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# FINANCIAL NEWS

## Lehman-Nortel pensions case goes to Court of Appeal

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The **£2.2bn [Lehman Brothers-Nortel Networks](#)** pensions case, which some fear could scare banks off lending to companies with pensions deficits, opens in the UK's [Court of Appeal](#) today - but a final resolution could take months yet.



Photo: Jim Linwood

The case, which was first brought by the UK Government's Pensions Regulator late last year, hinges on the question of where a company's pensioners rank in the queue of creditors. If the firm goes bankrupt, do the pensioners get paid before banks who have lent the company money?

The Regulator sought to prove that the law in the UK requires that pension funds rank first, ahead of the banks and bondholders. In the High Court in December, Mr Justice Briggs agreed.

But administrators acting for the estates of two bankrupt firms - the bank Lehman Brothers and the Canadian telecoms group Nortel Networks, whose cases are being held together - decided to appeal. There is over £2.2bn at stake in the case, with Nortel's pension deficit estimated at £2.1bn and Lehman's put at £130m.

The appeal begins today, but is unlikely to be resolved before the end of this week, when the Court of Appeal goes into summer recess. It will not re-open until October.

Nick Moser, head of restructuring and corporate recovery at lawyers [Taylor Wessing](#), said the case would ultimately end up in the UK's Supreme Court: "If the administrators lose the appeal, they will be bound to appeal again, as it is very difficult to see how there would be any money left for any other creditors if this judgement stands.

"Equally, if the Pensions Regulator loses the case in the Court of Appeal, it will also be bound to take this as far as it can. The amount involved is so huge."

And he added: "If it does go to the Supreme Court, and is decided there in the Pensions Regulator's favour, that still may not be the end of it. The government has not yet wanted to get politically involved in this case, as they have not wanted to be seen as meddling with the rights of pensioners."

"But if the Regulator wins in the Court of Appeal and Supreme Court, then the government might have to step in and change the law, because of the impact on the wider economy and the ability of banks to lend to companies."

Mr Justice Briggs, in his December judgement, raised this possibility. He wrote: "It may be that Parliament might wish to consider a suitable amendment...to the [Pensions Act 2004], if persuaded as I have been that the conferring of super-priority as expenses upon the financial liabilities...is both potentially unfair to the target's creditors and inconsistent with a decision taken in 2004 not generally to elevate employees' pension claims above the claims of those creditors."

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