

A long time ago in a member state far, far away...

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On 19 December 2019, an epic story with multiple twists and which many thought would never happen will reach its conclusion. And there will be no droids or Wookies involved. Yes, it's the day we are expecting the ruling of the Court of Justice of the European Communities ("CJEU") in connection with the German case known as *Bauer*. ***This blog does not contain spoilers!***

In a nutshell, Mr Bauer suffered a reduction of around 7.5% of his overall pension benefits as a result of financial difficulties suffered by his former employer. One of the questions the German courts have asked the CJEU is whether an employee could be said to have suffered losses, as a result of the insolvency of his former employer, which are "manifestly disproportionate" if those losses do not amount to more than 50% of his accrued pension benefits.

The decision of the CJEU is the culmination of decisions in cases such as *Robins* (no obligation to guarantee payments in full); *Hogan* (at least 50%); *Webb-Sämann* (potential for a different percentage other than 50%); and *Hampshire* (losses less than 50% could be manifestly disproportionate). The recent *Hampshire* decision is probably most familiar to UK pensions practitioners and has resulted in a lot of work for the Pension Protection Fund (PPF), in particular in relation to its members whose benefits have previously been capped.

The Opinion of Advocate General Hogan, delivered on 8 May 2019, provoked much speculation about the outcome of the *Bauer* decision. In particular the statement that the Advocate General would "*find it difficult to see how the obligation provided for in Article 8 could in principle concern anything less than the full satisfaction of the employee's pension entitlements*".

If the CJEU were to determine that anything less than 100% of a member's benefits could be manifestly disproportionate, there are some potentially significant consequences. Amongst other things, the PPF compensation structure could need a statutory overhaul; PPF levy payments could rise materially; and it would give a fresh outlook on security of benefits for any scheme considering a covenant transfer.

Brexit might still have a hand in limiting the scope of how the CJEU's decision will apply to UK pension schemes. But in the meantime, grab your popcorn and wait for the title sequence to roll...

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