

PENSIONS LECTURES 2019

The Edward Nugee Memorial Lectures

June 2019 | 58VE, London | 6.30pm – 7.30pm followed by drinks

Wilberforce Chambers invites you to our latest series of lectures by pension law practitioners on current topics of particular interest to pensions lawyers. Wilberforce has a well-established reputation in the field of pensions law, due in large part to the late Edward Nugee QC, to whose memory these lectures are dedicated. The first lecture of 2019 will look at responsibility for advice and second-guessing beneficiary and adviser decisions; the second covers the implied *Braganza* duties of employers and trustees; the third looks at the lessons that flow from the recent British Airways decisions, in particular in relation to Beddoe relief and proper purposes; and the final lecture looks at time limits for underpaid DB benefits in the light of the Lloyds Bank decision.

LECTURE 1 TUESDAY 4TH JUNE AT 6.30PM

My brother's keeper? Duties to second-guess beneficiary and advisor decisions

Jonathan Hilliard QC, Sebastian Allen and Jonathan Chew

Providing information or advice to members on their benefits is an area fraught with difficulty. Going behind choices made by them in relation to their benefits can be harder still, and second-guessing advisers' decisions in relation to investment and the like a step further. Yet trustees are the ultimate custodians of the funds and cannot exclude liability completely in relation to investment, so this session examines when they have to wade into such territory. The talk will cover:

- SIPPs: *Berkeley Burke Sipp Administration Ltd v Financial Ombudsman Service Ltd* (2018) and beyond
- Other guidance on protecting beneficiaries against unwise decisions – the case-law on transferring out to suspect schemes
- Reviewing and second-guessing advisors' investment suggestions and decisions: guidance from the private client context – *Citco v Appleby* (2014), *Zang v DBS Bank* (2018) and *Daniel v Tee* (2016)
- When won't *Pitt v Holt* protect trustees from relying on advisers' advice?
- Duties to advise members
- Employer responsibilities

LECTURE 2 WEDNESDAY 12TH JUNE AT 6.30PM

Aspects of the *Braganza* duties: Review of employer and trustee decisions

David Pollard, Bobby Friedman and Tara Taylor

This session will look at the impact of the duties on decision making in relation to pension schemes by both employers and trustees following the seminal Supreme Court decision in *Braganza v BP Shipping*. How should decisions be made? When can decisions be reviewed in the courts? How can decisions be attacked? The talk will examine:

- The scope of the duty: when does it apply and how does it work? What are its limitations?
- The scope of the test for reviewing a decision based on its outcome – perversity etc
- The duty to consider "relevant factors". How are these analysed? Is it all relevant factors? How does it tie in with the duty of care?

LECTURE 3 TUESDAY 18TH JUNE AT 6.30PM

Lining up for landing: Lessons from the British Airways case

James Walmsley, James McCreath and Michael Ashdown

A look at the questions resolved and left unresolved by the BA litigation. The Beddoe decision this January potentially has significant consequences for pensions litigation more generally. Meanwhile, the widely reported settlement of the main litigation (subject to Court approval) means that the much anticipated Supreme Court hearing that had been scheduled for July 2019, which would have enabled the Supreme Court to give guidance on the 'proper purposes' doctrine in the context of pension schemes, will not be taking place. The talk will cover:

- The Beddoe application: when can parties appeal at the scheme's expense?
- The substantive propositions to take from the BA case.
- The unanswered questions the case leaves us with.

LECTURE 4 WEDNESDAY 26TH JUNE AT 6.30PM

Time limits for underpaid DB benefits

Robert Ham QC, Simon Atkinson and Daniel Scott

This lecture will look at the time limits for claims on DB benefits under trust based occupational pension schemes following the decision of Morgan J in the Lloyds Bank GMP litigation. How does the Limitation Act apply? The talk will:

- Consider the elements of Morgan J's judgment in the Lloyds case that relate to forfeiture and limitation against the context of forfeiture in trusts law more generally to see if the law has taken a wrong turn, and where it might be heading.
- Give practical advice on what to look out for in schemes.
- Discuss discretionary forfeiture clauses and how to advise trustees on the exercise of their discretion.
- Consider the problems encountering when seeking to amend schemes to introduce forfeiture clauses in an attempt to retrofit them.

Price:

£70 + VAT per lecture or
£250 + VAT for booking all
4 lectures (1,2,3 and 4)

CPD:

1.0 hours
per lecture

Venue:

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58 Victoria Embankment,
London EC4Y 0DS

Bookings:

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