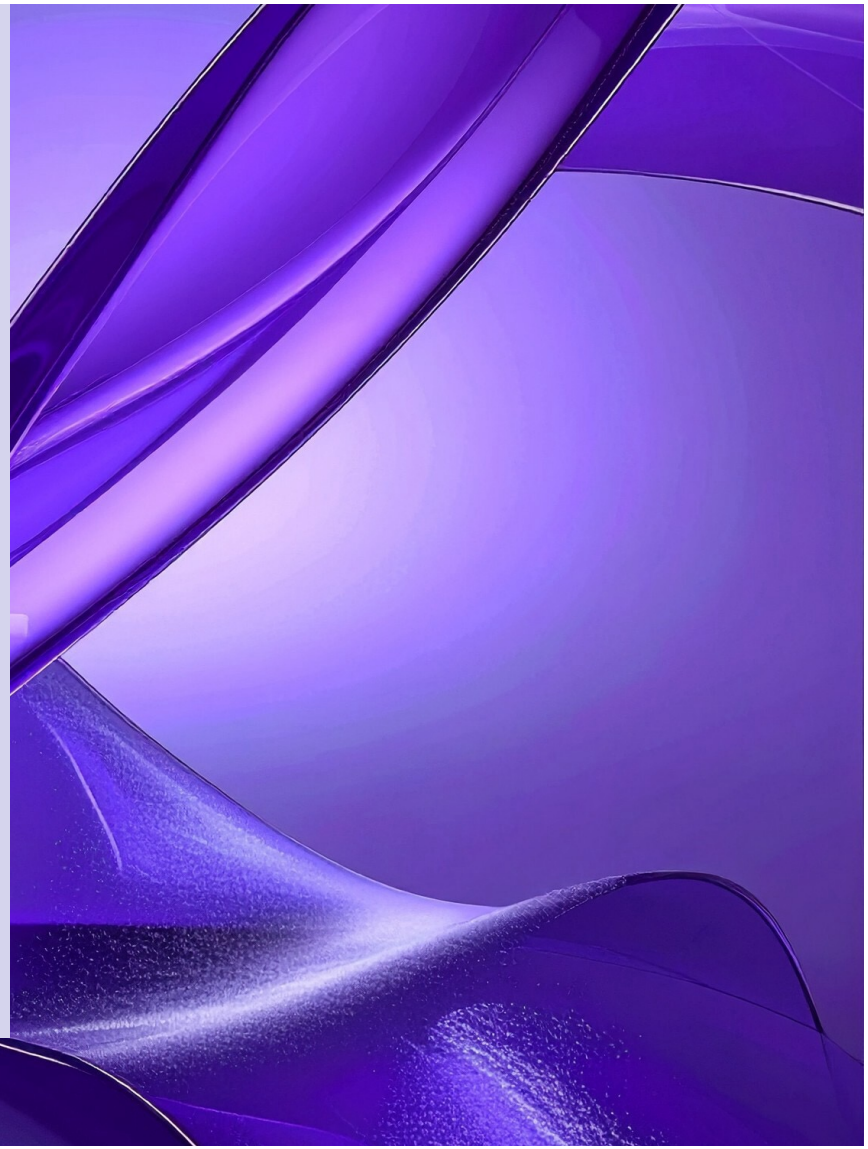
SLAUGHTER AND MAY

Beyond deficits: restructuring and insolvency issues in today's pensions landscape

Charles Magoffin

27 November 2026



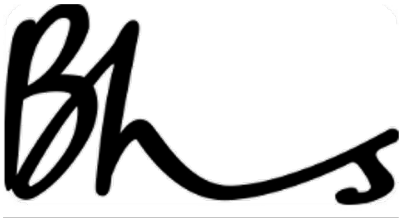
Topics

1. Influence of R&I in DB pensions
2. Refresher: Pensions regime and insolvency
3. Changed DB pensions landscape
4. Some potential scenarios

01

Influence of R&I on DB Pensions

R&I: a driver of change in pensions



LEHMAN BROTHERS

NORTEL

Debenhams

Sea Containers Ltd.

Arcadia

The Pensions Regulator
Making workplace pensions work

02
Refresher: pensions regime and insolvency

Refresher: pensions regime and insolvency

TPR Moral Hazard Powers (2004 Act)

Employer financial distress

↓

Employer insolvency

↓

Section 75 debt (1995 Act)

↓

PPF assessment process or scheme rescue (2004 Act)

↓

Compromise or apportionment of debt (1995 Act)

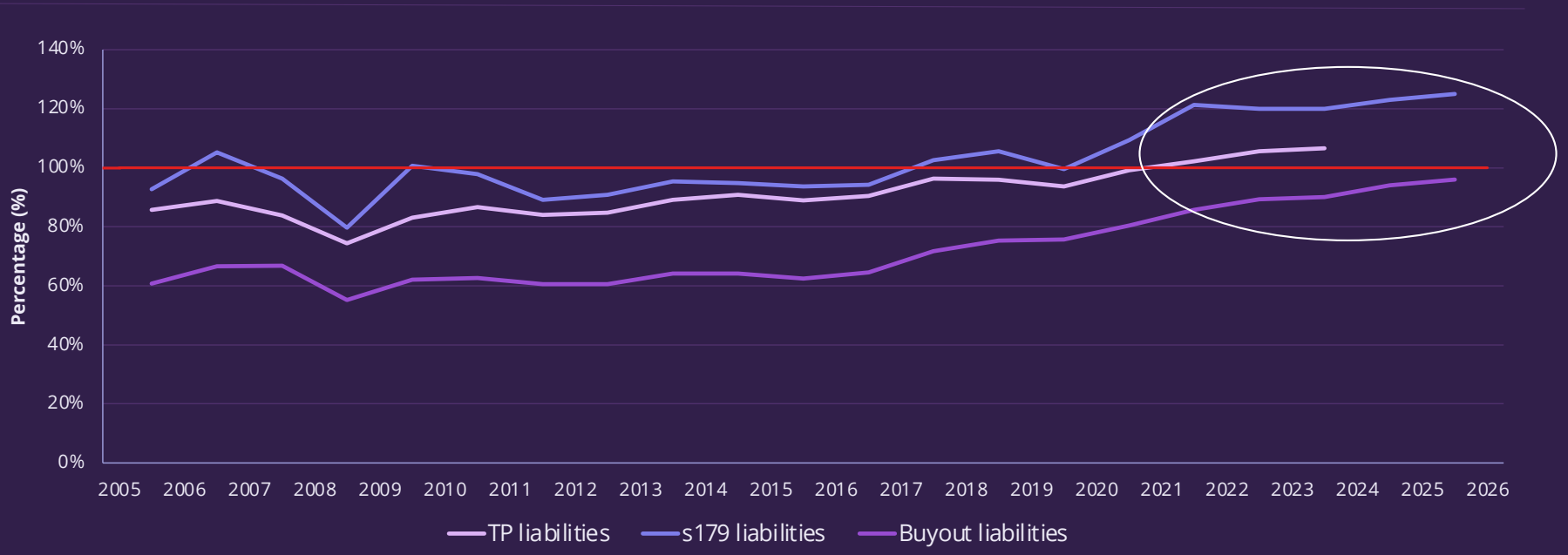
↓

Transfer into PPF or winding-up (1995 Act)

03

Changed DB pensions landscape

DB scheme funding: 2005 onwards



Sources: TPR, *Occupational Defined Benefit Scheme Funding Analysis 2026* (Annex, Table 2.1b), 2005–2013. *The Purple Book*, 2023 onwards.

The current funding landscape



Material buy-out surplus

Close to fully-funded

Well-funded on a low dependency basis

Surplus or full funding on a technical provisions basis

Material deficit (on a buy-out and technical provisions basis)

More choices for trustees and sponsors

- **Full insurance buy-out**
- **PPF plus buy-out**
- **Superfund transfer**
- **Sponsor swap and run-on**
- **Keep scheme and run-on**

04

Some potential scenarios

Some potential scenarios

1 **Separation from scheme's employer**

- A financially distressed employer is removed and replaced with another employer.
- Scheme with material surplus undergoes sponsor swap to third party organisation.
- Transfer to a Superfund.

2 **Proposed payment from ongoing scheme surplus to employer in difficulties**

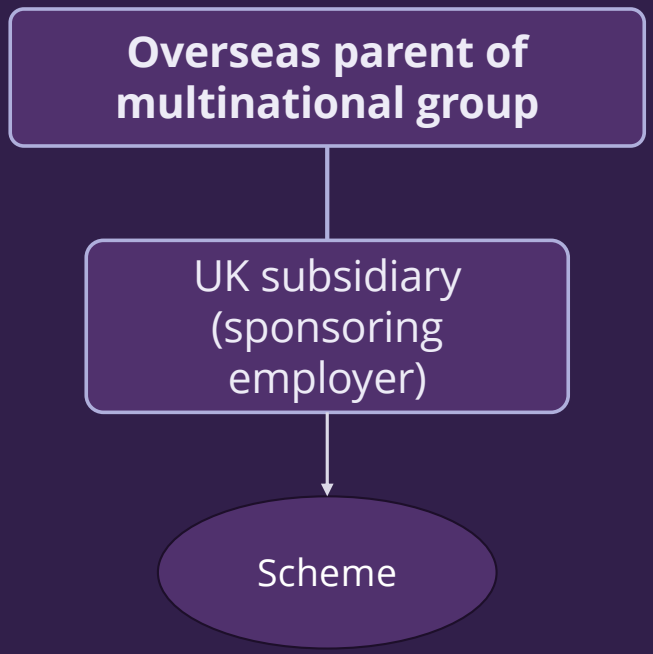
3 **Employer in insolvency process and scheme has material surplus**

- Surplus applied at trustee's discretion under trust deed.
- Surplus applied at employer's discretion under trust deed.

Separation from scheme's employer

Separation from scheme's employer

Scenario 1: A financially distressed employer is removed and replaced with another group employer



£400 million

Scheme liabilities circa.

Close to fully funded on estimated buyout basis.

(£10 million)

Estimated buy-out deficit

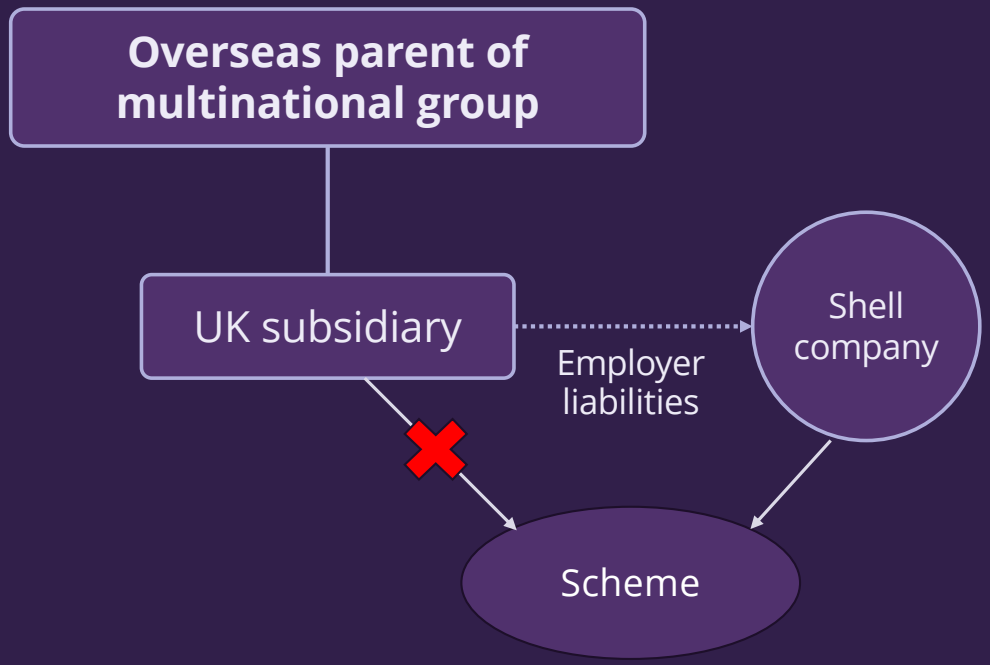
£15 million

Surplus (IAS19 basis)

- Trustee and parent preparing for buy-in of Scheme.
- Parent has been financially supporting the DB Scheme.
- Parent planning to sell distressed UK subsidiary - Scheme cannot transfer with it.

Separation from scheme's employer (cont.)

Scenario 1: A financially distressed UK employer is removed and replaced with another group employer

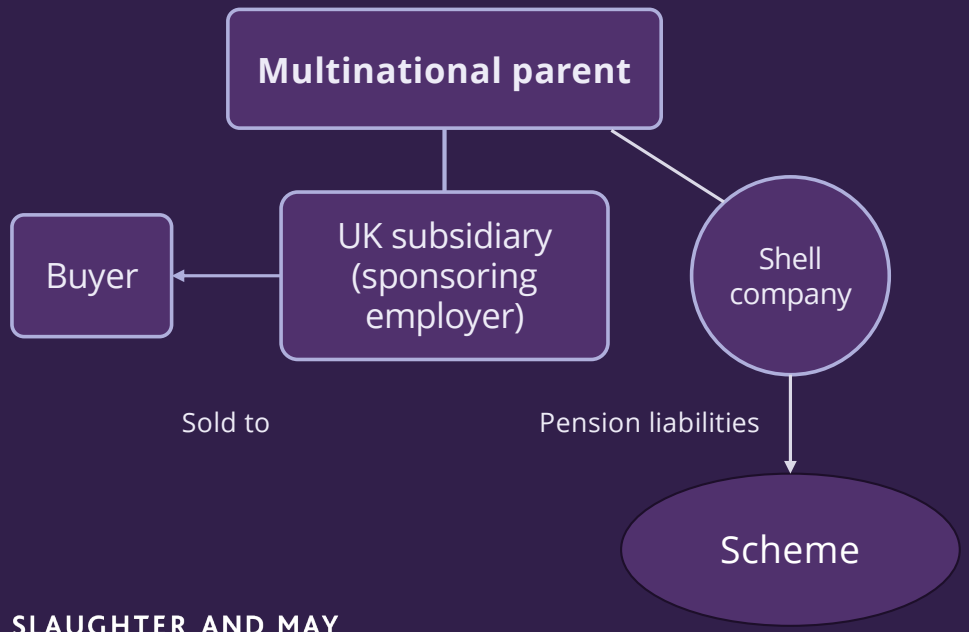


Parent proposes to:

- Move Scheme employer role to shell company subsidiary.
- Enter funding commitments.
- Support Trustee in moving Scheme through buy in and to buyout.

Separation from scheme's employer (cont.)

Scenario 1: A financially distressed employer is removed and replaced with another group employer

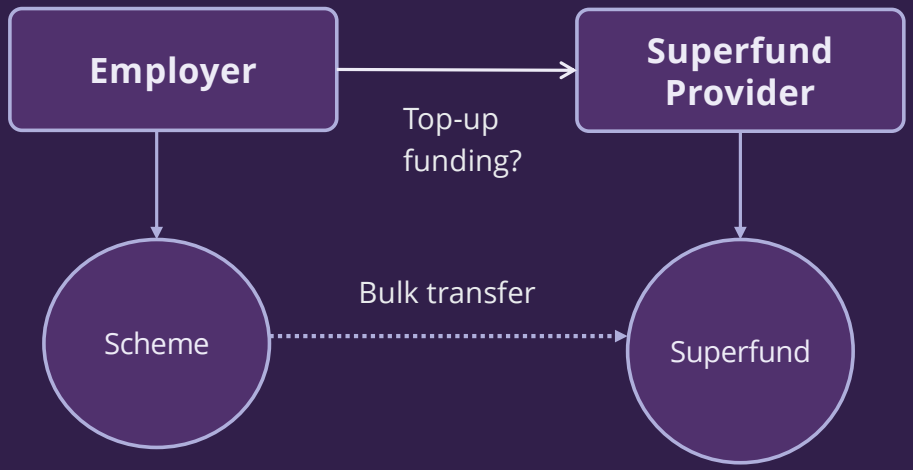


If insolvency process starts within 2 years of the change of employer:

- Transaction at undervalue?
- Unlawful preference or intention to defraud creditors?
- Unlawful distribution?
- What value is attributed to the potential or actual surplus?
- What if the surplus was material?

Separation from scheme's employer (cont.)

Scenario 2: transfer to a Superfund



c.£900 million Scheme liabilities

Fully funded on low dependency basis

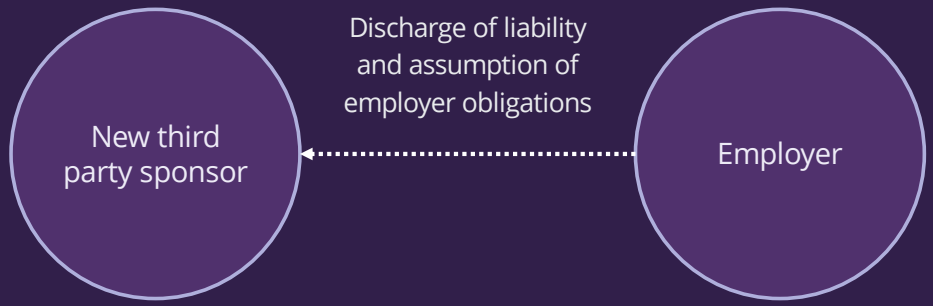
To be run on within Superfund and expected to generate surplus over time

If insolvency process starts within 2 years of the change of employer:

- Transaction at undervalue?
- What value is attributed to the potential or actual surplus?

Separation from scheme's employer (cont.)

Scenario 3: Scheme with material surplus undergoes sponsor swap to third party organisation



c.£900 million Scheme liabilities

Fully funded on low dependency basis

To be run on by new sponsor and expected to generate surplus over time

If insolvency process starts within 2 years of the change of employer:

- Transaction at undervalue?
- What value is attributed to the potential or actual surplus?

Payment from ongoing scheme surplus

Payment from ongoing scheme surplus

Employer in financial difficulties seeks a refund from a material scheme surplus to help fund its turnaround



£1.2 billion

Pension scheme liabilities

£150 million

Buy-out surplus

- If Scheme is wound up, residual surplus paid to the employer unless employer agrees it can be used to enhance member benefits.
- No power to make refund of surplus whilst Scheme is ongoing.
- Employer proposes Trustee make payment to employer whilst scheme is ongoing.

Payment from ongoing scheme surplus

Employer in financial difficulties seeks a refund from a material scheme surplus to help fund its turnaround

Trustee considerations

- Is a payment appropriate?
- What is scheme endgame?
- Are there hidden liabilities?
- Risk reserve buffer?
- How should members benefit?

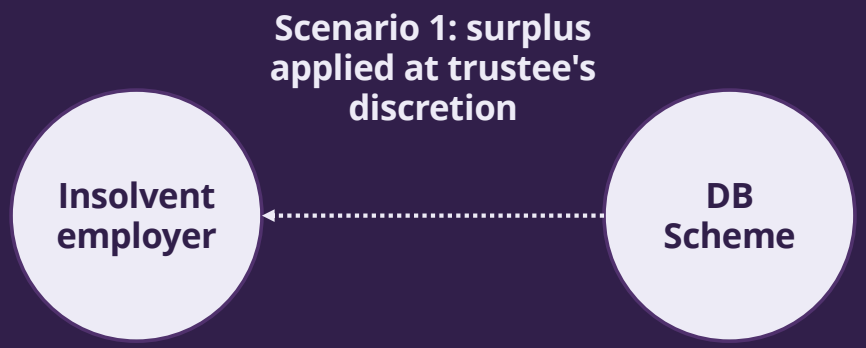
Pension Schemes Act 2026 – statutory power to modify scheme

- expected to come into force in April 2027
- but normal trustee duties will apply when using any such power

Employer in insolvency process

Employer in insolvency process

The employer enters restructuring and its scheme has a material surplus



£900 million	£150 million
Pension scheme liabilities	Buy-out surplus

- Scheme enters PPF assessment period.
- Exits PPF assessment and starts winding up: s154 PA 2004.
- Eventual winding-up may be lengthy: s132(2)(b) PA 2004.

Employer in insolvency process (cont.)

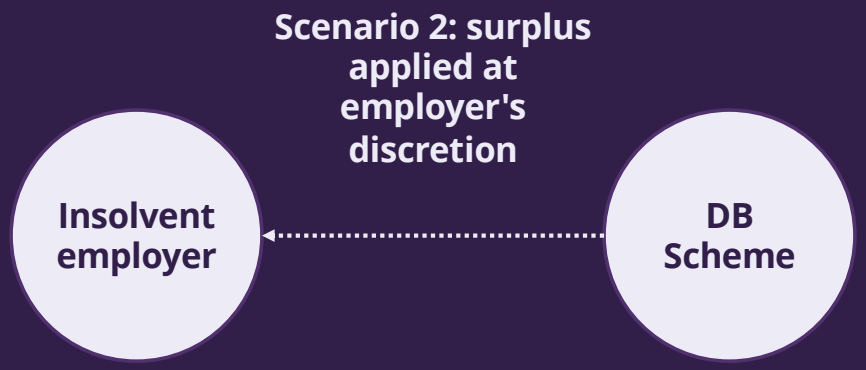
The employer enters restructuring and a scheme is in material surplus

Relevant trustee considerations include:

- Scheme purpose and trustee role (*British Airways v Airways Pension Scheme Trustee*)
- Member interests (but no overriding best interest duty):
    - *Merchant Navy Ratings Pension Fund v Stena Line*
    - *Keymed (Medical and Industrial Equipment Ltd) v Hillman and Woodford*
- Employer interests (*Merchant Navy Ratings*)
- Employer's creditors:
    - *Thrells Ltd v Lomas*
    - *Alexander Forbes Trustee Services Ltd v Halliwell*

Employer in insolvency process

The employer enters restructuring and its scheme has a material surplus



£900 million	£150 million
Pension scheme liabilities	Buy-out surplus

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- Eventual winding-up process may be lengthy: s132(2)(b) PA 2004.

Employer in insolvency process (cont.)

The employer enters restructuring and a scheme is in material surplus

Employer duties

- Member interests – a relevant consideration. See:
  - *Imperial Group Pension Trust Ltd v Imperial Tobacco*
  - *IBM*
  - *Braganza v BP Shipping Limited*)
- Is the surplus power a fiduciary power?
  - Yes, according to *Mettoy Pension Trustees Ltd v Evans*
  - Is this in conflict with the *Braganza* / trust and confidence cases?
- Employer should be able to make decisions in its own interests

Employer in insolvency process (cont.)

The employer enters restructuring and a scheme is in material surplus

Employer duties when power exercised by insolvency practitioner?

- Administrator or liquidator statutory duties and fiduciary duties
- Primary focus is to maximise outcome for creditors as a whole
- How to reconcile with employer-derived duties when exercising power under the trust?
- See *Thrells Ltd v Lomas* - example of how this was resolved for a trustee power
- Would this approach be necessary or appropriate for a non-fiduciary power?

Some takeaway practical points



Consider potential insolvency consequences when planning pension transaction



Document reasons for pension transaction



Consider what value needs to be given for any potential or actual surplus



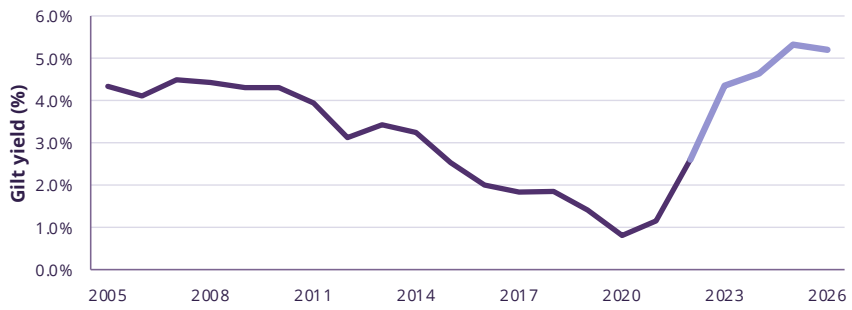
Have well informed decision-making process (all relevant considerations) and manage conflicts

Appendix

Long-Term Gilt Yields and Inflation: 2005 -2026

Gilt yields

Annual mean yield, 30-year benchmark

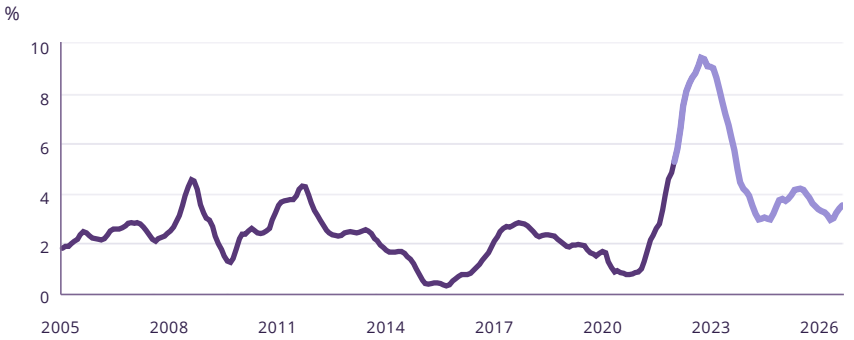


Source: UK Debt Management Office, Historical Monthly Gilt Yields.

Annual figure = arithmetic mean of the available monthly Long values. 2026 includes January only.

Inflation

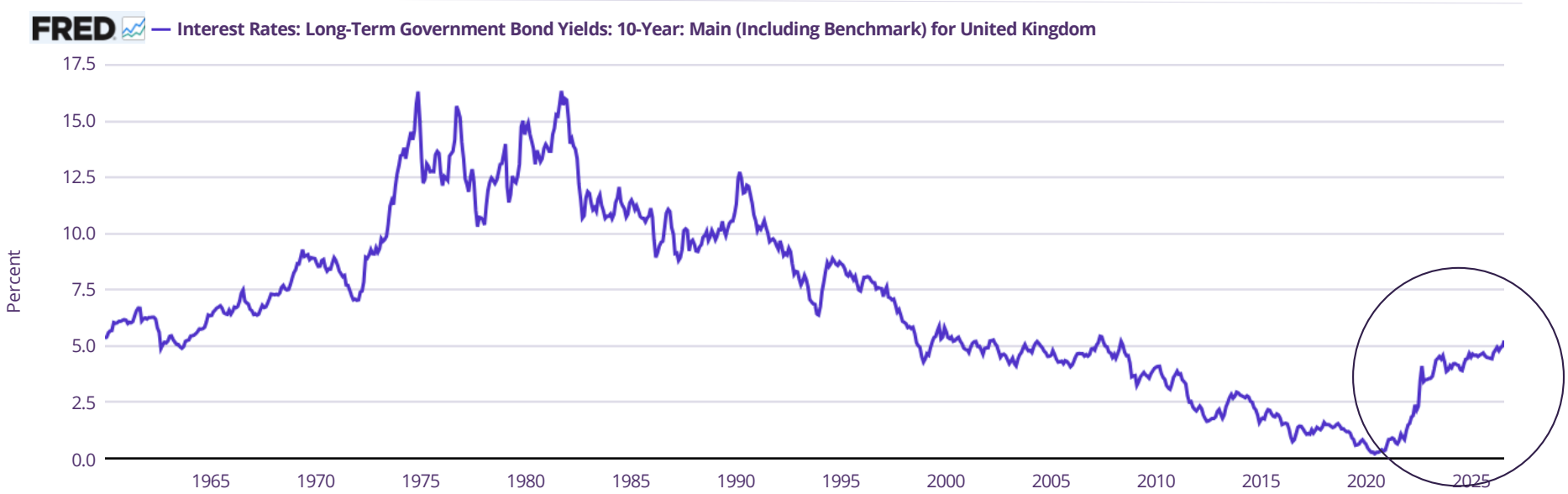
CPIH annual rate, all items (2015=100)



Source data set: Consumer price inflation time series (MM23) (Office for National Statistics)

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Long-Term Gilt Yields: 1960s onwards



Source: Organization for Economic Co-operation and Development via FRED®

fred.stlouisfed.org

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