to the Government’s action plan detailing five specific commitments it proposes to adopt within the next year. These commitments aim to enhance business confidence, improve the investment climate, and promote sustainable economic growth, aligning with TPR’s responsibilities. To review TPR’s letter in full, see [here](#).

Comment

HM Treasury’s action plan aims to drive a significant shift towards a more growth-oriented regulatory environment.

TPR has, however, highlighted the challenges it is expecting to face in implementing its commitments and the support it will require from the Government, including legislative change, as a result.



TPR: New Framework for Professional Trustee Oversight

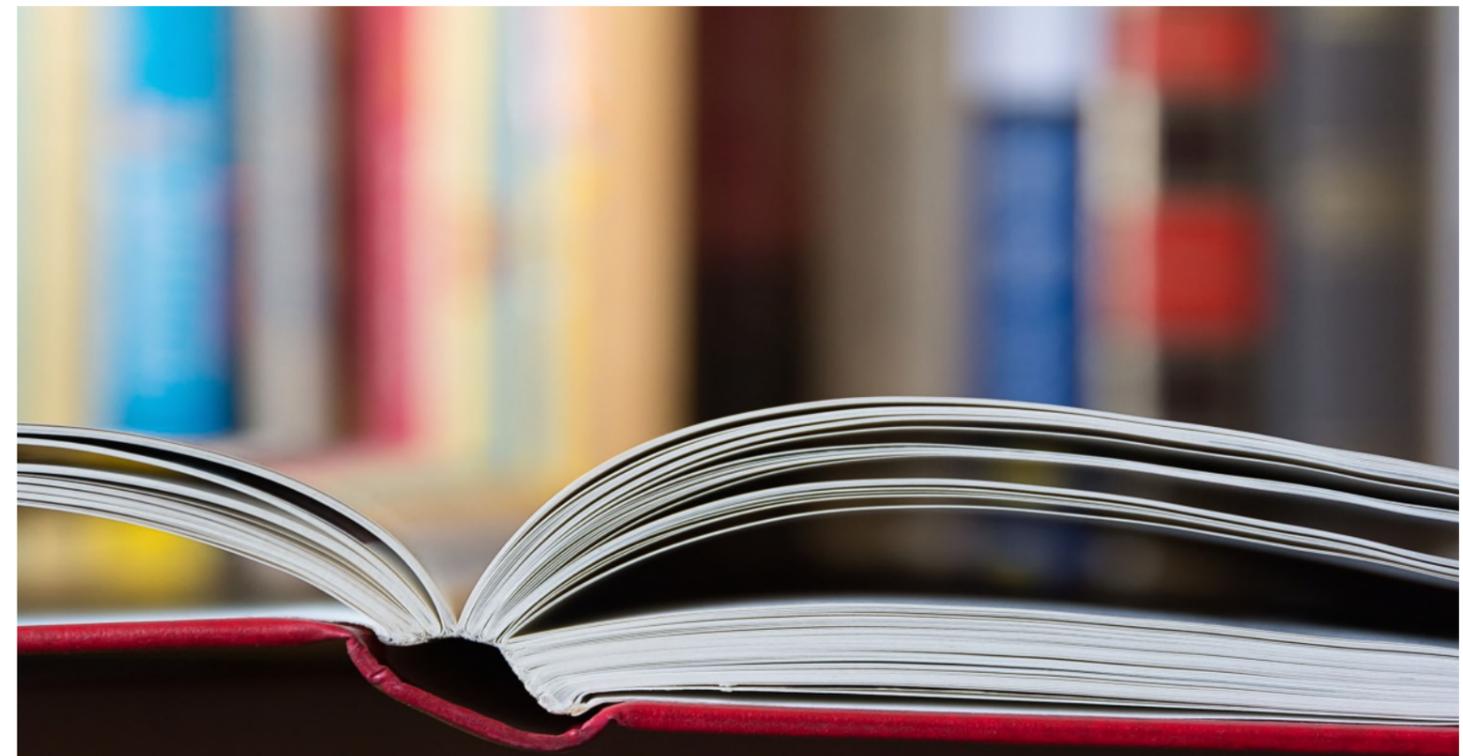
Outline	Comment
<p>TPR has announced that it will be introducing a new framework aimed at enhancing oversight of professional trustees, as part of a shift towards a prudential style of regulation allowing it to address risks at a systemic level. This initiative follows an evidence-gathering exercise from major trustee firms, highlighting diverse business models and a rise in professional trusteeship. TPR plans to establish ongoing supervisory relationships with professional trustee firms from Summer 2025, to address potential risks to outcomes for pensioners. TPR has also published a market oversight report, to identify areas where saver outcomes could be at risk.</p>	<p>Professional trustees can anticipate a heightened level of scrutiny and engagement from TPR.</p>

MGN Pension Scheme: TPR intervention

Outline	Comment
<p>TPR intervened after the MGN Pension Scheme trustees failed to agree on the 2019 triennial valuation with the scheme’s statutory employer. Despite initial challenges, TPR’s enforcement team prompted further negotiations, leading to a mutually acceptable agreement on both the 2019 and 2022 valuations without the formal use of TPR’s powers. The agreement enhanced the scheme’s deficit recovery plan and improved the dividend-sharing arrangement, with the support of the wider corporate group under Reach plc.</p>	<p>TPR is keen to highlight in its regulatory intervention report that it would have taken formal enforcement action if an agreement had not been reached. The report also serves to highlight, however, that TPR generally prefers to encourage parties to reach agreement on funding negotiations rather than step in and impose a valuation settlement.</p>

PASA Updated Guidance on Data Readiness for Buy-Ins and Buyouts

Outline	Comment
<p>The Pensions Administration Standards Association (“PASA”) has updated its guidance on data readiness for pension schemes considering buy-ins and buyouts. This guidance incorporates feedback from insurers and the industry, detailing key data items (and their level of importance) in respect of active, deferred, pensioner and dependant members to ensure smooth transactions. Accurate and complete membership data is emphasised as crucial for achieving better pricing and certainty in buy-in / buyout transactions.</p>	<p>PASA’s guidance is helpful for schemes on their de-risking journeys to assess their data readiness. However, the quality of the data for each scheme, and the specific requirements from insurers on those data items, are likely to vary. Trustees and administrators should therefore also consider the scheme-specific circumstances in managing their data.</p>



UK Pensions Horizon Scanning

A reminder of key upcoming developments in the UK pensions space

2025 developments

Pension Schemes Bill – Summer

Expected to cover: (i) consolidation of small deferred DC pension pots; (ii) Value for Money framework; (iii) retirement products; (iv) DB consolidation; (v) reaffirmation of the Pensions Ombudsman as a competent court; and more

Verity Trustees Limited v Wood – trial ended on 28 March 2025. Judgment not expected before Autumn

Addressed scheme power of amendment issues, and touched on issues arising from the *Virgin Media* litigation

Collective Defined Contribution (“CDC”) Schemes Regulations - Autumn

Regulations will be laid before Parliament extending the legal framework for CDC Schemes to include whole-life multi-employer schemes

Automatic Enrolment Reforms - TBC

Regulations to be introduced pursuant to the Pensions (Extension of Automatic Enrolment) Act 2023 to lower the age threshold for auto-enrolment and reduce / repeal the lower qualifying earnings band

2026 onwards

31 October 2026
Pension dashboards

Mandatory final connection deadline for all in-scope schemes

6 April 2027

Inheritance Tax changes for pensions

Consultation closed on 22 January 2025; draft legislation is expected later in 2025

6 April 2028

Increase in Normal Minimum Pension Age to age 57

The minimum age at which most people can access their pension will increase from age 55 to 57

5 April 2029

Expiration of scheme rules statutory override for Lifetime Allowance abolition

The override facilitates the retention of limits under scheme rules which have been drafted by reference to the Lifetime Allowance

2030

RPI alignment with CPIH