



Pensions Disputes

Our highlights from 2023

The Pensions Disputes team specialises in resolving issues and problems that trustees and employers might encounter during the life of their pension schemes. In 2023, our Pensions Disputes team advised on some of the leading cases impacting on pensions. The team is recognised for its specialist knowledge, market leading experience and ability to advise across the full range of trustee, sponsor and professional service issues.

NRD equalisation

In the run-up to buy-out, doubts emerged as to whether NRDs had been equalised as intended. The amendment power required employer and trustee consent to the amendment. There was a lack of documentary evidence but we put in place a strategy to plug the gap. Having obtained statements from those involved at the time, we secured Counsel's Opinion which enabled the parties to proceed on the basis the change had been made, saving millions of pounds in unintended liabilities.

Increases and revaluation errors

Trustees had been applying RPI increases for decades. Acting for the employer, we persuaded the trustees that CPI-increases should be applied. Taking a pragmatic approach to avoid court, we negotiated an agreement between the employer and the trustees by which an augmentation was agreed to regularise historic RPI-based increases and it was agreed that CPI would be used going forwards.

Erroneous pension increase rules

Acting for the trustee of a scheme sponsored by a household name, we persuaded the employer that such was the strength of our evidence that the increase rule had been introduced by mistake that the employer agreed to amend the rules, avoiding the costs of a rectification application.

In another matter, on behalf of an employer we have been investigating whether the pension increase provision was introduced and perpetuated in the rules by mistake. That matter is ongoing.

Execution issues

We are advising on a scheme where there are issues with the execution of historic deeds. We have identified ways in which these issues can be resolved, thereby avoiding significant financial implications for the scheme and its employer. The matter is ongoing.

Representative beneficiary work

We are advising members of pension schemes on various applications seeking relief from the court. Those matters are ongoing.

Liability-Driven Investment (LDI) issues

We are advising trustees of a number of schemes on potential claims against various parties arising from the management of their scheme's LDI investments.

Surpluses

We have been advising employer clients on the options for efficiently accessing "trapped" surpluses and advising trustee clients on the extent to which, consistent with their duties, trustees should use surpluses to augment benefits as part of considering proposals to return some of the surplus to employers.

Final salary linkage

Trustees had been advised that the scheme had not severed the final salary link when it closed to accrual. We took a deep dive into the documentation and, working collaboratively with the trustees' legal advisors, were able to advise that there never was a final salary link, saving the funding costs of the increase in liabilities and ensuring the buy-out timetable was not pushed back.

Securing compensation

Where we are unable to find practical solutions to resolve all issues, we switch to seeking compensation for our clients. Over the last 12 months alone we have secured well over £7m for our clients in negotiated settlements whilst avoiding full blown litigation in the High Court.

Overpayments and recoupment

We acted for the principal employer of the CMG UK Pension Scheme in the case heard by the Court of Appeal in 2023. The judgment has significant implications for trustees who wish to recover from beneficiaries past overpayments they received.

Section 37

We act for Virgin Media Limited in the industry-significant "section 37" case heard by the High Court in 2023 following the Trustee's decision to seek Court guidance. The appeal is due to be heard by the Court of Appeal in June 2024.

Drafting errors and increased liabilities

Whilst preparing for buy-out, a drafting error was identified in the scheme rules. Our employer client has an ongoing relationship with the actuarial consultants that caused the error. We worked to secure a deal for our clients that protected it against the potential cost of unintended liabilities.



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