

Current Legal Issues in Pensions

Presented by
Sonya Fraser and Ben Fairhead

Arc Pensions Law

Agenda



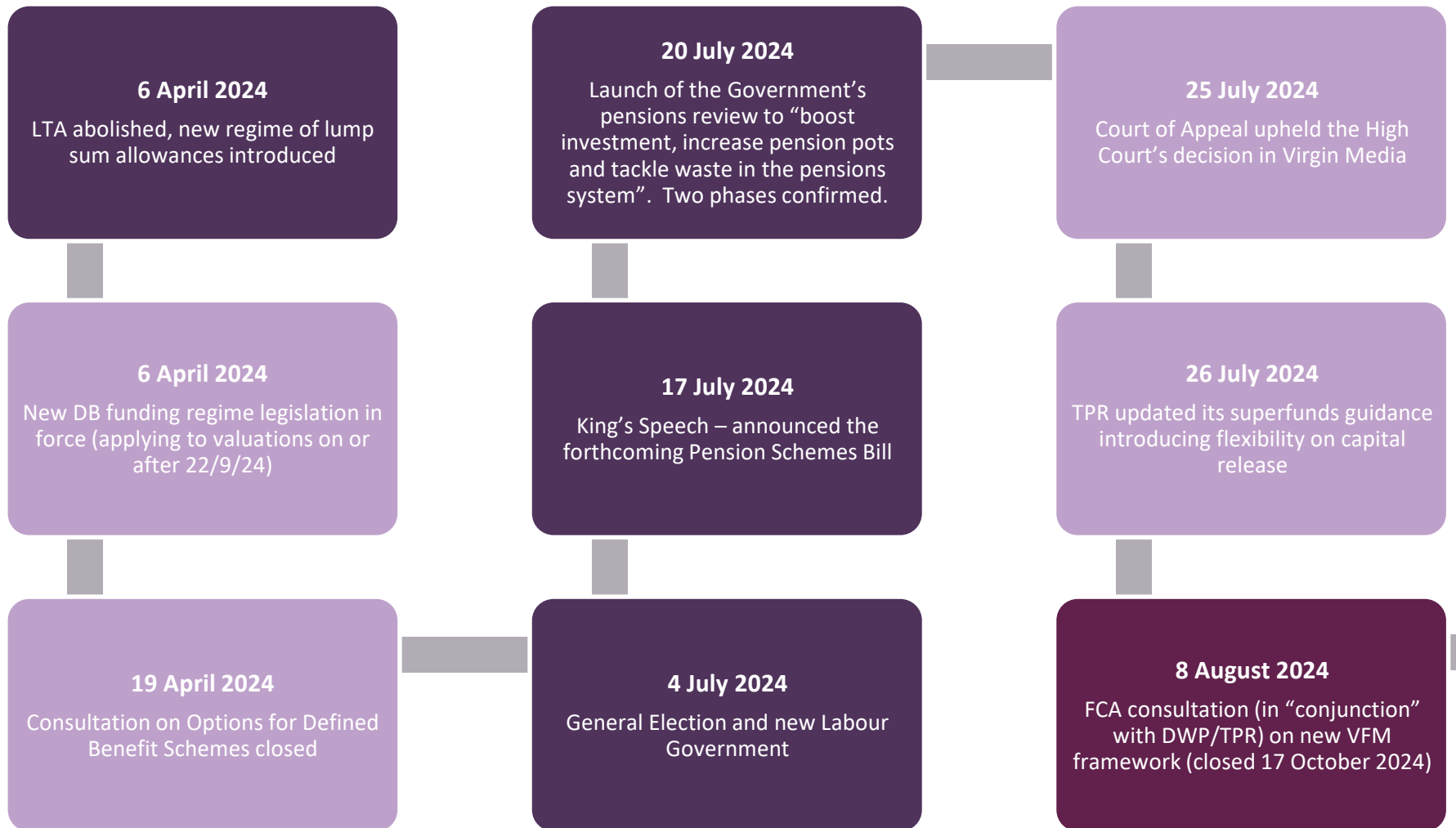
Stock take on the past year's developments

Looking ahead – Pension Schemes Bill and known unknowns

Virgin Media & TPT

TPO – recent changes to procedure

What has been going on over the past year?



What has been going on over the past year?

4 September 2024

Call for evidence launched for Phase 1 of the pensions review (closed 25 September)

8 October 2024

Following the launch of the first CDC scheme authorised by TPR, consultation on draft legislation extending the CDC framework to enable unconnected multiple employer CDC schemes (closed 19 November 2024)

30 October 2024

Autumn budget – changes to IHT on pension death benefits. Technical consultation on proposals published (closed 22 January). Draft Regs expected later in 2025, with the new rules applying from 6 April 2027.

12 December 2024

FCA consultation on proposals for “targeted support” as part of the wider Advice Guidance Boundary Review being undertaken by the FCA and Government (closed 13 Feb)

4 December 2024

TPR published its covenant guidance for the purpose of the new funding regime.

14 November 2024

Mansion House speech setting out plans to create pension “megafunds” to “power growth in our economy”. Phase 1 interim report published, consultations launched (closed 16 January).

28 January 2025

Government announced plans to enable surplus extraction. Detail to come in response to the Options for Defined Benefits consultation

Feb/March 2025

The Pensions Trust case in the High Court (judgment not expected before the Autumn)

30 April 2025

The largest schemes to connect to the pensions dashboard ecosystem under the DWP’s connection guidance

Pension Schemes Bill

Announced last summer –

- New DC decumulation duty on trustees
- Standardised VFM framework for trust-based DC schemes
- Consolidation of small deferred DC pots
- Legislative framework for commercial DB superfunds
- Removal of the need to take a PO decision to the county court before starting recovery of past overpayments through recoupment

May also include –

- Provisions connected to the outcome of the Phase One pensions review
- Provisions re surplus extraction
- A fix to the s37 issue
- Amendments to legislation to enable the PPF to reduce the PPF levy to zero without being prevented from restarting the levy or materially increasing it if needed

Timing -

- In speech at PLSA investment conference, Torsten Bell said the aim is to introduce the Bill before the summer recess
- Note he also said “not everything that could be legislated for will be legislated for in the forthcoming Bill”

The Known Unknowns

Timing of Phase Two of the pensions review

And, linked to that, **auto-enrolment changes** – the 2023 Extension of Automatic Enrolment Act gave power to issue Regulations to reduce the lower age limit and have contributions be calculated from the first pound earned

Public sector consolidator, as explored in the 2024 Options for DB Schemes consultation

Notifiable events – the previous government consulted on draft regulations in 2021 relating to notifiable events and corporate transaction notifications

GMP conversion regulations – we had a GMP conversion act in 2022 intending to make GMP conversion easier but no indication to date of a commencement order or regulations

Transfer conditions - the previous government published a review of the transfer regulations recognising that the incentives red flag and the overseas investments amber flag are causing delays and issues for members and trustees

Virgin Media / TPT

Arc Pensions Law

The Pensions Trust Litigation - Background



- Verity Trustees Limited –v- (1) Katherine Wood (2) Save the Children Fund
- The Pensions Trust:
 - Established 1946
 - 2,500 active employers
 - Over 445,000 beneficiaries
 - Over 50 schemes established
- The litigation:
 - 6 week trial in February/March 2025
 - 31 questions put to the Court
 - Parties
- Groups of questions including:
 - Scope and application of fetter on the power of amendment
 - Provisions dealing with increase to pensions in payment and revaluation of deferred pensions
 - S.37 issues

S37 related issues being considered in TPT

- Which type of amendments fell within scope of s37 (including closure to future accrual)
- Whether a particular document constitutes confirmation in writing
- Whether the next actuarial confirmation of the Scheme continuing to meet the reference scheme test could validate an earlier amendment (for which no written confirmation can be found) and, if so, from what date
- If written confirmation cannot be located, can it be inferred or can the presumption of regularity help
- Whether the exercise of certain scheme powers was an alteration of the rules for the purpose of s37
- If a deed contains both s37 and non-s37 amendments is the whole deed invalid or just the s37 amendments

Virgin Media - limitation considerations

- Breach of contract
 - 6 years from the date of the breach
- Negligence
 - 6 years from when damage is suffered
 - OR 3 years from date of knowledge for the claimant
 - 15 years long-stop from defendant's negligent act

Loss of a chance claims

- Hypothetical contingencies/
actions of third parties
- Did the claimant have a real or
substantial chance of a better
outcome?



Standstill agreements



- Stopping the clock
- Strategically helpful?
- Considerations:
 - What is the “Dispute”?
 - Period in place
 - Confidentiality
 - Don’t take it to the wire!

Final thoughts on litigation

- Formal pre-action letter required
- Potential defences to claims
 - Someone else's responsibility?
 - Other limitation arguments
 - Terms and conditions: liability cap?
 - Causation
 - Has a loss been suffered?



TPO - recent changes to procedure

TPO – procedural changes made

- Expedited decision-making to speed up resolution of complaints
- Need to ensure member has exhausted IDRP
- Enforcing deadlines – extensions harder to obtain
- Refusal of jurisdiction where another body better placed, or if a complaint is clearly misconceived or trivial
- Lead cases approach

Arc Pensions Law

LONDON

100 Liverpool Street
London EC2M 2AT

+44 (0)333 091 2670

LEEDS

Park House, Park Square West
Leeds LS1 2PW

+44 (0)333 091 2670

www.arcpensionslaw.com

Arc Pensions Law is the trading name of Arc Pensions Law LLP, a limited liability partnership registered in England and Wales with registered number OC398641. The LLP is authorised and regulated by the Solicitors Regulation Authority.

A list of names of the members is available for inspection at the LLP's registered address at 100 Liverpool Street London EC2M 2AT. The word "partner" denotes an LLP member, or consultant or employee with equivalent standing and qualifications.

Nothing in this presentation should be taken as constituting legal advice.

© Arc Pensions Law 2024