

## Managers brace for legal tasks and precedents

By Catherine Lafferty | 16 December 2013

**2014 preview: The next 12 months should provide extra case law that affects the scheme-employer relationship, further auto-enrolment challenges and preparations for the abolition of contracting-out for defined benefit schemes.**

Lawyers predict the appeal to the Upper Tribunal by broadcaster ITV on [financial support directions made against it on behalf of the Box Clever pension scheme](#) will set important precedents.

Rosalind Connor, partner in the pensions team at Taylor Wessing, said the appeal should address questions about the position of a lender in relation to the scheme as well as the retrospective application of the 'reasonableness' test – whether it was reasonable to issue FSDs for past events.

Connor added: "In addition, we are hoping to receive the final [IBM judgment](#), reviewing the concept of the employer's duty of good faith to a pension scheme. The [Nortel litigation](#) is also continuing in the US and will see some interesting issues on transfer pricing and group pension obligations."

While some schemes have made the switch to CPI from RPI for calculating pension increases, Robert West, head of pensions at Baker & McKenzie, said there remain a wide variety of provisions in scheme rules and promises to individual employees. These could result in complaints to the pensions ombudsman, or High Court litigation.

West also predicted further moves to address the consequences of the 2013 Court of Appeal decision in the Olympic Airlines case, which limited the extent to which English courts have jurisdiction to wind up companies primarily based overseas.

"This has material implications for some UK schemes sponsored by overseas employers, which may not be able to gain access to the Pension Protection Fund if the sponsoring employer is liquidated abroad," he said. "We may well see new legislation to address this issue."

### Managing legislative change

In the political context, [scheme lawyers will be focusing on the government's forthcoming legislation redefining money purchase](#). This will affect a number of schemes that previously thought they were not subject to defined benefit obligations, but under the new legislative regime will have to comply.

They are also watching the government's defined ambition drive to create risk-sharing schemes with less of the DB regulation burden, or new defined contribution schemes with more predictability in outcomes.

Legislation from Europe on data protection will also have a "very significant impact on pension schemes", Connor warned.

The coming year will see further regulatory changes as the authorities contend with the issue of pensions liberation and start to regulate for the new public sector schemes, which will come within the purview of the regulator.

New public sector pension schemes will be rolled out and the great auto-enrolment project will take further steps, with smaller firms due to start enrolling employees into workplace schemes.

Jenny Kreser, head of law firm Silverman Sherliker's pension practice, said: "This could open smaller firms up to legal challenges from scheme members if investment decisions go wrong."

Proposals for [DC scheme governance are being fine-tuned](#), as the regulators consider how to provide a set of proposals that are consistent with legal obligations, as well as the legal differences between occupational and personal pensions, Connor observed.

A considerable amount of preparatory work is expected by legal experts over the next year in anticipation of contracting-out ending in April 2016.

Scheme design, administration, practice and funding issues for all contracted-out schemes will need to be tackled, West warned.