# First Briefing, May 2026
# Virgin Media remedy goes live

The long-awaited legislative response to the Virgin Media judgment is now in force. Following Royal Assent to the Pension Schemes Act 2026, trustees finally have a statutory route to address the uncertainty created by the High Court decision – though it comes with conditions and requires judgement from scheme actuaries.

Trustees can ask their scheme actuary to confirm that scheme amendments would not have prevented the scheme continuing to meet the contracting-out requirements.

Trustees of contracted-out schemes should ask their legal advisers to review their files to establish whether any historical amendments may need to be remediated.

## Why this matters: a reminder of the problem

During the period 6 April 1997 to 5 April 2016, amendments affecting contracted out benefits could only be made if the scheme actuary confirmed in writing that the scheme would continue to satisfy the contracting-out requirements.

## Virgin Media case

Back in 2023, the High Court considered the case of Virgin Media v NTL Pension Trustees II. The rules of the NTL scheme had been amended in 1999 to reduce the increases applied to deferred pensions before retirement. The judgment assumed that the required actuarial confirmation was not obtained.

The Court's key finding was, in the absence of the scheme actuary's confirmation, the 1999 amendment is void. The judge also found that this actuarial confirmation is required for amendments related to both past and future service rights, and also amendments that enhanced benefits.

The employer appealed on one aspect of the decision - whether confirmation was required for both past and future service rights - however this was dismissed.

## Potential implications for schemes

The potential implications are far-reaching. Historical amendments could be void if the scheme actuary's confirmation was not obtained at the time or cannot be found.

## Possible legislative remedy

Following lobbying by industry bodies, the Pension Schemes Act 2026 includes a legislative remedy to the uncertainty caused by the Virgin Media case.

In broad terms, an amendment can be treated as valid provided that:

- The current scheme actuary confirms in writing that it is reasonable to conclude that, had the amendment been validly made, it would not have prevented the scheme from continuing to satisfy the contracting-out requirements.
- The scheme actuary can rely on the information available to them, as long as they believe it is sufficient to form that opinion.
- Schemes have not taken positive action on the basis the amendment was void (for example, informing members that an amendment was void or adjusting benefits on that basis).
- The amendment was not already subject to legal proceedings before 5 June 2025.
- Amendments in the case of certain schemes, including those that wound up or transferred into the PPF, before the legislation comes into force, are treated as having been made validly.

The provisions came into force on the day the Act received Royal Assent, 29 April 2026.

## Guidance for scheme actuaries: judgement, not hindsight

In January the FRC issued guidance for scheme actuaries on how to give retrospective actuarial confirmation of historical amendments. While this may be refined further, it offers useful clarity on how key concepts should be applied in practice.

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In particular:

- ***"Reasonable to conclude"*** does not mean certainty. Scheme actuaries are expected to exercise professional judgement where there is uncertainty.
- ***"Continuing to satisfy"*** requires the scheme actuary to assume the scheme met contracting out requirements immediately before the amendment and to consider only the impact of the amendment itself — not changes over time (e.g. to pay structures)
- Scheme actuaries do not need to put themselves in the shoes of the scheme actuary at the time, nor determine definitively whether the scheme met the requirements afterwards.

In the case of some amendments, e.g. those that do not decrease benefits, the guidance suggests that it might be possible for the scheme actuary to provide the confirmation without any further information.

## TPR guidance for trustees

TPR has issued guidance to remind trustees of their duties and to set out its expectations of the standards required to achieve compliance.

If trustees wish to use the remedy, they will need to give a formal written instruction to their current actuary. They may need legal help to write this.

There is no deadline in the legislation for the use of the remedy. Trustees should agree a practical and realistic timescale with their scheme actuary reflecting the scheme's circumstances e.g. a quick timescale for schemes about to be bought out.

Schemes can proceed in the most efficient and cost-effective way for them. Trustees should also discuss the timing with the sponsoring employer. Trustees who decide not to use the remedy immediately should ensure that relevant documents are not destroyed (e.g. via automatic destruction policies) until the matter is resolved.

Where trustees cannot easily find evidence that actuarial confirmation was obtained, they should consider weighing the cost of trying to find evidence of actuarial certification against assuming that none was obtained and using the remedy.

The legislation allows the scheme actuary to act on the basis of the information available to them, if they consider it sufficient. Before any work is done, trustees should speak to their actuary to find out whether they have sufficient information. TPR does not expect trustees to carry out exhaustive searches before any remediation work is started. The actuary may ask for extra information, which could take many forms, including records of trustee decisions or advice received on historical membership data.

Finally, the scheme actuary will not always be able to provide the required confirmation, at least not at the current time. Trustees should consider the reasons the actuary has given for why they cannot provide confirmation and decide on their next steps.

## What does this mean for affected schemes?

On the face of it, this is very good news, as it may offer affected schemes a way to stop historical amendments being voided simply because actuarial confirmation was not obtained at the time or cannot now be found.

However, the remedy, whilst very welcome, is not necessarily a magic wand that will make all Virgin Media-related problems disappear. For some schemes, some digging through records may have to be done before the remedy can be used. Furthermore, a scheme actuary may not always be able to provide the required confirmation, at least not at the current time.

Now that the Pension Schemes Act 2026 has Royal Assent, trustees might wish to discuss when to use the remedy with their lawyers, scheme actuary and the employer.

## Further information

For further information, please contact your usual First Actuarial consultant.