

## Last Waltz for IBM Challenge

The Court of Appeal, in the case of IBM Holdings v Dalgleish, has ruled that an employer may reasonably restructure its pension scheme even where that disappoints the “reasonable expectations” of the employees.

The Court of Appeal, in overturning the previous High Court decision, has lowered the bar for employers and provided clarity in the area of contractual pension commitments.

In this issue: [Background](#) | [The Court of Appeal Decision](#) | [Comment](#)

### Background

IBM had undertaken a series of projects to manage its defined benefit (DB) pension liabilities. Against the background of the 2008 financial crisis, IBM finally decided to close its defined benefit pension scheme altogether, except in respect of a small number of employees who were contractually entitled to retain DB benefits. They named this exercise Project Waltz.

Project Waltz involved three essential elements:

- Excluding employees from membership of the DB parts of the pension scheme as regards future service from April 2011,
- Bringing an end to the long standing policy of allowing early retirement from age 50 on beneficial terms for employees from April 2010, and
- Ensuring future increases in salary would not count towards the employee’s final pensionable salary for the purposes of DB rights referable to past service.

Under the scheme rules IBM had the unilateral power to exclude employees from membership of the pension scheme and their consent was needed for early retirement.

The High Court decided in 2014 that, in exercising its non-fiduciary discretion, IBM must justify its decision as a necessary and appropriate response to the circumstances. It decided that statements given by IBM during previous restructuring exercises in 2005 and 2006 had given employees “reasonable expectations” that the scheme would not be closed and the previous generous early retirement policy would continue. There was thus a breach of IBM’s duty of good faith towards its employees, known as its “Imperial duty”, following the case of the Imperial Group Pension Trust v Imperial Tobacco. The Imperial duty is an obligation on an employer not, without reasonable and proper cause, to conduct itself in a manner calculated, or likely to destroy, or seriously damage, the relationship of confidence and trust between employer and employee.

The High Court also attacked the consultation process which it said had not been open or transparent. IBM appealed to the Court of Appeal.

## The Court of Appeal Decision

The Court of Appeal ruled that the High Court put too much weight behind the reasonable expectation of members. Instead they decided to adopt a rationality test, where only relevant matters are considered, following the case of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*.

Under the *Wednesbury* test:

- Only relevant matters (and no irrelevant matters) have to be taken into account; and
- The decision must not be one that no reasonable decision maker could have reached.

The Court of Appeal reiterated that in considering rationality the Court must not substitute its own decision for that of the employer. The fact that the Court would have done something different did not make a decision of itself irrational. Whilst one factor to be taken into account was the reasonable expectation of members, that factor alone (except in extreme cases) was not overriding and the employer was entitled to take its own interests into account and did not have to prove no other course of action was open to it.

The Court of Appeal concluded that it would not be right to prevent Project Waltz from being implemented, and that no further consultation process needs to occur.

## Comment

The Court of Appeal noted the High Court Judge's "extensive specialist experience of the law and practice in relation to trusts, and in particular to occupational pension schemes" yet overruled him on almost every aspect of his judgment. This decision will please employers who have taken steps (or are considering taking steps) to implement changes to occupational pension schemes.

### Authors

Gary Crockford, Technical Services Manager  
Nikki Williams, Senior Technical Consultant

### Produced by the Knowledge Resource Centre

The Knowledge Resource Centre is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your consultant or call us on 0800 066 5433.

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.

Conduent HR Services is a trading name in the UK for Buck Consultants Limited (registered number 1615055), Buck Consultants (Administration & Investment) Limited (registered number 1034719), and Buck Consultants (Healthcare) Limited (registered number 172919), which are private limited liability companies registered in England and Wales. All have their registered office at 160 Queen Victoria Street, London EC4V 4AN. Buck Consultants (Administration & Investment) Limited and Buck Consultants (Healthcare) Limited are authorised and regulated by the Financial Conduct Authority.

© 2017 Conduent Business Services, LLC. All rights reserved. Conduent and Conduent Agile Star are trademarks of Conduent Business Services, LLC in the United States and/or other countries. FYI® and For Your Information® are trademarks of Buck Consultants, LLC in the United States and/or other countries.