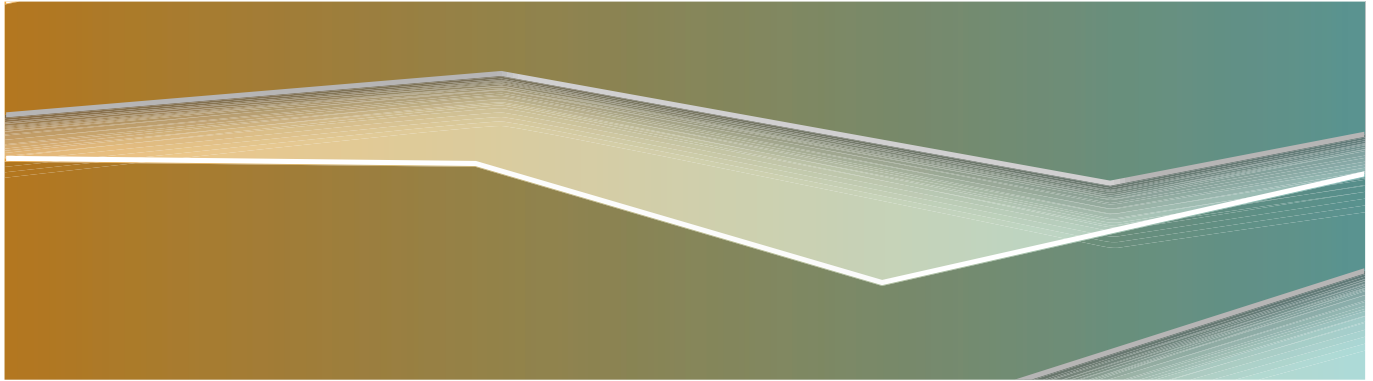


## CAN A PENSION CHANGE BE CHALLENGED BECAUSE IT'S UNREASONABLE?



Can a change to pension arrangements be challenged on the grounds that it's unreasonable despite complying with the letter of the law? The Court of Appeal has considered this issue in two recent cases. The good news for employers is that the Court's judgments set the bar for such a challenge pretty high.

*Bradbury v BBC* concerned changes to the BBC's pension arrangements that involved members being offered a pay rise conditional on them agreeing that only part of it would be pensionable. Mr Bradbury argued that this breached the BBC's duty of trust and confidence as his employer. The Court disagreed. It took into account that the scheme trustees and unions agreed that something had to be done about the scheme's multi-billion pound deficit, otherwise the BBC's pension costs would have affected the quality of its services.

In *IBM v Dalglish* the Court considered the validity of a package of pension changes including ending further benefit accrual, ending a long standing early retirement policy and only granting future pay rises if employees agreed they wouldn't be pensionable. The changes closely followed two other recent rounds of pension changes, which many members had understood would ensure that the scheme continued.

The Court held that an employer's use of its scheme powers should not be overturned unless its decision-making process was flawed or the decision was one that no reasonable decision-maker could have reached. Applying this test, it held that the changes were valid.

What wider message can employers take from these judgments? The BBC case shows that courts recognise that the scale of a pension deficit can mean that there is no "do nothing" option, and that an employer's actions need to be judged in that light. The IBM case suggests courts are unlikely to overturn pension decisions for lack of reasonableness unless a decision is very unreasonable indeed. The difficulty of challenging an employer decision on reasonableness grounds may make it more likely that future legal challenges focus on process, for example claiming that the decision-making procedure was flawed or that the formalities for making the changes were not met. Ultimately, both cases show that pension changes, if undertaken carefully, can withstand challenge and provide a valid means of controlling costs.

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