Housing briefing, June 2025
Virgin Media Ltd v NTL Pension Trustees II Ltd

The Government recently announced that it intends to introduce legislation to address the issues arising from the Court of Appeal ruling in Virgin Media Ltd v NTL Pension Trustees II Ltd.

We spoke to legal experts **Martin McFall (MM) from Trowers & Hamlins** and **Kirsty Thompson (KT) from Devonshires** about this announcement and what it means, including the impact on the TPT court case.

What was the ruling in the Virgin Media Ltd v NTL Pension Trustees II Ltd court case?

MM: The Court of Appeal case produced one of the most significant pension outcomes of recent times. Basically, it decided that any changes made between 6 April 1997 and 5 April 2016 to salary-related pension schemes that were contracted out of the State Pension scheme are void – unless the Scheme Actuary confirmed at the time that the scheme still met the statutory standard.

KT: This confirmation from the Scheme Actuary is often referred to as a requirement for a section 37 certificate, although actually as long as the confirmation was in writing, it did not have to be as formal as a certificate.

MM: The implications for Defined Benefit schemes, including those under the TPT umbrella, are potentially seismic.

KT: Understandably so. The ruling means that any scheme amendments made without that section 37 confirmation would be void. That includes changes to both future and past service benefits – even improvements to benefits, not just reductions.

Why did the ruling in the Virgin Media Ltd v NTL Pension Trustees II Ltd court case impact employers that are responsible for the Defined Benefit scheme run by TPT Retirement Solutions?

KT: TPT runs many schemes that were contracted out during this period.

KT: If section 37 confirmation wasn't obtained, employers could face additional liabilities, as members may now be entitled to different (and more generous) benefits than expected.

KT: While TPT never made explicit comment to employers about whether they were worried about the implications of the Virgin Media decision, the fact that it was deemed necessary to add questions to the claim form about the decision was a strong indication that they were not confident that they were fully section 37 compliant.

MM: Yes, and this will have sent lawyers and Verity Trustees scrabbling round the archives, frantically searching for actuarial certificates or confirmations in writing. The Verity Trustees v Wood case proceeded on the assumed basis that there was no evidence of confirmations having been provided by the Scheme Actuary at the material times (though the facts had not yet been fully investigated).

What has the Government said about the Virgin Media Ltd v NTL Pension Trustees II Ltd ruling?

MM: The Government has said it will bring forward legislation to give affected pension schemes the ability to retrospectively obtain written actuarial confirmation that historical benefit changes met the necessary standards.

KT: However, there is no timetable yet as to when this legislation will be introduced into parliament and when it would be enacted.

What does the mean in practice?

MM: While trustees and their advisers may be breathing a collective sigh of relief at the Government's announcement that legislation will bring clarity around scheme liabilities and member benefit levels, it's too early to say that we are completely out of the woods.

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KT: Yes I agree. It still means a lot of work for affected pension schemes to go back through changes which they introduced between April 2007 and April 2016 to establish which should have had a section 37 certificate. Where there was no certificate, or it cannot be sufficiently proven that there was one at the time, the actuary would then need to issue a retrospective certificate.

KT: This of course assumes that a certificate could have been issued at the time – the Government's intervention will not save schemes for legacy changes for which a section 37 certificate could never have been issued at the time.

MM: Indeed, we haven't seen the proposed legislative *sticking plaster*, and the devil is in the detail, as they say. To that extent, trustees should not just abandon their efforts to understand their position.

Does this mean employers should no longer be worried about Verity Trustees v Wood?

KT: Unfortunately not. The case was always much wider than just section 37 issues. The original decision made by TPT to go to court was made before the decision on Virgin Media had been made and all those issues still need to be determined.

MM: The Government's response to the Virgin Media ruling provides a framework for addressing this discrete issue. This could potentially reduce concerns on this point under the Verity Trustees v Wood case. That said, the case will still have other major ramifications for employers under the TPT schemes.

MM: With this in mind, employers need to be careful that until we see the proposed correcting legislation and the decision in Verity Trustees v Wood, the issue may not have disappeared. Let's not forget that many schemes, including schemes in the TPT master trust, have changed actuaries and advisers over time, and the necessary data and documentation may no longer be available for current actuarial advisers to sign off under new proposed saving legislation, despite pressure from trustees for them to do so.

What is the latest position with the Verity Trustees v Wood court case?

MM: The Verity Trustees v Wood case was heard in February 2025 and we are anticipating that the judgment will be available in autumn of this year.

What should employers be doing now?

KT: We are aware that prior to the Government's announcement of its intention to legislate in the section 37 area, at least some auditors were pressing employers quite firmly about whether they were potentially exposed to additional liabilities due to the Virgin Media case. This pressure may be relaxing again a bit now in light of the Government's announcement.

MM: Employers should maintain a watching brief on the outcome of the Verity Trustees v Wood case and liaise with their auditors and their usual TPT contact once further details are known.

What else is keeping you busy with clients in the sector at the moment?

KT: We have been advising a number of sector employers about their ability to recover an exit credit, where they have exited a Local Government Pension Scheme [LGPS] while in surplus. This has included a judicial review challenge on behalf of a client and securing a decision via the LGPS IDPR [internal dispute resolution procedure] that a fund's decision on non-payment of surplus was invalid.

MM: We are continuing to see clients exploring opportunities to introduce a more equitable pensions offering for their staff as well as managing their LGPS liabilities. Working hand in hand with First Actuarial, we have guided employers in the sector through the risks and challenges of refining their pensions offering and exiting the LGPS, while at the same time securing beneficial employer outcomes with their LGPS funds.

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