

# PENSIONS ESSENTIALS

March 2025

## QUICK LINKS

[TPR criticised again for not acting fairly on auto-enrolment penalties](#)

[Pensions dashboards update](#)

[UK data adequacy decisions extended for six months](#)

[Refunding surplus update](#)

[Virgin Media update](#)

[Watch list](#)

## TPR CRITICISED AGAIN FOR NOT ACTING FAIRLY ON AUTO-ENROLMENT PENALTIES

*A micro company has successfully appealed against the issue of a fixed penalty notice under section 40 of the Pensions Act 2008 for failure to submit a declaration of compliance with its auto-enrolment duties. This is the third time Tribunal Judge Hughes has criticised the Pensions Regulator for failing to act proportionately and/or fairly in an application to review a penalty notice. In all three cases, the notices were issued in the second half of 2023 and reviewed in late December 2023/early 2024 so it remains to be seen whether the Tribunal's criticism will result in a change of approach.*

**Background:** The employer building company was formed in November 2018 but did not become subject to auto-enrolment duties until its first member of staff started work on 1 July 2023. The Regulator eventually accepted that the employer had complied with its auto-enrolment duties, save for the requirement to submit a declaration of compliance, which was due by 1 December 2023. Having sent an initial reminder letter on 11 December 2023, the Regulator issued a compliance notice on 29 December 2023, followed by a fixed penalty notice of £400 on 23 February 2024. At that point, the employer's accountant completed the declaration and sought a review, explaining that his client had encountered personal difficulties stemming from family bereavement and the ramifications of the COVID-19 pandemic and assured the Regulator that steps had been put in place to prevent further non-compliance.

**Regulator's response:** In refusing to carry out a review of the penalty notice the Regulator said that *"the appeal grounds do not constitute a reasonable excuse for failure to comply with the requirements of the Compliance Notice or indicate that [the Regulator] has acted unfairly in any way"*. In its response to the Tribunal, the Regulator focussed on demonstrating that the relevant notice had been validly served on the employer but did not address the merits of the employer's review application.

**Tribunal's decision:** The Tribunal was highly critical of the arguments put forward by the Regulator. Notwithstanding that section 43 of the Pensions Act 2008 gives the Regulator discretion to review a fixed penalty notice, it had not sought confirmation of the facts put forward by the employer nor *"queried their veracity or weight"*. It had *"entirely discounted them"* and *"ignored the newness and scale of the company, the possible impact of the extraordinary pandemic on such a small new organisation as well as the impact of a bereavement"*.

This is the third time that the [First-tier Tribunal](#) (and specifically Tribunal Judge Hughes) has set aside penalties issued for auto-enrolment non-compliance. In doing so, he has openly criticised the Regulator for failing to act proportionately and/or fairly and to understand the scope of its own powers on review (see also *Cofal Ltd v Pensions Regulator* and *Gianni's Glasgow Ltd v Pensions Regulator* covered in [July 2024's Pensions Essentials](#)).

The Tribunal was particularly concerned by the Regulator's statement that *"It is irrelevant that the underlying duties may have been met in this case, the Declaration of Compliance was not, and this is an important statutory duty"*. The Tribunal held that these words *"are a somewhat concerning statement for a Regulator to make and indicate a significant failure to*

*appreciate the function of regulation which is precisely to promote the performance of “underlying duties”. The Regulator appears satisfied that it is entitled to issue a penalty and views that as sufficient. I am entirely satisfied that this behaviour unambiguously indicates that “the Regulator has acted unfairly”*”. As such, the Tribunal waived the penalty and directed that the amount payable under the notice should be £0.

The Tribunal’s focus on the significance of the employer’s compliance with its underlying duties (and the implication that a procedural requirement to file a declaration confirming such compliance is of secondary importance) may yet lead to a re-evaluation by the Regulator of its approach. The continued messaging from the Tribunal that complying with the substantive duties of auto-enrolment is far more important than procedural form-filling may encourage other employers to challenge the issue of fixed penalty notices for failure to submit a declaration of compliance in future.

#### **Practical points:**

- *Employers and trustees should be aware of the Regulator’s [automatic enrolment enforcement policy](#) which sets out the factors that should determine its approach to enforcement action.*
- *Consider whether any use of the Regulator’s powers is in line with its policy and with the principles espoused in the recent decisions of the Tribunal.*

## **PENSIONS DASHBOARDS UPDATE**

*With the [30 April 2025 deadline](#) for master trusts with 20,000+ members and personal pension schemes to voluntarily connect to the dashboard ecosystem fast approaching, the Pensions Dashboards Programme has published [a blog](#) setting out seven key steps that providers and schemes should take to ensure they are fully prepared for connection. This comes following confirmation that three of a group of 20 “volunteer participants” have completed their connection journey.*

By way of reminder, the long-stop mandatory connection deadline to the dashboard ecosystem for all schemes in scope is 31 October 2026. However, [DWP has issued guidance](#) (which trustees must have regard to) setting out a staged timetable for connection to the dashboard ecosystem. Whilst the timetable is not mandatory, DWP encourages trustees to follow it “*unless there are exceptional circumstances which prevent them from doing so*” and the Regulator [has also said](#) that it expects scheme to comply with these timescales.

The first DWP guidance connection deadline is only five weeks away and with Heywood, Legal & General and Pension Fusion having [completed their connection journey](#), the dashboard momentum is building. The Pensions Dashboard Programme published a [blog](#) on 18 March 2025 with a reminder of the seven essential things providers and schemes must do to prepare. These are:

- Confirm your connection date from the [DWP’s guidance](#) - the deadline varies depending on the size and type of scheme.
- Decide whether you will connect directly or through a third party, such as a third-party administrator or an integrated service provider. Connecting directly is a lengthy process so plan early.
- Familiarise yourself with the [pensions dashboards standards](#) which set out the rules and requirements for ongoing connection to and operation of the pensions dashboard ecosystem.
- Focus on data, ensuring it is both reliable and up to date. On 3 March 2025, the Regulator also published its [data strategy](#) which aims to improve the quality of data held by schemes by focussing on three key areas. These are the implementation of data principles, widening its approach to data by linking to the wider external data ecosystem and ensuring that all data it collects is directly related to good saver outcomes and supports effective regulation, competition and innovation. This will be a major area of regulatory focus in the months and years ahead.
- Agree your data matching approach, having regard to [PASA’s data matching guidance](#) and seek advice where appropriate.
- Keep up to date with dashboard developments.
- Access further [guidance](#) and support from the Pensions Dashboards Programme’s website.

A particular area of focus for trustee dashboard projects will be to manage and coordinate how any information regarding member AVCs held by a third-party provider will be provided to the pensions dashboards. We have seen reluctance amongst some AVC providers to supply this information to scheme administrators so that the administrators can provide data relating to the member's entire scheme benefit from one source. Instead, they prefer a multi-source approach which allows them to provide any information relating to member AVCs directly to the pensions dashboards. Trustees need to be aware that AVCs are a scheme benefit and they are the party legally responsible for ensuring that the data is displayed on the dashboards. Therefore, to avoid a fine for non-compliance, trustees should put in place a clear, written framework agreement with any AVC providers who insist on a multi-source approach to ensure that they provide the data in a way that complies with the legislative requirements.

Even though many schemes will connect to the dashboard ecosystem in the coming months, it will still be some time before the information will be accessible to members. There is currently no information about when the dashboards will go live but at least 6 months' notice will need to be given by the Government of this date.

#### **Practical points:**

- *Ensure you have a dashboard project plan in place and are working towards the deadlines contained in it.*
- *If you require further detail, please contact us for a copy of our in-depth Dashboards Essentials bulletin.*

## **UK DATA ADEQUACY DECISIONS EXTENDED FOR SIX MONTHS**

*The European Commission has proposed an extension to the UK's adequacy decisions until 27 December 2025. The extension is due to the UK's Data (Use and Access) Bill, which is now awaiting the Report stage at the House of Commons and is expected to pass this spring. Once the new law has been adopted, the EU Commission will assess the UK's new legal framework and decide on its adequacy.*

Under UK data protection law, both trustees and employers are likely to be data controllers in relation to any member data they hold. Where that data is being transferred outside the UK, they are required to ensure that it is adequately protected. Protection can be ensured in several ways including by using contractual provisions or where the country to which the data is being transferred has been recognised by the UK as providing adequate levels of data protection. Similar provisions apply under EU law where personal data is being transferred outside the EU.

The European Commission first adopted its adequacy decisions in relation to the UK on 28 June 2021, being a decision under the EU's General Data Protection Regulation and another decision under the Law Enforcement Directive. These decisions allow personal data to continue to flow freely from the EU to the UK, as the UK has been judged by the EU as offering an "essentially equivalent" level of protection for personal data to that provided under the EU GDPR. Whilst the UK's data protection framework currently continues to be based on the same rules that were applicable pre-Brexit, the Commission remains cautious about regulatory divergence once the UK's Data (Use and Access) Bill becomes law. This extension gives the European Commission time to review the Bill and decide whether the adequacy decisions should extend beyond the end of this year.

#### **Practical points:**

- *Trustees should regularly review their data protection policies and procedures.*
- *Where member data is processed in the EU, trustees should keep up to date with developments in relation to the UK's adequacy decisions and be ready to adopt new data processing contracts if those decisions are not renewed.*

## **REFUNDING SURPLUS UPDATE**

*In his speech at the PLSA Investment Conference in Edinburgh, the Pensions Minister, Torsten Bell, confirmed that a response to the previous Government's Options for Defined Benefit scheme consultation would be published this spring. The consultation closed on 19 April 2024 and sought industry's views on proposals to make changes around releasing surplus in ongoing schemes, as well as establishing a public sector consolidator via the Pension Protection Fund for schemes that are unattractive to commercial consolidators.*

The Minister gave little detail away but did reference a surplus figure of £160bn, which commentators have pointed out assumes a surplus on a low dependency investment allocation basis, as opposed to a surplus on the s.75 buy-out basis which is the funding level at which surplus can currently be extracted under s.37 Pensions Act 1995. The Minister also said that surplus could be released “where it is safe to do so” and “where trustees agree”. This is consistent with the Government’s announcement in January which we covered in [January 2025's Pensions Essentials](#).

There was also a throwaway comment that some trustees may want to examine the position of members with non-increasing pre-1997 benefits when considering the use of surplus. This follows on from [confirmation](#) that the Department of Work and Pensions is working with the Regulator to gather information on the number of schemes that provide discretionary increases on pre-1997 benefits, following a recommendation of the Work and Pensions Committee. The Regulator is also planning to publish the results of these enquiries this spring.

#### **Practical points:**

- *Keep an eye out for the response to consultation.*
- *Trustees should engage with sponsors regarding the long-term strategy for their scheme and whether that includes an interest in running on to generate surplus.*

## **VIRGIN MEDIA UPDATE**

*On 27 February 2025, in response to a Parliamentary Written question, the Pensions Minister [noted industry concerns about the impact of the Virgin Media case on pension schemes, members and sponsoring employers. He said that whilst no final decisions have been made, the Government is actively considering its next steps and will provide an update in due course.](#)*

Between 6 April 1997 and 6 April 2016, schemes could contract members out of the second tier of the state pension on a “reference scheme test” basis. The actuary needed to certify that a scheme continued to meet this test every three years and, generally, when amendments were made, provide confirmation that it was still satisfied. In July 2024, [the Court of Appeal](#) confirmed that where the required confirmation was not obtained in relation to pre 6 April 2013 amendments, amendments would be void. The regulations on amendments changed in April 2013 but written actuarial confirmation continued to be required in relation to future service amendments until the abolition of contracting-out in 2016 and so amendments after April 2013 may also be void.

This has resulted in schemes doing reviews of historic amendments and it is clear that actuarial confirmations cannot now be found in all cases. This is causing considerable uncertainty and as reported in [January 2025's Pensions Essentials](#), the industry has been pressing the Government to pass regulations to deal with the issue. The DWP has given little indication as to whether they are prepared to address or even consider the issue so the Minister’s latest statement has given the industry a small glimmer of hope.

#### **Practical points:**

- *Watch out for further developments in relation to Virgin Media.*
- *Consider your approach to the judgment pending further developments.*

## WATCH LIST

For upcoming developments see our [pensions: what's coming webpage](#).

No	Topic	Effective date or expected effective date	Further information/action
1	Changes to DC scheme governance and disclosure	2025/26 Pension Schemes Bill to be laid before Parliamentary summer recess (currently 22 July 2025).	Anticipated that wording for new value for money framework in occupational pension schemes will be included in the Pension Schemes Bill. The FCA has consulted on the requirements for personal pension schemes.  Draft legislation on consolidating small DC deferred pots also expected in the Bill, along with new obligations in relation to decumulation options.
2	DB consolidation	2025/26 Pension Schemes Bill to be laid before Parliamentary summer recess (currently 22 July 2025).  Public consolidator to be established by 2026, consultation on features closed on 19 April 2024, a response to which is expected in spring 2025.	TPR further updated interim superfund guidance - issued July 2024.  Draft legislation on superfunds expected in Pension Schemes Bill.
3	Pensions tax	Changes are anticipated from 6 April 2027 in relation to inheritance tax (IHT) on lump sum death benefits and inherited benefits.  Changes to be made from 6 April 2026 in relation to need for UK scheme administrators.  Changes to be made to overseas transfer regime from 6 April 2025 to bring transfers to schemes in EU or EEA in line with transfers to schemes elsewhere in the world.	Draft legislation awaited in relation to IHT changes.
4	Repayment of surplus	Further changes to legislation in relation to refunding surpluses in ongoing schemes have no clear date but may be included in the Pension Schemes Bill to be laid before Parliamentary summer recess (currently 22 July 2025).	The Government has announced that changes will be made to surplus legislation but has yet to publish details. Response to Options for Defined Benefit schemes consultation expected in spring 2025.
5	Funding and investment strategy requirements for DB schemes	Legislation came into force 6 April 2024. Funding and investment strategy in place 15 months from date of the first valuation obtained on or after 22 September 2024.  Revised Code of Practice from TPR came into force on 12 November 2024.	Strategy statements will need to be submitted electronically, the format for which will be published in spring 2025.

No	Topic	Effective date or expected effective date	Further information/action
6	Notifiable events for DB schemes on corporate and financing activity	Significant uncertainty about publication of government response to consultation on draft Notifiable Events (Amendment) Regulations. No dates are known as to when any progress will be made.	TPR will consult on an update to Code of Practice 2 (Notifiable Events) and accompanying guidance once DWP have published their finalised regulations and consultation response.
7	Pensions dashboards	Compulsory connection deadline of 31 October 2026 for schemes with 100 or more active and/or deferred members at year end between 1 April 2023 and 31 March 2024. Staging timetable set out in DWP guidance.	All registrable UK-based schemes with active and/or deferred members.
8	Collective defined contribution schemes	Legislation allowing unconnected multi-employer schemes may be issued in 2025.	The Government <b>has consulted</b> on the possibility of extending the legislation allowed collective defined contribution schemes to schemes for unconnected-employers, paving the way for commercial providers to offer such schemes.
9	DC consolidation	Proposals on default funds may come into force in 2030.	The Government <b>has consulted</b> on requiring multi-employer DC schemes to have a maximum number of default funds of a minimum size.

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