

Employer pension briefing, October 2024

Virgin Media Ltd v NTL Pension Trustees

The Court of Appeal has upheld the High Court's ruling in the Virgin Media v NTL Pension Trustees court case relating to section 37 and contracted-out Defined Benefit (DB) scheme amendments.

In this briefing, we outline the key points that employers need to understand about case, and highlight potential actions.

Key points arising from the case

- The Virgin Media Ltd v NTL case concerned the applicability of benefit changes in DB schemes that were contracted-out via the reference scheme test.
- Until April 2016, legislation applying to these schemes required an actuary to provide written confirmation that any changes made to the scheme would not cause it to fail a minimum benefit test.
- The outcome of the case is that benefit changes made in these schemes between 6 April 1997 and 5 April 2016 may be void if that confirmation was not provided.
- If they are void, then benefits may need to be reinstated at their pre-change level, which could result in additional liabilities for employers to fund.
- There is scope for government intervention, which would resolve this potential voiding problem, but it's unclear at present whether this will be forthcoming.

Key potential actions arising from the case

- Auditors may want to understand the implications of the case on the financial reporting of DB schemes. A 'do nothing now' approach may not be appropriate in all cases.

- Sponsors should familiarise themselves with the case and engage with scheme trustees to establish whether they're taking steps to understand how the ruling may affect their pension obligations.

Background to the case

Between April 1997 and April 2016, benefit changes could only be made in most contracted-out Defined Benefit (DB) schemes if the Scheme Actuary had confirmed in writing that the scheme would still meet a minimum benefit test after the benefit changes had been made.

In the case of the NTL Pension Plan, an amendment had been made to the scheme benefits, but written confirmation from the scheme actuary could not be found. Consequently, in June 2023, the High Court ruled that the amendments were void. The case was appealed in July 2024, with the Court of Appeal upholding the High Court's decision.

The implications of this ruling potentially extend to all DB schemes that were contracted out via the reference scheme test.

The Department for Work and Pensions (DWP) has a statutory power to introduce legislation which would retrospectively validate benefit changes.

Three industry bodies have formed a working group, which has proposed to the DWP that it should issue regulations to retrospectively validate any amendments that are voided for the sole reason that written actuarial confirmation was either not obtained or cannot now be found.

It remains to be seen whether the DWP will issue any such regulations.

Implications for employers

Potential for additional pension liabilities

If a rule amendment within the scope of the ruling is void, then benefits might need to be reinstated at the pre-change level. This could result in additional liabilities.

It remains unclear what might constitute actuarial confirmation. Given this, and the potential for DWP intervention, it's unlikely that many schemes will be looking to reinstate benefits to their previous level at this stage.

That said, trustees are likely to be discussing this issue, and many will now be taking legal advice to understand the potential for additional scheme liabilities.

Implications for financial reporting

In most cases, sponsors will need to include some narrative in their accounts to explain the issue.

To inform this narrative, auditors may want to understand:

- Whether any benefit amendments were made between 6 April 1997 and 5 April 2016
- Whether actuarial confirmation of these changes has been located
- Where it has not been located, what steps are being taken to find the confirmation.

Sponsors should be prepared to have these conversations as part of (and ideally early on in) the next audit process. This may trigger investigatory work in cases where the trustees have not yet commissioned legal advice on this issue.

We would not expect auditors to require sponsors to recognise extra liabilities on the balance sheet at this stage. However, in the longer run, any increase in liabilities would need to be recognised through the profit and loss as a past service cost.

A majority of UK companies have a 31 December year-end, and therefore many should be planning for how to tackle this issue now.

Other considerations

The implications of this issue will vary from scheme to scheme, but particular care and attention may be needed where:

- The scheme still has active members – it may be desirable to take steps now to ensure that future accrual is based on the intended benefit structure
- The scheme is close to securing benefits with an insurer or is in the process of wind-up
- Consideration is being given to distributing surplus to members.

Get in touch with our experts

To discuss the contents of this briefing, or any area of pensions, contact our [contact our employer services team](#) or your normal First Actuarial consultant.



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