

## Contesting Pensions Regulator's action means playing by the court rules (Chappell v The Pensions Regulator)

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**Pensions analysis: James Walmsley, barrister at Wilberforce Chambers, says the Upper Tribunal's (UT) decision in *Chappell v The Pensions Regulator* will be of interest to pensions law practitioners mainly because, subject to any appeal that Mr Chappell may seek permission to bring, and the steps that will be made in terms of enforcement, it brings closure to the pensions regulatory action against him. The decision is also of interest for its application and legal analysis of reinstatement applications when seeking relief from failure to carry out the terms of an unless order.**

*Chappell v The Pensions Regulator* [\[2019\] UKUT 209 \(TCC\)](#), [\[2019\] All ER \(D\) 149 \(Jul\)](#)

### What are the practical implications of this case?

The case of *Chappell v The Pensions Regulator* relates to regulatory action that the Pensions Regulator pursued against Mr Dominic Chappell in relation to his involvement in the notorious purchase of British Home Stores (BHS) in 2015. It will be of interest to pensions law practitioners mainly because, subject to any appeal that Mr Chappell may seek permission to bring, and the steps that will be made in terms of enforcement, it brings closure to the pensions regulatory action against him. The upshot of the decision is that the Pensions Regulator's decision in January 2018 to issue contribution notices to Mr Chappell, in the sum of circa £9.5m, stands and Mr Chappell's challenge to that decision is at an end.

In terms of wider practical implications, the decision will be of interest for its application and legal analysis of the 'relief from sanctions' principles in the specific context of a 'reinstatement application' before the UT. The decision underlines respects in which seeking relief from a transgression of a unless order is in some ways a special case, both in terms of how 'seriousness of breach' is to be assessed, and in terms of how the tribunal's discretion is to be exercised. In particular:

- in assessing seriousness of breach for the purposes of a reinstatement application, one looks to the underlying breach that prompted the unless order, not simply the breach of the unless order itself
- when looking at the underlying breach, where a sequence of related breaches has prompted the unless order, it is the whole sequence that one looks at, not just the underlying breach that finally prompted the unless order
- in relation to the tribunal's exercise of discretion in all the circumstances of the case, an applicant will only be assisted by reliance on the merits of their case if they can persuade the tribunal that they have an unanswerable case

### What was the background?

In March 2015, Retail Acquisitions Limited, a company of which Mr Chappell was at all material times a director and 90% shareholder, purchased BHS Group from a group of companies under the control of the family of Sir Philip Green (March 2015 transaction). BHS subsequently went into administration in April 2016 and liquidation in December 2016. Pensions regulatory action was taken against Sir Philip Green and the 'sell side' of the March 2015 transaction, which led to a widely reported £363m settlement in 2017. The Pensions Regulator also took action against the 'buy side' of the March 2015 transaction and that led to a decision by the Determinations Panel in January 2018 that Mr Chappell be required to pay circa £9.5m to the BHS pension schemes.

Mr Chappell, as was his right, referred that decision of the Determinations Panel to the UT. During the proceedings that followed, Mr Chappell repeatedly missed deadlines in respect of his own pleadings. Though he produced a document on 30 November 2018, he failed to comply with all the relevant requirement of the rules by that date. This

triggered the consequences of a previous unless order and meant that his reference was automatically struck out, subject to any reinstatement application that he might make. He made that application.

### What did the UT decide?

The UT refused the reinstatement application. It concluded that the breaches of unless order were serious and significant, that there were no good reasons for them, and that in all the circumstances, notwithstanding the significant prejudice to Mr Chappell in being deprived of the opportunity to challenge the regulatory action requiring him to pay circa £9.5m into the BHS schemes, the correct course was clearly not to permit reinstatement.

*James Walmsley has a particular specialism in pensions law within his broad commercial chancery practice. Walmsley is recognised for his work in the pensions regulatory field and continues to act for the Pensions Regulator in the long-running Box Clever Financial Support Directions case, and acted for targets of regulatory action in cases such as Nortel and Lehman. Walmsley also acted, and continues to act, for the Pensions Regulator in the various regulatory actions connected with and arising out of the BHS transaction in 2015. He was counsel for the Pensions Regulator in Chappell v The Pensions Regulator.*

*Interviewed by Kate Beaumont.*

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