

PENSIONS IN 30 PODCASTS

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CHANGING PENSION ARRANGEMENTS - employer's duty of good faith

Key points

- The Imperial case (Imperial Group Pension Trust Ltd. v. Imperial Tobacco Ltd. [1991] 1 W.L.R. 589) established that an employer owes a duty to pension scheme members (including employees, former employees and dependants of members) when exercising its powers under the scheme.
- Summarised, the employer's duty is not, without reasonable or proper cause, to act in a way calculated or likely to destroy or damage the relationship of trust and confidence between employer and scheme member.
- For the employer to have acted in breach of duty, it needs to be shown that it acted irrationally or perversely, in a way in which no reasonable employer acting in good faith would. Although it is entitled to take into account its own interests in deciding what to do, those interests need to be weighed against any reasonable expectations which employers had created.
- The IBM case (IBM (UK) Holdings Ltd v Dalglish [2014] EWHC 980 (Ch)) has recently considered this area.

Main sources

Imperial Group Pension Trust Ltd. v. Imperial Tobacco Ltd. [1991] 1 W.L.R. 589

IBM (UK) Holdings Ltd v Dalglish [2014] EWHC 980 (Ch)

Summary

The duty of employers to act in good faith towards employees – a duty established in relation to employment contracts – applies equally in relation to the way in which an employer exercises its powers under a pension scheme.

A pension scheme has a term implied into it "that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee".

The duty extends to all the members of the pension scheme, including former employees as well as current employees (as well as dependants of members of the scheme).

More detail

Background

The Imperial case, decided at the end of 1990, has been commented on and approved by the Court on a number of occasions since it was decided. It remains good law. It was recently discussed in the IBM case (which could be subject to appeal).

The Imperial case creates an implied term in an occupational pension scheme, in relation to the employer's exercise of its powers under the scheme.

It is based on the implied term in an employment contract (already recognised in law at the time of the Imperial case) which is "that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee".

More information

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The employment contract implied term arose from the case of *Woods v WM Car Services (Peterborough) Limited* [1981] IRLR 347 which was approved by the Court of Appeal in *Lewis v Motorworld Garages Ltd* [1985] IRLR 465.

Effect

- An employer is under an implied duty, in relation to a pension scheme in which it may exercise powers, 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.
 - This duty exists as part of the pension trust. The member/employee benefits from the existence of this duty under the pension scheme, and does not have to rely on the employment contract relationship here.
 - The duty extends to deferred and pensioner members as well as active members, because the judgment expressly refers to "employees and former employees".
 - This is not a duty on the employer simply to "act reasonably". However, the IBM case stated that the test for breach is whether the employer has acted irrationally or perversely, in a way in which no reasonable employer would have acted.
 - There is nothing in the Imperial or subsequent cases requiring that the employer must reach a decision that is "fair", nor requiring that a decision take account of specific factors. An employer is entitled to take into account its own interests in deciding what to do and, all things being equal, an employer can prefer its own interests over those of its employees.
- However, it cannot act in a vacuum and those interests need to be weighed against any reasonable expectations which employers had created (either directly or through the trustees).
 - It is not necessary to show that the employer had agreed or promised (for example) not to do something. It was enough that members reasonably expected that the employer would not do the thing it went on to do. It was then a question of whether the employer was acting properly in trying to do something despite what employees expected would happen.

It should be noted that the facts in IBM are considered to be unusual. The extent to which it will be followed on less "extreme" facts remains to be seen.

Future developments

The employer's duty of good faith has been the subject of litigation involving IBM. At the date of preparation of this briefing, there is an appeal to the Court of Appeal yet to be heard which could change the position as set out above.

More information

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