

PENSIONS ON AIR PENSIONS PODCAST May 2025

Dan Schaffer	<p>Well hello and welcome to our second episode of the Slaughter and May pensions podcast, Pensions on Air.</p> <p>I am Dan Schaffer, one of the three pensions partners here at Slaughter and May. Once again, I am absolutely thrilled to be joined by Catrin Young, a Senior Knowledge Lawyer in our team and as one of our feedback listeners called her “the velvet voice of pensions”.</p> <p>Catrin, what do our clients need to know about developments in pensions in April 2025?</p>
Catrin Young	<p>Well – despite the recent glorious weather we have had a bit of a spring shower of announcements and publications from the Pensions Regulator.</p> <p>Only yesterday on 29 April 2025, the Regulator published its latest Annual Funding Statement, the first one under the new DB funding and investment regime. The appendices contain clarification of the covenant guidance published in December 2024 and how trustees should approach their assessment of supportable risk. We will go into more detail on that in next month’s podcast.</p> <p>The other big regulatory development is the Regulator’s plan to increase engagement with professional trustee firms. I think we have all noticed the significant increase in schemes with professional trustees as well as sole trustee appointments.</p>
Dan Schaffer	<p>How will the Regulator’s attention impact in practice?</p>
Catrin	<p>Well Dan, the Regulator has identified three main potential areas of concern.</p> <p>The first relates to conflicts of duty and interest. The Regulator intends to engage with professional trustees on how they manage relationships with the sponsor. This seems to relate to the fact that it is the sponsor who appoints and removes the trustee.</p> <p>The second concerns how trustees prioritise multiple appointments.</p> <p>And the third concern arises from professional trustee firms offering bundled services beyond trusteeship. The issue was highlighted last year in a non-pensions Court of Protection decision where it was held that a trust company’s appointment of their own firm’s asset manager to manage investments constituted a conflict of interest.</p>
Dan	<p>Do we know if TPR is going to go beyond just talking to professional trustee firms about these risks?</p>
Catrin	<p>The first step will be for the Regulator to discuss with professional trustee firms ways in which these risks can be mitigated. It will also highlight good practice. However, ultimately, if it continues to have concerns, it could use</p>

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	its existing statutory powers, for example to remove a professional trustee firm, where appropriate measures are not put in place.
Dan	So what else has April revealed on the Regulator's to-do list?
Catrin	<p>The Regulator continues to focus on DC schemes and the need to ensure that they provide value or consolidate.</p> <p>Its 2025 climate adaptation report noted that whilst climate change remains a threat to the long-term sustainability of schemes, a relatively large number of small DC scheme trustees have limited knowledge of the scale of this threat. This was borne out by a recent survey of DC schemes which showed that less than a fifth had dedicated time or resources to assessing climate-related risks. The Regulator has said that trustees in smaller DC schemes should “upskill or consider consolidating”.</p> <p>We know that the Regulator and the FCA are working on a new value for money framework which will set out how schemes should determine whether they provide value for members or if members would be better off elsewhere. However, whilst we're waiting on that, it's worth remembering that since 2021, smaller DC schemes with assets of less than £100 million already have to complete a detailed assessment of value for members, comparing costs and charges and net investment returns against three other schemes. The Regulator is concerned about the extent to which these requirements are being complied with and has increased the use of its enforcement powers in this area, issuing penalties to 19 schemes totalling just shy of £98,000.</p>
Dan	Did the DC survey contain anything else of interest?
Catrin	<p>The most interesting thing for me was on cyber security. The survey showed that a significant number of schemes hadn't reviewed cyber risks and controls in the last year, and less than half of trustees had received regular training. Although the Regulator didn't draw any particular conclusions about this, the ongoing lack of cyber awareness is concerning given recent press reports about a number of concerted attacks on large Australian pension funds.</p> <p>Where trustees haven't reviewed the cyber risks faced by their scheme recently, it would be a good time to do so. If you are looking for any guidance in this area, the General Code has some helpful checklists. We can also offer trustees bespoke training in this area.</p>
Dan	<p>Indeed, very topical as you say with those cyber attacks in Australia.</p> <p>Another legal development that hit the headlines in April was the Supreme Court decision on the meaning of “woman” in the Equality Act 2010. Do clients need to be aware of any pensions implications of the judgment?</p>
Catrin	<p>Good question.</p> <p>The question before the court was narrow. It was asked to consider whether references in the Equality Act 2010 to “sex”, “woman” and</p>

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	<p>“female” were to a person’s biological sex or could include an acquired gender where someone has a gender recognition certificate.</p> <p>The court concluded that in the Equality Act, they could only be interpreted as referring to biological sex.</p> <p>For almost all purposes, pension schemes have to provide equal benefits regardless of sex so benefits won’t be affected by the decision.</p> <p>Whilst there is legislation that expressly deals with gender reassignment in relation to how you calculate GMPs (as GMP age does differ according to sex), those statutory provisions fall outside the Equality Act and are unaffected by this decision.</p> <p>The only area where we think the decision might have relevance is in relation to sex-based actuarial assumptions. The Equality Act permits the use of sex-based factors, although in recent years there has been a trend towards using unisex factors. The decision makes it clear that sex-based factors for the purposes of the exemption should be based on biological sex which makes sense given that they would be determined by reference to things like biological trends in longevity.</p>
Dan	<p>Well, Catrin the SC ruling wasn’t the only court case being talked about in April was it? I know you’re bursting to tell our listeners about the next instalment of Virgin Media.</p>
Catrin	<p>Indeed Dan - you’re right – and we’re still waiting to hear whether the Government will legislate the issue away.</p> <p>By way of reminder the issue is that where a scheme was contracted out on a DB basis between 1997 and 2016, before making an amendment to the scheme’s rules, a trustee needed to obtain an actuarial confirmation that the contracting out test continued to be met or otherwise the amendment is void.</p> <p>A 6 week High Court hearing in a case called <i>Verity Trustees v Wood</i> concluded on 28 March 2025. The judge now has to decide a long list of issues, some of which are follow on questions to last year’s Virgin Media judgment. We know the court was asked whether actuarial confirmation was needed on a scheme closure or in relation to benefits which were not part of the contracted-out regime; whether recitals in a later deed can rescue an earlier amendment and if subsequent routine certification that a scheme met the contracting-out test might save an amendment.</p> <p>Trower J, the judge who heard the case now has the unenviable task of writing a judgment answering no less than 31 questions, many of which involved sub-questions. I understand the Chancery Court has him listed to hear another case in May so the industry may have to wait until the autumn for the judgment as he may need his summer holidays to write it.</p> <p>Talking of judges, holidays and pensions, Dan it makes me want to ask you a question.</p> <p>Last month, I asked you about the most <u>extreme</u> holiday location where you’ve read pensions law.</p>

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	Can I ask you where's the most unusual holiday place you've worked on a pension case?
Dan	<p>Ooooh that's a nice question. Well I'd have to say it was in a subterranean room, being basted in hot liquid seaweed by a therapist and then wrapped in cling film and a rubber blanketat the thalassotherapy spa Les Thermes in St Malo Brittany. I was working on the High Court stage of RPTCL v Atos. It was there in a semi hypnotic state that I saw the argument that persuaded the Chancellor and the Court of Appeal how to interpret a funding rule in the Railways Pension Scheme. It was a simple four word argument: contributions must be collectible. A funding rule by definition cannot mandate an uncollectible level of contributions. I actually went back to Les Thermes spa after the Court of Appeal ruling and I tried to explain to the therapist that seaweed treatment has beneficial jurisprudential properties but she simply look at me bemused.</p>
Catrin	<p>Now, there's an image I need to forget and forget quickly! I think we had better wrap things up there for this month.</p>
Dan	<p>That's probably for the best. Thank you all for joining us and listening. If you would like to hear more from me and Catrin, please do subscribe to the podcast. Our next episode will air in a month's time.</p> <p>You can subscribe to the Pensions on Air show within the Slaughter and May podcast channel on your preferred podcast platform. If you have any comments on this episode, please do leave us a review.</p>