



## ITV and others v the Pensions Regulator

**The Upper Tribunal has dismissed ITV's endeavour to set aside Financial Support Directions (FSD) issued by the Pensions Regulator obligating ITV to provide financial support to Box Clever Pension Scheme.**

The Box Clever Pension Scheme was formed in 2000 as part of a merger between ITV (then Granada) and Carmelite. The Pensions Regulator began anti-avoidance action in December 2011 following the collapse of Box Clever by issuing FSDs to the organisations that form part of ITV. The FSDs called the organisations to propose how they would financially support the Box Clever Pension Scheme.

The Upper Tribunal has confirmed that the Pensions Regulator was right to use its powers to seek financial support from ITV for members of the Box Clever pension scheme.

Mike Birch, the Pension Regulator's Director of Case Management, said: *"We are very pleased with this ruling which sends a clear message to companies linked with defined benefit pension schemes that we will not hesitate to use our anti-avoidance powers where we believe it is reasonable for them to provide financial support. We will pursue these cases for as long as necessary to protect pension savers and the Pension Protection Fund. This has been a long and complex case, where the targets have raised numerous legal challenges causing significant delays*

*in an outcome being reached. We now hope that ITV will accept the Upper Tribunal's findings and seek to work with TPR to put in place appropriate financial support for the scheme and deliver a good outcome for members."*

This is the first time an anti-avoidance case by the Pensions Regulator has been heard in full at the Upper Tribunal. Mrs Justice Rose and Judge Timothy Herrington, said: *"By their choice of structure for the Joint Venture, the Shareholders extracted considerable cash from the business with no risk of recourse to their assets. They retained an ongoing interest in the merged business with the possibility of further value being generated if the business was successful, but without having to bear any responsibility if the business, whose strategy they continued to determine, subsequently failed."*

ITV has indicated that it will seek to appeal the Upper Tribunal's decision and so this long-running dispute looks set to continue. A spokesman for ITV said: *"ITV is naturally disappointed by the tribunal's decision. ITV continues to believe that the case brought against it is unfair and will be seeking to appeal the decision."*

*If you have any queries please contact your usual 44 Consultant or email [admin@44benefits.co.uk](mailto:admin@44benefits.co.uk)*

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