SHOOSMITHS

PENSIONS LITIGATION RISK

Ten years on.
Ten years ahead.

A look back at 2016 and a look forward to 2036

Suzanne Burrell | Lynette Lewis

FOR WHAT MATTERS

Agenda

Four lenses on litigation risk

01	**LOOK BACK**	Predictions accuracy?
02	**ESG**	Trustees as litigants, class-action and regulatory exposure
03	**AI + MEMBERS**	Complaints, expectations and procedural control
04	**SURPLUS**	Value creation, competing claims and trustee decision making

2016: the view from Budapest

A decade-old risk map

THE QUESTION THEN

Where would the next wave of pensions disputes emerge?

THE QUESTION NOW

Which risks matured, which receded, and which arrived from a different direction?

2016 → 2026 → 2036

The 2016 risk map

01

MASTER TRUSTS

Scale, governance and accountability

02

DC INVESTMENT PERFORMANCE

Outcomes, scrutiny and evidential risk

03

DISCRIMINATION CASES

Scheme closures and lessons from public-sector cases

A short retrospective, not a complete history

ESG: from stewardship to litigation

Trustees may be claimant, defendant or target of collective pressure

01 When might an investment decision become susceptible to challenge?

02 When does stewardship become an evidential record?

03 When should trustees consider pursuing an investment loss?

DISCUSSION LENS: TRUSTEE AS LITIGANT

Member expectations

The dispute risk is often the gap between legal entitlement and perceived fairness

Risk Transfer?

Member expectations

DISCRETIONARY INCREASES

Why past practice and communications matter

BENEFIT AUGMENTATIONS

When opportunity becomes expectation

AI and member complaints

Could better articulation reduce friction, even while volume rises?

POTENTIAL UPSIDE?

Can AI help a member turn a complex concern into a cogent, coherent complaint?

LITIGATION RISK

More accessible drafting may increase complaints, sharpen allegations and accelerate escalation.

USE CAREFULLY AND CAUTIOUSLY

Process guardrails for AI-assisted complaints

Maintain accessibility without surrendering procedural control

DATA

Warn members against placing unnecessary personal or scheme data into open AI tools.

CLARITY

Reserve the right to request source details and require the complaint to be narrowed.

TRIAGE

Consider how AI-generated volume affects filtering, escalation and processes.

THE IDRP REMAINS THE CONTROL FRAMEWORK

Surplus: asset, opportunity or litigation fuel?

Run-on strategy creates value, but also competing views about who should benefit

RUN ON	Generating surplus creates strategic optionality & opportunity.....but also litigation risk
MEANING OF WORDS	Interplay of the specific and wider rules
PROPER ADVICE	Being prudent – how prudent is prudent enough?
THE RISK OF CONFLICT	Employer expectations, member expectations and trustee decision making

Virgin Media reviews and GMPe

Potential issues for discussion as reviews and equalisation work progress

VIRGIN MEDIA REVIEWS

Execution formalities

Effective dates

Unintended consequences

Limits of amendment powers

GMPE: COMPLETED OR PARTLY COMPLETED

Forfeiture and late claims

De minimis and differing member impact

Conversion: winners and losers

Member understanding and complexity

The next decade

Four questions to carry into 2036

01 Will trustees become more active litigants?

02 Will AI improve complaint quality or quality or multiply disputes?

03 Will member expectations outrun outrun legal entitlements?

04 Will surplus resolve legacy issues or issues or create new contests?

Polling Question

What issues do you think will give rise to litigation/ member complaints over the next 10 years?

SHOOSMITHS

PENSIONS LITIGATION RISK: 2026 - 2036

Questions?

Suzanne Burrell | Lynette Lewis

FOR WHAT MATTERS