



## Paul Newman QC

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### Clerks' Details

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### Qualifications and Appointments

- First Class degree in Law, Downing College, Cambridge
- LLM, Harvard Law School

*“He is robust, authoritative and commercial - someone you see consistently in leading cases.”*

Chambers & Partners, 2016

### Memberships

- Association of Pension Lawyers
- Association of Contentious Trust and Probate Specialists

### Publications

- Paul is a contributor to leading practitioners' works on pensions law and on the law of corporate receivers (Lightman & Moss)
- He has written several articles on pensions and financial services topics, including an influential analysis of rectification issues as they relate to pension schemes, published in *Trust Law International*.

### Practice Overview

Paul has a litigation and advisory practice concentrating on financial and private client disputes, most notably pensions, financial services and trusts. Paul regularly acts in contentious private and commercial trust disputes both in the UK and overseas, particularly Jersey and the Caribbean, involving disputes concerning the role of protectors, claims by beneficiaries and the role and duties of trustees. A substantial proportion of Paul's practice also involves advising on and acting in negligence disputes involving financial service professionals.

As well as representing some of the highest profile pension schemes in the UK and several major life insurers, Paul acts regularly for The Pensions Regulator.

Paul has advised the Royal Bank of Scotland in connection with its successful recovery of pension benefits from Sir Fred Goodwin. He has also advised the Department of Work and Pensions on the age discrimination regulations, and has recently advised the senior UK judiciary on the effect of the reforms to public sector pensions on the judicial pension schemes.

Paul has been heavily involved in advising on, and appearing in cases relating to, various provisions of the Pensions Act 2004. Paul also has extensive experience of advising and litigating on various public sector and industry-wide pension schemes.

Paul acted in an aspect of the heavily-contested trust litigation involving proceedings in Switzerland, Liechtenstein and the UK worth over £75 million, which recently led to a Court of Appeal decision on an important point of procedure: *Labrouche v Frey* [2012] 1 WLR 3160. The case went to trial in 2015.

Paul has recently appeared in an international arbitration in Bermuda relating to a claim for breach of warranty in a share sale agreement involving a multinational telecommunications company.

Paul is regularly recommended in the legal directories. Chambers & Partners, 2015 states that **"he has boundless energy, shows inventiveness and has an engaging courtroom manner"** and The Legal 500, 2015 describes him as being **"thoughtful, methodical and well prepared."** Chambers & Partners, 2016 describe him as an outstanding silk with great expertise across the whole gamut of pensions and financial services law. He is experienced in handling litigation relating to the Pensions Act 2004, and acts for both insurers and industry regulators. **"Very bright and tenacious, he is prepared to give robust advice and will argue his corner forcefully, making him a good choice for adversarial pensions disputes."** **"He has boundless energy, shows inventiveness and has an engaging courtroom manner."** A dynamic and well-respected silk with significant experience in financial services law and professional liability. He is **"a passionate and tenacious advocate with terrific experience."**



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## Pensions

Paul has regularly advised some of the largest UK pension schemes and companies on various pensions' issues, often of a highly technical nature. He is consistently ranked in the legal directories as a leading pensions silk, described as "**the counsel to go to if you want a clear opinion**" (The Legal 500, 2014). Solicitors praise him for his "**superb advice that is delivered in a way that enables clients to move swiftly to a decision**" (Chambers & Partners, 2013) and he is described as "**a very impressive advocate, who is extremely good on his feet and very persuasive.**" (Chambers & Partners, 2014). The most recent edition of Chambers & Partners, 2015 describes him as "**very bright and tenacious, he is prepared to give robust advice and will argue his corner forcefully, making him a good choice for adversarial pensions disputes.**"

Paul is the current Chairman of the Trustees of the Bar Council Staff Pension & Life Assurance Fund

### Equalisation

Paul has spent much time over recent years dealing with cases involving the equalisation of retirement ages, many of which are now the leading authorities in this area, including:

- *ICM Computer Group Ltd v Stribley* [2013] EWHC 2995 (Ch). Paul successfully argued in a construction application for certain words to be inserted into an equalisation amendment which had been omitted by mistake.
- *HR Trustees Ltd v Wembley* [2011] EWHC 2974 (Ch). The court accepted Paul's argument that a defect in compliance with the pension scheme's amendment power could be cured by the application of equitable principles.
- *Smithson v Hamilton* [2008] 1 WLR 1453. The leading case on the court's jurisdiction to correct mistakes in pension scheme documentation.
- *Trustee Solutions Ltd v Dubery* [2007] 1 All ER 308 (affd., sub nom *Cripps v Trustee Solutions Limited* [2007] PLR 237). This concerned the validity of scheme amendments, group estoppels, and the effect of Barber window service on statutory winding-up priority categories.
- *Harland & Wolff Pension Trustees Ltd v Aon Consulting* [2006] PLR 201. This concerned the effect of retrospective amendments on the Barber window service.

### Rectification

Paul has extensive experience of advising and acting in cases involving the rectification of pension scheme provisions, including acting for IBM in *IBM United Kingdom Pensions Trust Limited v IBM United Kingdom Holdings Limited* [2012] PLR 469. Paul has also recently obtained rectification of pension scheme provisions by way of summary judgment in *CIT Group (UK) Ltd v Gazzard* [2014] EWHC 2557 (Ch) and *CitiFinancial Europe plc v Davidson* [2014] PLR 625.

Paul has recently been involved in the successful resolution of rectification claims involving pension schemes operated by Hewlett Packard and Citibank.

### Insolvency and pensions

The effect of corporate insolvency on pension schemes has long been a particular interest of Paul's, stemming from the aftermath of the last recession, and given new impetus by the Pensions Act 2004, and in particular the establishment of the PPF.

#### Notable cases in this field include:

- *Bridge Trustees Ltd v Yates* [2008] PLR 261 revsd. sub nom *Houldsworth v Bridge Trustees Ltd* [2010] PLR 101) (the meaning of 'underpin benefits' in the context of the statutory priority order in s.73 of the Pensions Act 1995.



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## Pensions continued

- *L v M Ltd* [2007] PLR 11 (whether agreements which operate prior to the triggering of a S 75 debt, and which reduce that debt, jeopardise the entry of the scheme into the PPF).
- *Phoenix Venture Holdings v Independent Trustee Services Ltd* [2005] PLR 379. The MG Rover Pension Scheme: interaction of section 75 of the Pensions Act 1995 and the PPF.
- *Re TXU Europe plc* [2004] PLR 175. Whether assets set aside to fund unapproved pension arrangements are subject to a trust or equitable charge.

Paul has considerable experience of advising on the restructuring of pension scheme debts within corporate groups, following his involvement in *L v M Ltd*.

Paul also acted for members of the ASW Pension Scheme in their case against the UK Government in the European Court of Justice alleging breach of the 1980 EU Insolvency Directive (*Robins v SoS for Work & Pensions* [2007] PLR 55).

### Pensions legislation

Paul has acted in some of the leading cases on the construction of various provisions of the Pensions Acts, including:

- *Industry-Wide Coal Staff Superannuation Scheme Coordinator Ltd v IWCSS Ltd* [2013] PLR 55. A claim to rectify drafting mistake in pensions legislation.
- *Hearn v Dobson* [2008] EWHC 1620 Ch. Meaning of 'employer' in Scheme Funding Regulations 2005.
- *British Vita Unlimited v British Vita Pension Fund Trustees Ltd* [2007] PLR 157. Relationship between the scheme specific funding provisions of the Pensions Act 2004 and scheme contributions rules.
- *Aon Trust Corporation Ltd v KPMG* [2005] PLR 301. Definition of money purchase scheme; interpretation of S 67 of the Pensions Act 1995.
- *Parlett v Guppy's (Bridport) Ltd (No.2)* [2000] PLR 195. Court of Appeal guidance on the meaning of 'occupational pension scheme' in section 1 of the Pension Schemes Act 1993.
- *South West Trains Ltd v Wightman* [1998] PLR 113. First case on S 67 of the Pensions Act 1995.]

### Pensions ombudsman appeals

Paul has long and extensive experience of conducting appeals from determinations of the Pensions Ombudsman, involving subjects such as:

- The effect of explanatory literature on a Royal Mail Pension Scheme member's entitlements (*Royal Mail Pensions Trustees Ltd v Gosling* [2008] PLR 85).
- The trustee's application of surplus on a winding up (*Alexander Forbes Trustee Services Ltd v Halliwell* [2003] PLR 269).
- The incidence of costs of a successful appeal (*Moores (Wallisdown Ltd v Pensions Ombudsman (No.2))* [2002] 1 WLR 1649).
- The consequences of a switch of members from a final salary to a money purchase scheme *Moores (Wallisdown Ltd v Pensions Ombudsman* [2002] PLR 73).

Most recently, Paul successfully represented the Cabinet Office in the Court of Appeal restoring a decision of the Ombudsman relating to the meaning of "resignation" in the Principal Civil Service Pension Scheme: *Ellis v Cabinet Office* [2015] PLR 379.

### Regulatory

Paul acts regularly on behalf of The Pensions Regulator in both an advisory capacity and before the Determinations Panel and the Upper Tribunal. He acts in a wide range of matters in this respect, from the issue of financial support directions and contribution



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## Pensions continued

notices to the appointment of independent trustees of schemes, most notably in the context of attempted 'pensions liberation' exercises. Paul recently acted for the Pensions Regulator in a successful application to strike out a reference to the Upper Tribunal: *Quarters Trustees Ltd v Pensions Regulator* [2012] PLR 415.

**Paul's other regulatory work in the pensions field includes:**

- Acting for the US creditors committee of Sea Containers, the administrators of the Lehman Brothers Group and the US division of the Nortel Networks Group in relation to the financial support directions issued by the Pensions Regulator, appearing in *Nortel and Lehman v The Pensions Regulator* at first instance ([2011] PLR 37), in the Court of Appeal ([2011] PLR 201) and in the Supreme Court ([2013] 3 WLR 504).
- Acting for the PPF in relation to the 'Crown Guarantee' claimed by the *BT Pension Scheme*.
- Acting for individual and corporate trustees in investigations by The Pensions Regulator into alleged mis-investment of scheme assets.
- Acting for the National Employment Savings Trust on various issues regarding its establishment, funding and administration.
- Acting for a large US private equity firm in relation to moral hazard issues arising from a potential takeover of a business from an insolvent UK corporate group.

### Local Government

Paul's local government and public sector work includes acting for several administering authorities and participating employers of the various UK Local Government Pension Schemes, most notably representing South Tyneside BC in a judicial review of the Ministry of Justice's refusal to meet the cost of benefits for non-active members (*R v Lord Chancellor and Secretary of State for Justice* [2007] EWHC 2984 (Admin); [2009] ICR 1352 (CA)). In addition, Paul recently appeared in the Northern Ireland High Court in a similar case involving the Northern Ireland Local Government Pension Scheme.

### Industry-wide schemes

Paul has acted extensively in cases involving particular issues thrown up by industry-wide centralised pension schemes, such as:

- The deficit repair regime for which the Trustee of the Merchant Navy Ratings' Pension Fund sought approval of the High Court: *Merchant Navy Ratings Pension Fund Trustees Ltd v Stena Line Ltd* [2015] PLR 239.
- An attempt by the employers of the Industry-Wide Coal Staff Superannuation Scheme to rectify the terms of the delegated legislation establishing the scheme following privatisation: *Industry-Wide Coal Staff Superannuation Scheme Coordinator Ltd v IWCSS Ltd* [2013] PLR 55.
- The various issues relating to the funding of the Pilots' National Pension Fund, as decided by Warren J ([2010] PLR 261).
- The application of the scheme funding regulations to industry wide schemes (*Hearn v Dobson* [2008] EWHC 1620 (Ch)).
- The meaning of employer participation in the Merchant Navy Officers' Pension Fund (*MNOPF Trustees Ltd v FT Everard & Sons Ltd* [2005] PLR 225).
- The application of statutory pension increases to such schemes (*BEC Pension Trustee Ltd v Sheppeck* [2002] 3 All ER 154).

### Taxation of pension schemes

Paul has been retained on behalf of several very high-profile private clients, most notably members of the UK judiciary, to advise on pension issues arising out of the tax simplification regime introduced in the Finance Act 2004.

Paul has also advised a major life assurance firm on how to mitigate the tax consequences of mistaken unauthorised payments to members of insured schemes.



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## Pensions continued

Paul represented the trustees of the Ford Pension Schemes and the National Association of Pension Funds in the Finance and Tax Tribunal on a key test case on the liability to VAT of pension scheme fund management charges, which was subsequently referred to the ECJ: *Wheels Common Investment Fund Trustees v HMRC* [2011] PLR 387.

### Personal pension schemes

For many years Paul was heavily involved in the litigation arising from the review into the mis-selling of personal pensions. He acted for a wide range of insurers and financial advisers. Including:

- Representing a large Canadian insurer on a five-year, £80m dispute between another Canadian insurer over the conduct of a mis-selling review, which culminated in a two week arbitration.
- Representing a financial adviser in a dispute over limitation in relation to a mis-selling claim: *Loosemore v Financial Concepts* [2001] Lloyd's Rep PN 235.

### Other recent/notable cases include:

- *Granada Group Ltd v Law Debenture Pension Trust Corp Plc* [2015] EWHC 1499 (Ch); concerning whether a secured unfunded retirement benefits scheme required shareholder approval under s.320 of the Companies Act 1985.
- *Briggs & Ors v Gleeds (Head Office) & Ors* [2014] 3 WLR 1469; concerning the consequences of the invalidity of a number deeds seeking to amend a pension scheme.
- Acting for IBM on the leading case on the employer's duty of good faith: *IBM UK Holdings Ltd v Dalgeish* [2014] PLR 335; [2015] PLR 99.
- Acting for several schemes in disputes with Norwich Union relating to the construction of a deferred annuity policy.
- Acting for a group of policyholders seeking to block the transfer of the long-term insurance business of Axa Equity & Law (*Re Axa Equity & Law Life Assurance Society Ltd* [2001] 1 All ER Comm 1010).
- Advising Scottish Widows on the scope of the amendment powers in its schemes.
- Advising the Prudential on alterations made to its structured buyout policies.
- Advising Scottish Equitable on issues arising on the calculation of transfer values under its S 32 buyout policies.
- Advising a prominent firm of IFAs on issues arising out of the mis-registration of SIPPS.

### Pension liberation

Paul regularly acts for The Pensions Regulator in pension liberation cases, including hearings before the Determinations Panel.

## International Arbitration

Paul has appeared in international arbitrations, most recently a UNICITRAL arbitration in Bermuda concerning a breach of warranty claim in a share sale agreement involving a major multinational telecommunications company. The case involved extensive cross-examination of factual and expert witnesses.

Paul's work in this area has also involved a number of international commercial and private trust disputes of a highly confidential nature.



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## Professional Liability

Paul has extensive experience of acting for and against professionals in claims concerning the failure to equalise the retirement ages of pension scheme members, relating to schemes operated by companies such as Group 4, Harland & Wolff, MFI, Fujitsu, Life Sciences International, IMG, Hewlett Packard, BNP Paribas, Allders and Siemens. Paul has been consistently recommended as a leading silk in Chambers & Partners for Professional Negligence and is described in the latest edition as "**a dynamic and well-respected silk**", "**a passionate and tenacious advocate with terrific experience**," and "**robust, authoritative and commercial – someone you see consistently in leading cases.**"

Other recent/notable cases include:

- Acting for a firm of consulting actuaries defending a claim for several million pounds from an employer following the failed conversion of a final salary scheme to a money purchase arrangement, which resulted in a very favourable settlement for the firm.
- Acting for the trustees of a scheme against benefits consultants over the failure properly to implement proposed pension increases, resulting in a settlement worth several millions of pounds to the scheme.
- Acting for the trustees of the Royal Doulton Pension Scheme in a claim for negligence against the scheme actuaries relating to anti-franking legislation.
- Acting for trustees of settlements in negligence proceedings arising out of a failed attempt to secure Beddoe directions for proceedings against former trustees.
- Acting for a policyholder in a £1m dispute with the Prudential Plc, concerning the validity of a deferred annuity contract taken out when the policyholder earned no UK-taxable income.
- Acting for a firm of insurance brokers in a £6m dispute with the actuary of its pension scheme, relating to his mis-calculation of the scheme's FRS 17 liabilities.
- Acting for Stagecoach Group in a dispute with a firm of solicitors regarding advice given on the pension scheme liabilities of a target company.

## Trusts, Tax, Probate and Estates

Paul has considerable experience acting in Private and Commercial Trust matters. His experience in this area dates back to his early years in practice working on cases relating to Lloyds Names' Premium Trust Deeds. Paul's expertise includes advising and acting on trust matters, both in the UK and overseas, particularly Jersey and the Caribbean, involving disputes concerning the role of protectors, claims by beneficiaries and the role and duties of trustees.

Notable/Recent cases include:

- Acting for one of the professional trustees in the long-running litigation involving the Blenkinsopp estate in Northumberland: *Howell v Lees-Millais*.
- Acting in the heavily-contested trust litigation involving proceedings in Switzerland, Liechtenstein and the UK worth over £75 million, which recently led to a Court of Appeal decision on an important point of procedure: *Labrousche v Frey* [2012] 1 WLR 3160. The case went to trial in 2015.
- Acting for the life tenant of a £15m settlement in a breach of trust claim brought against the trustees.
- Representing corporate defendants in a £400m intellectual property/breach of confidence claim, in which proprietary interests are claimed over the corporate defendants' property.
- Acting for the estate of the settlor of a trust of the proceeds of a life assurance policy worth £5m, in a dispute over the distribution of the policy proceeds.
- Advising a Jersey trustee company on various issues raised by a disgruntled beneficiary of a sizeable discretionary trust.