



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

“A first-rate litigator”

Chambers & Partners, 2019

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*.
- Paul was responsible for the chapter on expert witnesses in *Chambers' Guide to the Civil Procedure Rules*.

Practice Overview

Paul has a litigation and advisory practice concentrating on financial and private client disputes, most notably pensions, financial services and trusts. A substantial proportion of Paul's practice also involves advising on and acting in liability and negligence disputes involving 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. He has been heavily involved in advising on, and appearing in cases relating to, various provisions of the Pensions Act 2004, and also has extensive experience of advising and litigating on various public sector and industry-wide pension schemes.

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 advised the senior UK judiciary on the effect of the reforms to public sector pensions on the judicial pension schemes.

An increasing amount of Paul's work relates to Self-Invested Personal Pension Schemes, or SIPP. Paul acts for investors, providers and trustees in respect of claims for mis-selling of SIPP and mis-investment of investments within SIPP.

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

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. The Legal 500, 2019 describes him as **"impressive in his rigorous analysis of the legislation"**. Chambers & Partners, 2018 describes him as **"a very bright and first-rate advocate, imaginative in finding solutions to extremely complex legal issues, and he does so without losing sight of the underlying legal principles"**. The Legal 500, 2018 regards him as **"an absolutely outstanding advocate, who fights cases with passion"**. The Legal 500, 2017 describes him as **"a superb advocate with a no-nonsense approach"**. Chambers & Partners, 2016 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"**.



Practice overview continued

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."**

Pensions

Paul has regularly advised some of the largest UK pension schemes and FTSE 100 companies on various pensions issues, often of a highly technical nature. He is consistently ranked in the legal directories as a band 1 pensions silk, and is described in the 2019 edition of Chambers & Partners as **"very sharp and practical"**; the same guide refers to him as **"expressing his opinion in a user-friendly form"** and as **"impressing with his rigorous analysis of the law"**. In Chambers & Partners, 2018, he is hailed as **"a very bright and first-rate advocate, imaginative in finding solutions to extremely complex legal issues"**.

Previous editions of the directories have described him as **"very impressive on the technical pensions analysis"**, with **"a litigator's instinct"** (Chambers & Partners, 2017); **"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"** (Chambers & Partners, 2016); **"the counsel to go to if you want a clear opinion"** (The Legal 500, 2014); **"a very impressive advocate, who is extremely good on his feet and very persuasive"** (Chambers & Partners, 2014); and providing **"superb advice that is delivered in a way that enables clients to move swiftly to a decision"** (Chambers & Partners, 2013).

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 case 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 case 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 also 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 also been involved in the successful resolution of rectification claims involving pension schemes operated by Hewlett Packard and Citibank.

Paul has obtained directions from the Court under s.48 of the Administration of Justice Act 1985 for permission to administer several pension schemes, on the basis of a particular construction of their governing provisions, which has proved in suitable cases a cheaper means of obtaining a more definitive clarification of ambiguities in pension schemes than rectification. An example of such a case - the first reported case of its kind - is *Re BCA Pension Plan* [2016] 4 WLR 5.



Pensions continued

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).
- *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. A case involving the MG Rover Pension Scheme and the 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:

- *Engineering Construction Industry Training Board v Swift* (unreported, 29 July 2016). Whether a hybrid scheme constituted a segregated scheme for the purposes of the Employer Debt Regulations.
- *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 s.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).



Pensions continued

- 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).

Paul acted for the Pensions Ombudsman in the first appeal following his recent decision to become more involved in appeals from his determinations: *Police and Crime Commissioner for Greater Manchester v Butterworth* (unreported, 10 November 2016).

Paul also 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 notices to the appointment of independent trustees of schemes, most notably in the context of attempted 'pensions liberation' exercises. Paul 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 a very prominent businessman in connection with contribution notice proceedings issued by the Pensions Regulator.
- 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 funds of the UK Local Government Pension Scheme, 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.

Paul also recently represented the Pensions Ombudsman in an appeal from a determination concerning benefit entitlements of an employee of a police commissioner, under the Local Government Pension Scheme: *Police and Crime Commissioner for Greater Manchester v Butterworth* (unreported, 10 November 2016).

Most recently, Paul has been heavily involved in advising local authorities and collective investment entities on issues arising out of the Government's proposals for asset pooling within the 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.



Pensions continued

- 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.

Paul has also recently advised several major life assurance firms as to the taxation consequences of adding critical illness benefits to relevant life policies.

Paul also appeared for the successful appellant in *Coats UK Pension Scheme Trustees v Styles* [2019] EWHC 35 (Ch), which concerned whether the old Inland Revenue limits continued to apply to pension increases following A-Day.

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.

Master trusts

Paul has advised several entities, including major accountancy firms, in connection with the establishment, operation and regulation of master trust pension schemes.

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 with 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.

More recently, Paul has acted for investors, providers and trustees in claims relating to SIPPs, both on the advice to enter into the SIPP and on the investment of SIPP assets. In addition, Paul acts for the Financial Services Compensation Scheme in claims against SIPP providers and trustees assigned by investors following payment of compensation to them.

Pensions and divorce

Paul has acted in several high net worth divorce cases involving claims for pension sharing orders in respect of domestic and overseas pension schemes.

Other recent/notable cases include:

- *Keymed Ltd v Hillman* [2019] EWHC 485 (Ch), in which Paul successfully argued that pension scheme trustees owe no duties to the scheme employer with regard to the investment of pension scheme assets.



Pensions continued

- *Spirit Energy Resources Ltd v Marathon Oil* [2019] EWCA Civ 11: whether pension deficit contributions were payable under an oil and gas joint venture agreement.
- *Shannan v Viavi Solutions UK Ltd* [2018] EWCA Civ 681: the extent to which the presumption of regularity and the Re Duomatic principle can validate the substitution of a principal employer of a pension scheme.
- *Dutton v FDR Ltd* [2017] EWCA Civ 200, the first case to consider how an underpin operates in relation to the rate of increases for pensions in payment under a pension scheme's rules, following a defective trust deed executed in 1991 which purported to change the rate at which pensions in payment were increased from 3% to 5% LPI.
- *Granada Group Ltd v Law Debenture Pension Trust Corp Plc* [2017] EWCA Civ 200: concerning whether a secured unfunded retirement benefits scheme required shareholder approval under s.320 of the Companies Act 1985.
- *Sterling Insurance Trustees Ltd v Sterling Insurance Group Ltd* [2015] EWHC 2665 (Ch): concerning the proper interpretation of a limitation on an amendment power where an attempt had been made to break the final salary link to benefits on the closure of a pension scheme.
- *Briggs & Ors v Gleeds (Head Office) & Ors* [2015] Ch 212: 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 Aviva 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.

Pensions liberation

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