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Pensions

## **Pension ruling 'catastrophic' for companies**

**Members of bankrupt pension schemes have been handed a near-blanket guarantee by a radical court ruling that pushes them right up the creditor hierarchy but has been branded "catastrophic" for banks and companies.**



Pension trustees will be able to demand a lump-sum payment from administrators of a failed business ahead of all lenders Photo: Alamy

By Philip Aldrick and Helia Ebrahimi 8:10AM GMT 11 Dec 2010

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In a fundamental shake-up of the corporate debt structure, pension trustees will be able to demand a lump-sum payment from administrators of a failed business ahead of all lenders bar those backed by property assets. Even the administrators will be lower in the pecking order.

Before the ruling, pension claims ranked beneath the riskiest unsecured loans, potentially robbing workers of their retirement income.

In a packed courtroom at the High Court on Friday, Mr Justice Briggs ruled in favour of The Pensions Regulator in its bid to recover funds from Lehman Brothers and Canadian telecoms firm Nortel for the 43,000 members of the insolvent companies' pension schemes.

The administrators of Nortel and Lehman, which went bust with UK pension deficits of £2.1bn and £148m respectively, were contesting the regulator's decision to issue a "Financial Support Direction" (FSD) requiring them to strike an agreement with the pension trustees before disbursing funds to creditors.

Under the current rules, if no agreement is struck the regulator imposes a "Contribution Notice" (CN) demanding the administrator make a payment to the trustees. In a ground-breaking judgment, Mr Justice Briggs ruled that the CN would qualify as an "administration expense" – meaning it must be paid above all but "fixed asset" creditors, even before the administrators take their fees.

"It's a shock ruling, everybody I have spoken to has got their mouths wide open," said Nick Moser at law firm Taylor Wessing. "Administrators will be discouraged from implementing rescues because super-priority for pension schemes could wipe out any return for any other creditor."

Allen & Overy restructuring partner Jen Marshall added: "This will have huge implications for the restructuring industry. It is potentially catastrophic, the decision is totally untenable. For banks and companies, it is an impediment to the rescue culture."

Jonathan Land, business recovery partner at PricewaterhouseCoopers, who advised Nortel's pension fund trustees throughout the two-year case, warned that companies with large pensions deficits, such as British Airways, may find it harder to raise funds as a result.

"This is great for pensioners but will have huge implications for the banks," he said. "Banks will have to wake up to the importance of the pension creditor. They will have a lot more risk to contend with. They should be wary of companies with huge pension liabilities."

Mr Justice Briggs said he regretted having to make the ruling, which he blamed on "a legislative mess". "Parliament might wish to consider a suitable amendment," he added.

"The conferring of super-priority as expenses on the financial liabilities arising from the FSD regime is both potentially unfair to the target's creditors and inconsistent with a decision taken in 2004 not to elevate employees' pensions claims above the claims of those creditors."

The regulator, whose role is to protect both pension scheme members and the lifeboat – the Pension Protection Fund – welcomed the ruling.

The administrators are expected to appeal.