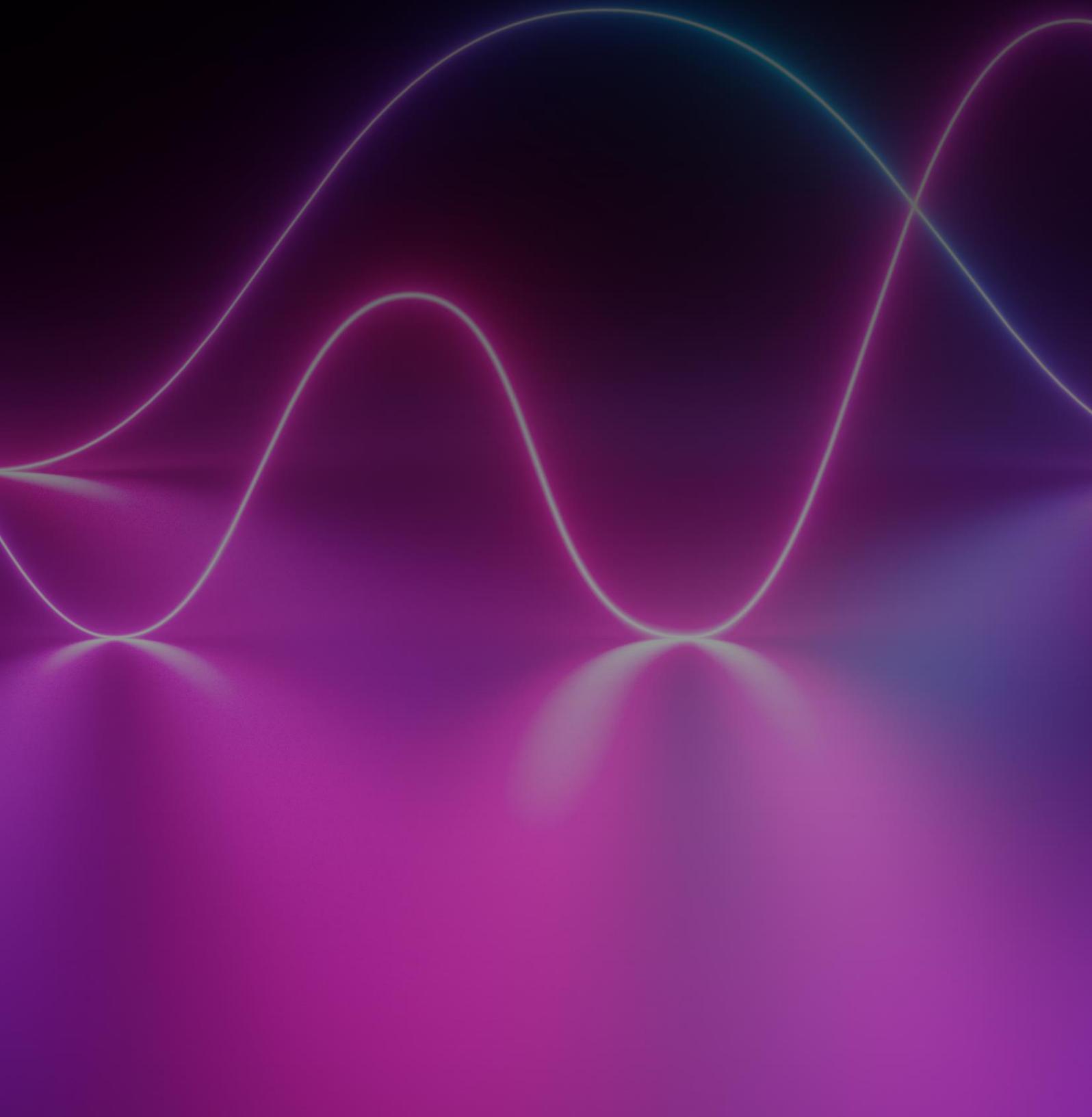


# **Recent pensions cases and Pensions Ombudsman developments**

A summary of key recent pensions cases and Pension  
Ombudsman decisions

February 2026

# Case Law Update



## Case law update

### Court blessing of trustee decisions in scheme wind-ups: the KO UK case and the Arcadia case

Trustees in two recent cases sought court blessing for “momentous” decisions arising during scheme wind-ups. In each case, the transactions were novel, financially significant, and had implications for both members and employers.

#### The KO UK case

- The Coca-Cola Company pension scheme held a surplus of approximately £46 million, with most liabilities secured under a buy-in policy. The insurance structure was unusual and the parties wanted to restructure the buy-in arrangement in order to benefit from the release of a £46 million surplus which would be used for member benefit augmentations. The Trustee therefore sought the court’s blessing for the variation to the buy-in policy, the winding-up of the pension scheme (required in order to release the additional funds) and to the benefit augmentations.
- In settling on this approach, the Trustee had weighed up a “bird in the hand” (immediate augmentation benefiting more members) against a “wait and see” approach (higher potential future surplus but with mortality reducing the number of beneficiaries). Given the maturity of the pension scheme, delay would risk many members not living long enough to benefit.
- The Court approved the “bird in the hand” approach, confirming that the Trustee had acted lawfully, prudently and within its powers throughout the process. It also confirmed that the Court’s role was limited to reviewing the Trustee’s decision-making process, not the merits of the Trustee’s decision.

#### The Arcadia case

- In a case relating to the Arcadia pension scheme, a court blessing was given for use

of surplus in one scheme to repair the deficit in another.

- Two group schemes, the Executive pension scheme and the Staff pension scheme, shared trustees, advisers, and committees and, following Arcadia’s 2019/20 collapse, arrangements were made to share recoveries and maintain funding parity. However, unexpectedly the schemes’ positions reversed such that the Staff Scheme had a £35m surplus and the Executive Scheme had an £11m deficit. Future recoveries were expected to increase the funding disparity.
- It was proposed that the Executive scheme be merged into the Staff Scheme, with the Staff Scheme surplus, in effect, repairing the deficit in the Executive Scheme. Although Staff Scheme members’ contingent surplus expectations would be diluted, surplus allocation in the Staff Scheme was discretionary in any event.
- The Arcadia Trustee sought the Court’s blessing to the merger and an amendment to the Staff Scheme’s rules to permit the merger. The Trustee therefore had to take the unusual step of amending the Staff scheme during wind-up.
- The Court approved the merger and the required amendments, confirming: (i) the amendment power continued during winding up with no additional restriction; (ii) the Trustee could properly take account of the broader context, including historic inter-scheme relationships and the objective of funding parity; and (iii) dilution of the surplus in the Staff Scheme was permissible as any augmentation was discretionary and the Staff Scheme’s stated purpose was to provide members’ basic entitlements, which the proposals would deliver, and not any augmentation.
- This case is helpful in confirming that courts are reluctant to imply constraints on broad amendment powers, although we would always recommend that amendment powers include express wording allowing their continuation during any winding up. The

case also provides an interesting example of surplus in one scheme being used for wider purposes where this is justified by the purpose of the scheme (it was key in this case that application of the Staff scheme surplus was a matter of trustee discretion; if members had been entitled to the surplus, the outcome would likely have been different).

### Interpretation of amendment powers: the 3i case

In a case relating to the 3i pension scheme, the Trustee sought the Court's view on an amendment power restriction which could have affected the validity of a scheme closure, before surplus could be returned to the employer. The Trustee intended to return the £83m surplus to the employer at the end of the scheme's winding up. However, after the *BBC* Court of Appeal ruling, concerns arose that the presence of the word "*interests*" in the amendment power might invalidate the 2010 closure to accrual. The Scheme prohibited amendments that diminished "*accrued rights or interests*". A representative beneficiary argued that "*interests*" protected future service benefits. The employer argued the phrase was "composite" ("accrued" qualifying both "rights" and "interests") and applied only to accrued (past service) benefits. The Court agreed with the employer, confirming that the restriction protected past service benefits only (including the salary link). The judge decided that "*interests*" was not a free-standing term and the wording in the 3i scheme was materially different from that in the *BBC* case.

The decision is helpful in confirming that references to "*interests*" in amendment powers do not automatically restrict changes to future service. It also demonstrates that each amendment power must be construed on its terms. The presence of a word or words in one case does not necessarily mean that the court will apply them in the same way in another.

## Corrective construction: the *Renishaw and the Spirit Legacy* cases

### The *Renishaw* case

- The *Renishaw* pension scheme provided final salary benefits and a money purchase underpin. It was possible to interpret the underpin, which required the annual DB pension to be "*increased so as not to be less than the Member's [DC] Pension Account*". It was possible to interpret this in two ways: the first was described as the "Annual Pension Construction" ("APC"), which compared final salary pension with the *annual* pension purchaseable from a member's defined contribution account. The second was the "Entire Account Construction" ("EAC"), comparing final salary *annual* pension with the *entire* defined contribution account. The Scheme had always used the APC approach in practice. The EAC approach (while arguably what the language of the underpin literally required) would have inflated liabilities from c.£140m to c.£1.6bn.
- The Court found a clear drafting error and applied a remedy known as "corrective construction". This requires there to have been a clear error in the language of a provision and for it to be clear, objectively, what a reasonable person would have understood the parties to have meant. The judge therefore favoured the APC approach, noting that the EAC approach, amongst other things, would make the underpin meaningless as the defined contribution account would always exceed the annual defined benefit pension. This was a common-sense conclusion that demonstrates the courts' willingness to correct errors where the literal meaning would produce irrational or unworkable outcomes. "Corrective construction" is distinct from "rectification" which is concerned with correcting a document whose drafting does not reflect the subjective intention of the parties, based on evidence.

## The Spirit Legacy case

- The High Court was asked to consider an appeal from a Pensions Ombudsman decision. The issue was whether a member's bridging pension should cease at age 65 (the Trustee's view) or 66 (the Ombudsman's and member's view). The dispute turned on the meaning of "State Pension Age" in the Scheme's Rules, which cross-referred to the statutory definition in the Pensions Act 1995. The Court was asked, in particular, to consider whether the statutory reference in the rules was "static" (i.e. it was fixed at the relevant member's state pension age in force when the provision was drafted - in this case, age 65) or "dynamic" (i.e. it was automatically updated to reflect later legislative amendments – age 66).
- The Court preferred the Trustee's view, disagreeing with the Ombudsman who had applied the "dynamic" construction. The High Court found that the key question was whether the legislative reference performed some kind of "normative function" (i.e. to ensure that the pension scheme meets underlying legal requirements that may change over time) or whether the legislation was used as "convenient shorthand" to avoid having to include complex and lengthy drafting in a document. The Court found that this was a case of "convenient shorthand", and that any dynamic construction would effectively tie members' benefits to unpredictable future legislation, which could be followed by exercise of the Scheme's power of amendment if that is what the Trustee and employer wanted to do at the time.
- This decision reinforces the Court's preference for a strict textual and context-sensitive approach to pension rule construction and will be a useful reference point for the principles that must be considered when deciding whether a legislative reference in a pension scheme's rules is static or dynamic.

## Court approved settlement: Places for People

Between 1993 and 2011, several deeds of amendment made benefit changes to the Places for People pension scheme. However, multiple defects in the drafting, execution and validity of the deeds emerged over time, including in relation to the requirements of Section 37 of the Pension Schemes Act 1993 (the subject of the *Virgin Media* litigation). It was agreed between the parties that full litigation to resolve the various issues would have been disproportionately costly and lengthy. The Trustee, employer and a representative beneficiary therefore negotiated a settlement, based on the probability of various legal scenarios being correct, and sought court approval for that settlement.

The Court approved the parties' settlement and confirmed that the process undertaken was rigorous, suitably adversarial and was intended to avoid lengthy litigation – and so brought immediate benefits to members without the costs and uncertainty of a full trial. It also allowed the application for rectification of various deeds whose drafting did not reflect the parties' intentions. The relevant question for the Court to consider, it said, was whether the settlement fell within the range of reasonable outcomes and not whether it was an outcome which the court itself would have reached. While court approved settlement of such issues is not uncommon, it is unusual to have a judgment explaining how the court approaches this type of question.

## Key takeaways from 2025 cases

These 2025 Court decisions highlight several important legal principles:

- The courts will generally review the *process* that trustees and employers have followed in their decision-making, and not the *merits* of the particular decision reached by the parties.
- Broad amendment powers remain flexible unless expressly restricted - but always ensure the power expressly continues during any winding up.
- Legislative cross references must be construed contextually – there is no general presumption that they are static or dynamic.
- Corrective construction remains a valuable tool for clear drafting errors.
- Court approved settlements can be appropriate for resolving complex historic issues when properly and rigorously structured.

continued salary link) be removed. Finally, another “blessing” application will reach the High Court in March relating to the *HSBC Pension Scheme* and a request for approval of a proposed use of surplus.

## What’s coming up in 2026?

The judgment in the *Verity Trustees v Wood* case is still awaited. In this case, the Court was asked to consider a large number of legal questions relating to The Pensions Trust. One of the areas which the industry had been particularly interested in was whether the judgment would address some thorny outstanding questions arising from the *Virgin Media* litigation, notwithstanding the legislative fix set in the Pension Schemes Bill. It is not yet clear whether these questions will be answered in the judgment, which is awaited.

We are also expecting the High Court to hear the *Airea* case in which the High Court is being asked to “rectify” the pension scheme’s rules to correct an earlier error relating to pension increases. Another rectification claim is going to the High Court in the *Soufflet Bairds Malt* case, where the parties are requesting that a power of amendment restriction (which would require a

# Pensions Ombudsman Update



## Pensions Ombudsman Update

A large number of Pensions Ombudsman determinations were issued during 2025, covering a broad range of topics, reflecting the Ombudsman's recent attempts to address its workload backlog – a key aim of its Operating Model Review. In a blog post from October 2025, the Ombudsman noted that case closures had increased by 14% in comparison to the previous year. A continuing feature of the new model has been the issuing of determinations in “lead cases”, offering a guide as to how future decisions on similar topics might be approached by the Ombudsman.

This summary draws out common themes and guidance for trustees and employers across five key areas: overpayments, transfers, pension increases, GMP equalisation and discretionary death benefits.

### Overpayments

2025 saw several notable determinations clarifying how the Ombudsman will approach the recovery of pension overpayments, particularly in relation to the legal defences to recovery. The Ombudsman also published a [factsheet](#) on the recovery of overpayments (see more details below).

#### A determination in which the overpayment was largely not repayable: Mr and Mrs D

- In a further case arising from the Bic pension scheme (the Ombudsman issued the **Mr E** “lead case” determination in 2024) and the incorrect payment of pension increases, the Deputy Pensions Ombudsman held that two members, who had received significant overpayments from the pension scheme, could rely on applicable legal defences - primarily the “change of position” defence - for most of a 20-year period of payment. They had spent the overpaid amounts in good faith and had not been given full information about the issue until 2020. Initial information had been provided in 2013, which the Deputy Ombudsman had found was not sufficient to put the members legally

on notice of the potential overpayment. It was found that the “change of position” defence could apply, meaning that only £766 of the almost £48,000 that was originally overpaid was ultimately repayable by the members.

#### A determination where the overpayment was repayable: Mrs N

- In this determination, a pension calculation error led to a member of the Teachers’ Pension Scheme receiving a higher pension than she was entitled to under the scheme’s Rules for a period of six years. However, unlike in the **Mr and Mrs D case**, Mrs N was found **not** to have relied on the overpayment in good faith; the documentation she had received should have alerted her to the error as it was apparent her salary was significantly higher than it should have been. She was found to have had “Nelsonian knowledge” of the overpayment (a reference to Admiral Nelson knowingly holding his telescope up to his blind eye during a battle in order to ignore a command to withdraw). Although Mrs N had to repay the full amount, she was awarded a significant distress and inconvenience award of £3,000.

#### Other recent developments

- As noted above, the Ombudsman issued a [factsheet](#) at the end of 2025 for members about the recovery of overpayments, which reflects the recent approaches it has been taking in overpayment determinations. Importantly, the factsheet makes clear that, even where it is not the member’s fault, trustees are under a duty to recover any overpayment. It also reiterates the Ombudsman’s earlier advice that trustees should raise with members the potential for a legal defence to apply in each case. The Ombudsman would like trustees to share the factsheet with members when seeking to recover an overpayment.
- In addition, new legislation in the Pension Schemes Bill will simplify the recoupment

process following an Ombudsman determination, meaning that trustees who have gone through a successful Ombudsman process will no longer have to go to the County Court to enforce the recoupment.

## Transfers

Several 2025 determinations revisited trustees' duties in relation to pension scams that took place before 2021, when the "Transfers Conditions" regulations were introduced that provided further protections for transferring members.

### The "lead case": Mr D (British Steel)

- The Ombudsman did not uphold the complaint that the transferring trustees should have undertaken more extensive due diligence before agreeing to the transfer. He found no additional legal duty requiring checks beyond the statutory requirements at the time.

### Confirmation of Mr D approach in later determinations

- The Deputy Ombudsman followed the same reasoning in the **Mr R** and **Mrs T** cases, emphasising that trustees had no duty to warn members of potential scams before the 2021 regulations came into force.

### Liability of receiving trustees for a failed transfer: Mr Y

- In this determination, the receiving trustees were found to owe a duty of care once they agreed to accept a transfer. Failing to obtain HMRC information for several years constituted maladministration, and the trustees were directed to compensate the member for the investment loss (c. £1,700) that he incurred as a result of the failed transfer. The decision highlights the importance of trustees proceeding correctly and efficiently with transfers, and the possible liability that can attach to receiving trustees, even if a transfer does not ultimately go ahead.

## GMP equalisation

In the **Mr N** determination, a member complained to the Ombudsman in relation to delays to pay GMP equalisation top-ups in respect of historic underpaid transfer values. The Ombudsman confirmed that trustees who are making reasonable progress on historic transfer top-ups arising from GMP equalisation were not acting unreasonably, noting also that it is very common for trustees to be working from incomplete data. While the complaint was not upheld, the Ombudsman stressed that projects must not be "unreasonably delayed", signalling continued expectation of progress on these types of project across the industry.

## Transfer SLAs

In **Dr H**, a member complained that certain stages of his transfer process did not meet service-level agreement targets, as set out in his pension scheme's administration agreement. He complained that this had led to delays in his transfer being processed and he incurred resulting investment loss. The Ombudsman held that SLAs are merely targets - not legal obligations - and, in any event, the transfer process had been carried out within the statutory timescales. The case provides welcome reassurance for both trustees and administrators who may be concerned that SLAs in an administration contract could form the basis of a claim by a member.

## Pension Increases

In **Mr L**, the Ombudsman reiterated the long-standing legal principle that discretionary benefits, such as discretionary pension increases, are "just that". Provided trustees follow a proper process and act reasonably, the Ombudsman will not interfere (nor will a court). This confirmation comes at a time of heightened industry focus on discretionary pension increases and so provides a helpful confirmation of trustees' duties in this area.

## Discretionary Death Benefits

Two 2025 determinations demonstrated the Ombudsman's expectation that trustees must go through a full and proper process when paying out a discretionary death benefit. In particular,

they must identify all eligible potential beneficiaries before exercising their discretion, even when the amount of the benefit is considered to be minimal.

- **Mrs E and Mr R:** In this determination, the trustees had incorrectly ruled out two dependants from consideration for the benefit; the Ombudsman directed the decision to be reconsidered.
- **Ms N:** This was a more striking case involving fraud by one child of the deceased member. L&G, as administrator, was criticised for an insufficient investigation to identify all potential beneficiaries and its successor was required to revisit the decision despite the benefit (c. £60,000) already having been paid out.

A key takeaway from these two determinations is that even modest death benefits require trustees to carry out a full and thorough process to *identify* all possible beneficiaries before a discretion is exercised. The Ombudsman noted that a more proportionate process for lower amounts could be adopted at a later stage of the process, for example when gathering information from the potential beneficiaries.



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