

Pensions: what's new this week

Welcome to your weekly update from the Allen & Overy Pensions team, bringing you up to speed on all the latest legal and regulatory developments in the world of occupational pensions.

Box Clever: TPR wins in Court of Appeal | ESG and stewardship: new PLSA guide

Box Clever: TPR wins in Court of Appeal

The Court of Appeal has unanimously dismissed an appeal by Granada and ITV in the long-running Box Clever litigation: [Granada UK Rental & Retail Ltd & anor v the Pensions Regulator & anor](#).

Box Clever was a joint venture between Granada and Thorn. In 2011, the Determinations Panel of the Pensions Regulator (TPR) decided to issue financial support directions (FSDs) against five Granada/ITV companies (the Targets), requiring financial support for the Box Clever pension scheme. Since then, the case has been the subject of protracted litigation. Most recently, the Upper Tribunal ruled in May 2018 in favour of TPR, upholding the FSDs (to read more, see [WNTW](#), 29 May 2018).

The Court of Appeal considered three grounds of appeal and concluded that:

- The legislation permits TPR, when deciding whether to exercise the FSD power, to take into account relevant matters that occurred before the statutory power came into force.
- The Upper Tribunal was correct in its view that the Targets were associated with an employer. The Targets had argued that this was not the case for reasons related to the appointment of administrative receivers in 2003.
- There was no error of law in the Upper Tribunal's assessment of the reasonableness of issuing the FSDs. The Targets had argued that the Tribunal had reached a decision that no reasonable Tribunal could have reached.

The case is inevitably fact-specific and, with the passage of time, some aspects are unlikely to have wider application (such as the issue about the events occurring prior to the legislation coming into force). The Court of Appeal's decision contains some useful commentary on the statutory framework for FSDs; it also illustrates that the court will apply a high bar to an appeal against a decision of the Upper Tribunal on reasonableness.

ITV reportedly intends to seek permission to appeal from the Supreme Court.

ESG and stewardship: new PLSA guide

The Pensions and Lifetime Savings Association (PLSA) has published new [guidance](#) for trustees on ESG and stewardship duties, as well as further [case studies](#) and a [list of questions](#) to ask advisers.

This follows recently-published regulations extending content requirements for Statements of Investment Principles, and related disclosure obligations – for more information see our new guide '[Updating your SIP: new content requirements and disclosure deadlines for pension schemes](#)'.

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