

Global Policy Advocacy Case Study: BT Pension Scheme

BACKGROUND

We have acted for many years for the BT Pension Scheme, the largest final salary pension scheme in the UK with over 130,000 members and assets in excess of £40 billion.

At the time of privatisation in the 1980s, the sponsoring employer's liabilities in respect of the pension scheme were guaranteed (the Crown Guarantee) by HM Government under the privatisation legislation, in order to protect employees and pensioners (previously with the benefit of a civil service-style final salary pension backed by the Government) in the event that the privatised company entered insolvency.

THE ISSUE

The nature and scope of the Crown Guarantee has been and remains the subject of uncertainty and on-going litigation in the UK Courts. At the same time, questions have been raised as to whether the Crown Guarantee gives rise to State aid issues, and that question has been the subject of a European Commission investigation and subsequently proceedings before the European Courts, which remain on foot.

Those issues have profound consequences for the treatment of the Pension Scheme under the UK pension protection regime, including the Pension Protection Fund and the Pensions Regulator, and it is impossible to resolve questions of jurisdiction, protection, and liability under that regime until the Crown Guarantee and State aid issues are both resolved.

Our team in London and Brussels has worked very closely with the firm's pension lawyers to manage this complex, multi-strand matter, which has included legal proceedings in the UK and European Courts, and engagement with UK Government departments and regulators and the European Commission.

Following a State aid decision by the European Commission finding that certain exemptions from the pension protection regime for schemes with a Crown Guarantee constituted State aid, HM Government sought to implement that decision by amending the UK legislation. However, the proposed amendments had serious unintended consequences for the Pension Scheme and its members, which could leave members without any protection for their pension entitlements.

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WHAT WE DID

We assisted the Pension Scheme in making representations to the Department for Work and Pensions, the Department for Business and the Pension Protection Fund, explaining the legal consequences of the proposed amendments.

That work included drafting formal consultation response and representing the Scheme in numerous meetings with Government officials. We were able to deploy hard-edged legal arguments and advocacy skills to persuade the Government of the issues and to propose solutions. We put together a comprehensive solution, including drafting amendments to the proposed legislation.

THE RESULT

We succeeded in securing crucial amendments to the proposed legislation, and extended escrow arrangements, that prevented the unintended consequences for employees and pensioners and allowed the position to be protected pending the outcome of on-going litigation.

If you have any queries about this case study or our Global Policy Advocacy practice more generally, please contact:

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