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IBM V DALGLEISH SAYS “REASONABLE EXPECTATIONS” ARE JUST THAT – BUT BEWARE THE CONSULTATION REGULATIONS, THE NEW ‘WOLF IN SHEEP’S CLOTHING’

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Legal Briefings

IBM’s emphatic win in the Court of Appeal has been widely acclaimed as a victory for employers seeking to manage their pension liabilities – and rightly so. But could the judgment have a sting in its tail?

It seems as though the saga of *IBM v Dalgleish* has finally burned itself out. Judgment was handed down by the Court of Appeal at the beginning of August, with IBM winning every point of significance and the court unanimously reversing almost all of the High Court’s decisions (that IBM’s actions had been in breach of its legal duties) against which it had appealed. Although the ‘representative beneficiaries’ (the named individuals representing the interests of the scheme’s members, of whom Mr Dalgleish was one) had until the end of August to lodge an appeal to the Supreme Court, we understand they did not do so.

But *IBM v Dalgleish* looks to have left a significant legacy, in providing a degree of much-needed legal clarity on the so-called 'Imperial duty of good faith' which moderates the exercise of a non-fiduciary discretionary power under a pension trust. In particular, the Court of Appeal has limited the circumstances in which 'reasonable expectations' can be used to strike down business decisions that are otherwise rational. The High Court had proceeded on the basis that these expectations, once engendered, had a special status that overrode other business objectives – unless there was no alternative way in which those objectives could be met. The Court of Appeal rejected this approach and held that the High Court should have applied the longstanding 'Wednesbury' rationality test instead.

However *IBM v Dalgleish* also keeps open the possibility that any future breach of the Consultation Regulations by another employer may – in and of itself – lead to a breach of the Imperial duty, and potentially render any resultant changes to pension arrangements unenforceable and of no effect. If this is correct (and although it appears to be what the Court of Appeal said, it made no definitive ruling on this point), then 'the only penalty' for breaching the regulations – namely a £50,000 fine from the Pensions Regulator – is possibly not just 'the only penalty' after all…

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If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.

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