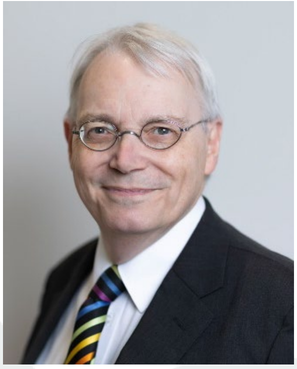
Private Client eBriefing

Trust Interpretation: Looking at previous decisions of a word or phrase

Article by David Pollard, 13th July 2026



Interpretation of trusts (including pension trusts and other commercial trusts) can be a big issue. The Supreme Court has tried, in a series of well known judgments over the last few years, to set out high level principles on how courts should interpret all written documents, including contracts, wills and trusts.

This paper looks briefly at the application of the general principles on construction to trusts and in more detail how far previous court decisions on the same (or similar) wording is relevant to the construction exercise.

1. Introduction

1.1 Principles of construction, particularly of formal written documents, have caused a number of difficulties in the last few years, at least if the number of decisions in the Supreme Court and public speeches by senior judges is any guide[1].

1.2 This paper looks at (a) the application of the general principles on construction that have emerged in the cases to trusts and (b) how far previous court decisions on the same (or similar) wording is relevant to the construction exercise.

2. Are trusts interpreted in the same way as contracts?

2.1 Much of the case law on interpretation of written instruments has focused on the position of contracts[2]. Thus in a pension trust case, *Barnardo's*[3], Lord Hodge (giving the only judgment) commented that recent case law has applied the same "general approach" to all written instruments. He held (at [13]):

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[1] See in particular:
- Lord Sumption's Harris Society annual lecture (available on the Supreme Court website): "*A Question of Taste: The Supreme Court and the Interpretation of Contracts*" (2017, 17 May);
- Lady Justice Asplin's APL prestige lecture (available on the APL website): "*It's all a matter of interpretation*" (2017) 23 October;
- Lord Hoffmann's reply to Lord Sumption "*Language and lawyers*" (2018) 134 LQR 553
- Sir Geoffrey Vos "*Contractual Interpretation: Do judges sometimes say one thing and do another?*" 18 Oct 2017, (2017) 23 Canterbury Law Review 1.

[2] Eg the modern "trilogy" in the Supreme Court: *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900, *Arnold v Britton* [2015] AC 1619 and *Wood v Capita Insurance Services Ltd* [2017] AC 1173.

[3] *Barnardo's v Buckinghamshire* [2018] UKSC 55, [2019] 2 All ER 175.

13. In the trilogy of cases, Rainy Sky SA v Kookmin Bank [2011] 1 WLR 2900, Arnold v Britton [2015] AC 1619 and Wood v Capita Insurance Services Ltd [2017] AC 1173, this court has given guidance on the general approach to the construction of contracts and other instruments, drawing on modern case law of the House of Lords since Prenn v Simmonds [1971] 1 WLR 1381. That guidance, which the parties did not contest in this appeal, does not need to be repeated. In deciding which interpretative tools will best assist in ascertaining the meaning of an instrument, and the weight to be given to each of the relevant interpretative tools, the court must have regard to the nature and circumstances of the particular instrument.

2.2 English law has applied its general interpretation principles to written documents generally. This includes such instruments as: wills, loan notes, articles of association, mortgages and bills of lading. In some cases the decisions make the point that the relevant background or matrix of fact may need to be more limited than usual.

Wills and unilateral documents

2.3 In 2014 in *Marley v Rawlings*[4], Lord Neuberger (with whom the remainder of the Supreme Court agreed[5]) decided at [20] that the approach to interpreting wills should be the same as that adopted in relation to contracts, the aim being "to identify the intention of the party or parties to the document by interpreting the words used in their documentary, factual and commercial context". At [23] he stated that subject to any statutory provision to the contrary, the approach to the interpretation of contracts which he had set out at [19] is just as appropriate for wills as other unilateral documents. The relevant part of [19] is:

> When interpreting a contract, the court is concerned to find the intention of the party or parties, and it does this by identifying the meaning of the relevant words:
> (a) in the light of:
> (i) the natural and ordinary meaning of those words,
> (ii) the overall purpose of the document,
> (iii) any other provisions of the document,
> (iv) the facts known or assumed by the parties at the time that the document was executed, and
> (v) common sense, but
> (b) ignoring subjective evidence of any party's intentions.

2.4 Lord Neuberger commented on the same approach being adopted for unilateral documents (eg notices) as for bilateral (or multi-lateral) contracts, citing the notice case, *Mannai Investment*[6] and a patent case, *Catnic Components*[7]:

> [20] When it comes to interpreting wills, it seems to me that the approach should be the same. Whether the document in question is a commercial contract or a will, the aim is to identify the intention of the party or parties to the document by interpreting the words used in their documentary, factual and commercial context. As Lord Hoffmann said in *Kirin-Amgen Inc v Hoechst Marion Roussel Ltd, Hoechst Marion Roussel Ltd v Kirin-Amgen* [2004]

4 [2014] UKSC 2, [2015] AC 129. See also *Sammut v Manzi* [2008] UKPC 58, [2009] 2 All ER 234, at [4] to [6] and the discussion in *Reading v Reading* [2015] EWHC 946 (Ch) (Asplin J).
5 Lord Hodge confining himself to some observations as to how Scots law might have dealt with the issues had it been the governing law.
6 *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749.
7 *Catnic Components Ltd v Hill and Smith Ltd* [1982] RPC 183.

UKHL 46 at [64], [2005] 1 All ER 667 at [64]: 'No one has ever made an acontextual statement. There is always some context to any utterance, however meagre.' To the same effect, Sir Thomas Bingham MR said in *Arbuthnott v Fagan, Deeny v Gooda Walker Ltd (in liq)* [1995] CLC 1396 at 1400, that '[c]ourts will never construe words in a vacuum'.

[21] Of course, a contract is agreed between a number of parties, whereas a will is made by a single party. However, that distinction is an unconvincing reason for adopting a different approach in principle to interpretation of wills: it is merely one of the contextual circumstances which has to be borne in mind when interpreting the document concerned. Thus, the court takes the same approach to interpretation of unilateral notices as it takes to interpretation of contracts: see *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749 at 770–771, 779–780 per Lord Steyn and Lord Hoffmann respectively.

[22] Another example of a unilateral document which is interpreted in the same way as a contract is a patent: see the approach adopted by Lord Diplock in *Catnic Components Ltd v Hill and Smith Ltd* [1982] RPC 183 at 243, cited with approval, expanded, and applied in the Kirin-Amgen case at [27]–[32] by Lord Hoffmann. A notice and a patent are both documents intended by its originator to convey information, and so, too, is a will.

[23] In my view, at least subject to any statutory provision to the contrary, the approach to the interpretation of contracts as set out in the cases discussed in [19], above is therefore just as appropriate for wills as it is for other unilateral documents.

2.5 In *Public Trustee v Harrison*[8], Marcus Smith J considered the construction of a unilateral instrument and held that the same approach as to commercial contracts should apply. He held:

18. The approach I must take to construction is set out in *Investors Compensation Scheme Ltd. v West Bromwich Building Society* [1998] 1 WLR 896 and *Arnold v Britton* [2015] UKSC 36. I accept that the approach laid down in these decisions is as applicable to unilateral instruments, such as the Indenture, as it is to bilateral instruments like contracts and the Scheme.

Loan Notes and debt securities:

2.6 In *Re Sigma Finance Corp*[9], the Supreme Court was considering a trust deed relating to 'debt securities' issued to 'a variety of creditors, who hold different instruments, issued at different times, and in different circumstances'[10], Lord Collins, at para [37], said '[c]onsequently this is not the type of case where the background or matrix of fact is or ought to be relevant, except in the most generalised way.' More generally, he said:

Where a security document secures a number of creditors who have advanced funds over a long period it would be quite wrong to take account of circumstances which are not known to all of them. In this type of case it is the wording of the instrument which is paramount. The instrument must be interpreted as a whole in the light of the commercial intention which may be inferred from the face of the instrument and from the nature of the debtor's business.

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8 [2018] EWHC 166 (Ch) (Marcus Smith J) at [18]. Reversed in part on appeal – see *Harrison-Mills v Public Trustee* [2019] EWCA Civ 966 - but not on the construction point.

9 *Re Sigma Finance Corp (in administrative receivership)* [2009] UKSC 2, [2010] 1 All ER 571 (at [36] and [37]). Cited by Lord Neuberger in *BNY Mellon* at [31].

10 Lord Collins at [36].

2.7 In *BNY Mellon*[11] the Supreme Court considered whether a redemption trigger had occurred in relation to contingent convertible loan notes issued by Lloyds Bank Group. The majority held that when construing a contract or trust deed which governed the terms on which a negotiable instrument was held, very considerable circumspection was appropriate before the contents of another document were taken into account. In this case, the trust deed could not be understood without some appreciation of the regulatory policy of the FSA at and before the time that the notes were issued. Accordingly, the general thrust and effect of the FSA regulatory material published in 2008 and 2009 could be taken into account when interpreting the terms and conditions of the notes.

2.8 Lord Neuberger held:

> [30] Over the past 20 years or so, the House of Lords and Supreme Court have given considerable (some may think too much) general guidance as to the proper approach to interpreting contracts and indeed other commercial documents, such as the Trust Deed in this case. What, if any, weight is to be given to what was said in other documents, which were available at the time when the contract concerned was made or when the Trust Deed in question took effect, must be highly dependent on the facts of the particular case. However, when construing a contract or Trust Deed which governs the terms upon which a negotiable instrument is held, as in the present case, very considerable circumspection is appropriate before the contents of such other documents are taken into account.

2.9 Lord Neuberger went on (at [31]) to refer with approval to the judgment of Lord Collins (above) in *Re Sigma Finance* and the (at [32]) to quote a case from 1931 to the same effect:

> [32] As Mr Dicker QC points out on behalf of the Trustee, the same point was made by Lord Macmillan when giving the decision of the Privy Council in *Egyptian Salt and Soda Co Ltd v Port Said Salt Association Ltd* [1931] AC 677 at 682. Disapproving the trial judge's reliance on 'surrounding circumstances at the time when the memorandum was framed', Lord Macmillan said that 'the purpose of the memorandum is to enable shareholders, creditors and those who deal with the company to know what is its permitted range of enterprise, and for this information they are entitled to rely on the constituent documents of the company' and that the 'intention of the framers of the memorandum must be gathered from the language in which they have chosen to express it'.

Trusts

2.10 The cases mentioned above, *Re Sigma Finance Corp*[12], and *BNY Mellon*[13] are both cases applying general (ie including contractual) interpretation principles to trusts.

2.11 In Australia the High Court has held that the usual interpretation principles should apply to trusts. In *Byrnes v Kendle*[14] the High Court held that the interpretation principles should apply to the issue of whether a trust had been created. The High Court (Heydon and Crennan JJ) held at [102] that the rules for the construction of contracts apply also to trusts.

> [102] *The construction of trusts.* The rules for the construction of contracts apply also to trusts. Although the two institutions are distinct, that is not surprising.

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11 *BNY Mellon Corporate Trustee Services Ltd v LBG Capital No 1* plc [2016] UKSC 29, [2017] 1 All ER 497.

12 *Re Sigma Finance Corp (in administrative receivership)* [2009] UKSC 2, [2010] 1 All ER 571.

13 *BNY Mellon Corporate Trustee Services Ltd v LBG Capital No 1* plc [2016] UKSC 29, [2017] 1 All ER 497.

14 *Byrnes v Kendle* [2011] HCA 26, 243 CLR 253 (French CJ, Gummow, Hayne, Heydon and Crennan JJ) at [111]. (2011) 14 ITELR 299 at [111], HC Aus.

[103] For one thing, as Mason and Deane JJ said[140]: "The contractual relationship provides one of the most common bases for the establishment or implication and for the definition of a trust." By "establishment" their Honours referred to deciding whether a trust existed. By "definition" they referred to ascertaining its terms. The two inquiries are closely related: for the terms of a document or oral dealing determine whether it creates a trust.

[104] For another thing, the same considerations which limit recourse to surrounding circumstances and oral testimony in relation to contracts applies in relation to trusts. In 1877 Lord Gifford said: "The very purpose of the written contract was to exclude disputes inevitably arising from the lubricity, vagueness, and want of recollection, or want of accurate recollection, of mere oral conversations occurring in the course of negotiations more or less protracted."[141] And three centuries earlier Popham CJ said[142]:

> "it would be inconvenient, that matters in writing made by advice and on consideration and which finally import the certain truth of the agreement of the parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory."

The goal of excluding disputes of this kind from litigation is thwarted by recourse to the same material in order to discover the background, and that is so whether the disputes are about whether a particular contract was created or a particular trust.

[140] *Gosper v Sawyer* [1985] HCA 19; (1985) 160 CLR 548 at 568-569; [1985] HCA 19 (emphasis added).

[141] *Buttery & Co v Inglis* (1877) 5 R 58 at 70.

[142] *Countess of Rutland's Case* [1572] EngR 423; (1604) 5 Co Rep 25b at 26a-26b [77 ER 89 at 90].

2.12 Later they commented at [111] on UK pension trust cases:

[111] In England these principles have been applied to the construction of trust deeds controlling pension funds – first in the language of Lord Wilberforce's "matrix of fact"[154], later without that reference. In that area one relevant aspect of the background is the fiscal background[155], and the practice and requirements of the tax authorities at the relevant time[156]. Another relevant aspect is that the beneficiaries under a pension scheme are usually not volunteers, but have rights with contractual and commercial origins in their contracts of employment which they pay for by their service and contributions[157]. Another relevant aspect is common practice in the field of pension schemes generally, as evinced in the evidence of actuaries and textbooks by practitioners in the field[158].

[154] *Mettoy Pension Trustees Ltd v Evans* [1990] 1 WLR 1587 at 1610; [1991] 2 All ER 513 at 537.

[155] *Mettoy Pension Trustees Ltd v Evans* [1990] 1 WLR 1587 at 1610-1611; [1991] 2 All ER 513 at 537; *National Grid Co plc v Mayes* [2001] 1 WLR 864 at 870 [18]-[20]; [2001] 2 All ER 417 at 423-424.

[156] *Stevens v Bell* [2002] EWCA Civ 672, quoted in *Ansett Australia Ground Staff Superannuation Plan Pty Ltd v Ansett Australia Ltd* (2002) 174 FLR 1 at 56-57 [216].

[157] *Mettoy Pension Trustees Ltd v Evans* [1990] 1 WLR 1587 at 1610; [1991] 2 All ER 513 at 537; *Imperial Group Pension Trust Ltd v Imperial Tobacco Ltd* [1991] 1 WLR 589 at 597; [1991] 2 All ER 597 at 605-606.

[158] *Mettoy Pension Trustees Ltd v Evans* [1990] 1 WLR 1587 at 1611; [1991] 2 All ER 513 at 537-538; *Stevens v Bell* [2002] EWCA Civ 672.

2.13 In *Mercanti v Mercanti*[15] the Court of Appeal in Western Australia held that general interpretation principles apply to trusts and deeds. Buss P held:

> [72] The rules that apply to the construction of contracts apply to the construction of deeds. See *Royal Botanic Gardens and Domain Trust v South Sydney City Council* [2002] HCA 5; (2002) 240 CLR 45 [9] - [10] (Gleeson CJ, Gaudron, McHugh, Gummow & Hayne JJ).
> [73] The rules applicable to the construction of contracts apply also to trusts. the search for 'intention' in relation to trusts, as with contracts, is for the intention as revealed in the words used by the parties. the expressed intention of the parties is to be found in the answer to the question, 'what is the meaning of what the parties have said?', not to the question, 'what did the parties mean to say?'. see *Byrnes v Kendle* [2011] HCA 26; (2011) 243 CLR 253 [53] (Gummow & Hayne JJ), [102] - [107] (Heydon & Crennan JJ). see also *Smith v Lucas* (1881) 18 Ch D 531, 542 (Sir George Jessel MR); Commissioners of Inland Revenue v Raphael [1935] AC 96, 142 - 143 (Lord Wright).

Other written instruments

2.14 Similar statements can be found in relation to interpretation of other written instruments, for example: leases[16], articles of association[17], bills of lading[18], mortgages[19] and deeds[20].

3. General interpretation principles

3.1 General principles of interpretation appear in many recent cases. In *Wood v Capita Insurance Services Ltd*[21], Lord Hodge (with whom the other members of the Supreme Court agreed) summarised the position. This was itself summarised by Leggatt LJ in a contract case, *Minera Las Bambas SA v Glencore Queensland Ltd*[22] (which I have split up for ease of reading):

> [20] The principles of English law which the court must apply in interpreting the relevant contractual provisions are not in dispute. They have most recently been summarised by the Supreme Court in *Wood v Capita Insurance Services Ltd* [2017] UKSC 24; [2017] AC 1173 at paras 10-14. In short:
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> - the court's task is to ascertain the objective meaning of the relevant contractual language.

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15 [2016] WASCA 206; 50 WAR 495; 340 ALR 290.

16 *KPMG LLP v Network Rail Infrastructure Ltd* [2007] EWCA Civ 363, [2007] Bus LR 1336. *Cherry Tree Investments Ltd v Landmain Ltd* [2012] EWCA Civ 736, [2013] Ch 305 per Arden LJ at [22]. See also Lewison '*The Interpretation of Contracts*' (6th ed, Sweet & Maxwell, 2017) at 1.02.

17 *Cherry Tree Investments Ltd v Landmain Ltd* [2012] EWCA Civ 736, [2013] Ch 305 per Arden LJ at [22], considering the decisions in *Bratton Seymour Bratton Seymour Service Co Ltd v Oxborough* [1992] BCLC 693, *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101 at [40], and *Belize v Belize Telecom Ltd* [2009] 1 WLR 1988. See also Lewison '*The Interpretation of Contracts*' (8th ed, Sweet & Maxwell, 2024) at 1.02.

18 *Homburg Houtimport BV v Agrosin Private Ltd (The Starsin)* [2004] 1 AC 715, discussed by Arden LJ in *Cherry Tree Investments* [2012] EWCA Civ 736, [2013] Ch 305 at [43].

19 *Re Sigma Finance Corp (in administrative receivership)* [2009] UKSC 2, [2010] 1 All ER 571, *Cherry Tree Investments* [2012].

20 For example *Re Sigma Finance Corp (in administrative receivership)* [2009] UKSC 2, [2010] 1 All ER 571. To the same effect in Australia, see *Mercanti v Mercanti* [2016] WASCA 206; 50 WAR 495; 340 ALR 290 per Buss P at [72] and *Royal Botanic Gardens Royal Botanic Gardens and Domain Trust v South Sydney City Council* [2002] HCA 5; (2002) 240 CLR 45 at [9] - [10] (Gleeson CJ, Gaudron, McHugh, Gummow & Hayne JJ).

21 [2017] UKSC 24; [2017] AC 1173 at [10] to [14].

22 [2019] EWCA Civ 972, [2019] STC 1642 per Leggatt LJ at [20]. Cited by Falk J in *Adaptive Spectrum and Signal Alignment Inc v British Telecommunications Plc* [2022] EWHC 1707 (Ch) at [60].

- This requires the court to consider the ordinary meaning of the words used, in the context of the contract as a whole and any relevant factual background.
- Where there are rival interpretations, the court should also consider their commercial consequences and which interpretation is more consistent with business common sense.
- The relative weight to be given to these various factors depends on the circumstances.
- As a general rule, it may be appropriate to place more emphasis on textual analysis when interpreting a detailed and professionally drafted contract such as we are concerned with in this case, and to pay more regard to context where the contract is brief, informal and drafted without skilled professional assistance.
- But even in the case of a detailed and professionally drafted contract, the parties may not for a variety of reasons achieve a clear and coherent text and considerations of context and commercial common sense may assume more importance.

4. Construing terms in the light of previous decisions

4.1 Generally, decisions of courts in other cases in relation to wording in written instruments (whether deeds or trust instruments) are unlikely to be strictly binding when construing another instrument. This is so even if the exact same wording is being used.

4.2 This is because inevitably the other terms of the instrument will differ. A court decision on one provision or term must be viewed in the light of the deed and circumstances as a whole. A later court may reach a different view even on what looks to be an identically worded provision[23].

Cases deprecating

4.3 Some case law indicates that referring to other cases is positively dangerous or a "wrong approach". Examples of this are below.

4.4 In 1875 Jessel MR in *Aspden v Seddon*[24] considered that references to other cases should be deplored[25]:

> No Judge objects more than I do to referring to authorities merely for the purpose of ascertaining the construction of a document; that is to say, I think it is the duty of a Judge to ascertain the construction of the instrument before him, and not to refer to the construction put by another Judge upon an instrument, perhaps similar, but not the same.

4.5 And later (at 398):

> The only result of referring to authorities for that purpose is confusion and error, in this way, that if you look at a similar instrument, and say that a certain construction was put upon it, and that it differs only to such a slight degree from the document before you, that you do not think the difference sufficient to alter the construction, you miss the real point of the case, which is to ascertain the meaning of the instrument before you. It may be quite

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23 Adapted from Pollard '*Employment Law and Pensions*' (Bloomsbury Professional, 2016), ch 55.

24 (1875) LR 10 Ch App 394, 398n. Cited by Christopher Nugee QC, '*Retires, retiring, retired*' (APL seminar, April 2004).

25 Describing Jessel MR as deploring this approach, see Nugee J in *Atos IT Services UK Ltd v Atos Pension Schemes Ltd* [2020] EWHC 145 (Ch) at [2].

true that in your opinion the difference between the two instruments is not sufficient to alter the construction, but at the same time the Judge who decided on that other instrument may have thought that that very difference would be sufficient to alter the interpretation of that instrument. You have in fact no guide whatever, and the result especially in some cases of wills has been remarkable. There is, first document A., and a Judge formed an opinion as to its construction. Then came document B., and some other Judge has said that it differs very little from document A.—not sufficiently to alter the construction—therefore he construes it in the same way. Then comes document C., and the Judge there compares it with document B., and says it differs very little, and therefore he shall construe it in the same way. And so the construction has gone on until we find a document which is in totally different terms from the first, and which no human being would think of construing in the same manner, but which has by this process come to be construed in the same manner.

4.6 Later Jessel MR in *Re New Callao Ltd*[26] reaffirmed this:

> …. nothing is better settled than that the construction put upon an instrument by a Court of law or equity is not binding on another Court of law or equity, even of inferior jurisdiction, as regards the construction of an instrument couched in somewhat similar language.

4.7 More recently in 1987, Dillon LJ in *Equity & Law Life Assurance Society plc v Bodfield*[27] deplored reference to previous cases as likely to lead to confusion and error:

> to refer to authorities on other documents merely for the purpose of ascertaining the construction of a particular document is to be deplored as a wrong approach and likely to lead to confusion and error.

4.8 In 1996 in *Deeny v Gooda Walker*[28] Lord Hoffmann held

> No case on the construction of one document is the authority on the construction of another, even if the words are very similar.

4.9 In 2015, Leggatt J held in *Scottish Power UK plc v BP Exploration Operating Co Ltd*[29] that previous cases were of "limited assistance", holding:

> I have reminded myself, however, that the issue for decision in this case is one of construction of a particular clause in a particular contract, and that consideration of how courts have construed differently worded clauses in different contracts is necessarily of limited assistance. It seems to me that, while taking note of the reasoning in the authorities cited, the correct approach is to focus on the precise terms of the Agreements with which

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[26] (1882) 22 ChD 484, CA, at 488. See also *Hack v London Provident Building Soc* (1883) 23 ChD 103, CA, at 111; *Pedlar v Road Block Gold Mines of India* [1905] 2 Ch 427 (Warrington J); and *Ashville Investments Ltd v Elmer Contractors Ltd* [1989] 1 QB 488, CA.
Aspden is described in Lewison '*The Interpretation of Contracts*' (8th ed, Sweet & Maxwell, 2024) at 4.83 as "Perhaps the strongest deprecation of the citation of authority..".

[27] [1987] 1 EGLR 124, 125C.

[28] [1996] 1 WLR. 426 (HL) per Lord Hoffmann at 435B.
Cited in Kessler et al '*Drafting Trusts and Will Trusts*' (15th edn, Sweet & Maxwell, 2023). Also citing referring to *Midland Bank v Cox McQueen* [1999] PNLR 605, describing precedent as of "extremely limited value" in the construction of a document and likewise *Sammut v Manzi* [2009] 1 WLR 1834 at [6].

[29] [2015] EWHC 2658 (Comm), [2016] 1 All ER (Comm) 536 at [204]. Cited by Lewison LJ in *Disclosure and Barring Service v Tata Consultancy Services Ltd* [2025] EWCA Civ 380, [2025] 4 WLR 42 at [75].

the present case is concerned and ascertain their meaning applying the ordinary principles of contract interpretation.

4.10 In 2020 in *Atos IT Services UK Ltd*[30], Nugee J (as he then was) did not consider other cases on different words in other instruments, holding that:

> but the detailed drafting shows a wide variety, and I entirely accept that this case has to be determined on the wording of the provision in question and not by comparing other cases in which other words have been construed. I was therefore, quite rightly, not taken to those other cases, although some of them are very familiar.

4.11 In 2024 in *BBC v BBC Pension Trust Ltd*[31], the Court of Appeal referred to *Atos*, commenting that there may be a family resemblance with previous decisions.:

> 29. Clauses like this bear what Nugee J described as a "family resemblance" but ultimately the meaning of a particular clause turns on its own interpretation: *Atos IT Services UK Ltd v Atos Pension Schemes Ltd* [2020] EWHC 145 (Ch), [2020] Pens LR 17 at [2].

Cases allowing for some assistance

4.12 But despite these judicial comments, it can often be appropriate to look at previous decisions. In. a pension trust case, *CMG Pension Trustees Ltd v CGI IT UK Ltd*[32] Leech J held that looking at previous decisions can give real assistance:

> 74. It is trite law that the Court's construction of one document is not binding authority in relation to the construction of another. But the way in which one judge has construed a provision (or, indeed, the general approach which he or she has adopted to construction) may provide real assistance to Courts faced with a very similar exercise.

4.13 Later in *CMG*, Leech J referred to *Atos IT Services UK Ltd* and noted that earlier decisions "should be treated with caution' but then held that he derived "valuable assistance" from earlier cases, holding:

> 76. I approach the construction and effect of Rule 5.11 in the same way and although I derive valuable assistance from *Lloyds 1* [and two other cited cases], I bear in mind that the context and wording of the relevant clauses was different. The primary duty for this Court is to construe the rule against the admissible background and decide the issues which have been agreed between the parties.

4.14 Later still in *CMG*, Leech J referred to the earlier cases and took "considerable comfort" from the earlier decision , considering it to be a "useful cross-check". He held (at [98]):

> Although it is not binding authority, I take considerable comfort from the decision of Morgan J in *Lloyds 1* (above). It is a useful cross-check that the construction of Rule 5.11 which I have adopted is the correct one.

4.15 In 2026 in *McKavney v Serco Group plc*[33] Trower J was dealing with the meaning of the word "retire" in a pension scheme. He held that a court must be very cautious in relying on another decision, holding (at [82]):

> The court must of course be very cautious before placing reliance on another court's decision as to the meaning of language used in another scheme, even where that language is very similar. To do so runs the risk of failing to construe the relevant provision in its

30 *Atos IT Services UK Ltd v Atos Pension Schemes Ltd* [2020] EWHC 145 (Ch), [2020] Pens LR 17 (Nugee J) at [2].
31 *British Broadcasting Corporation v BBC Pension Trust Limited* [2024] EWCA Civ 767, [2024] ICR 1399.
32 [2022] EWHC 2130 (Ch) (Leech J) at [74].
33 *McKavney v Serco Group plc* [2026] EWHC 508 (Ch), [2026] Pens LR 10 (Trower J).

proper context, and against all the admissible background (see e.g., the judgment of Leech J in *CMG Pension Trustees Ltd v CGI IT UK Ltd* [2022] EWHC 2130 (Ch) at [74] and [75]).

4.16 Earlier, in *Wood v Capita Insurance Services Ltd*[34] Lord Hodge had commented on the use of "similar provisions in contracts of the same type" as being helpful:

> There may often therefore be provisions in a detailed professionally drawn contract which lack clarity and the lawyer or judge in interpreting such provisions may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type.

4.17 A previous decision will often be very persuasive. Thus in 1989 May LJ in *Ashville Investments Ltd v Elmer Contractors Ltd*[35] commented as follows:

> However, I do not think that there is any principle of law to the effect that the meaning of certain specific words in one arbitration clause in one contract is immutable and that those same specific words in another arbitration clause in other circumstances in another contract must be construed in the same way. This is not to say that the earlier decision on a given form of words will not be persuasive, to a degree dependent on the extent of the similarity between the contracts and surrounding circumstances in the two cases. In the interests of certainty and clarity a court may well think it right to construe words in an arbitration agreement, or indeed in a particular type of contract, in the same way as those same words have earlier been construed in another case involving an arbitration clause by another court. But in my opinion the subsequent court is not bound by the doctrine of stare decisis to do so. If I were wrong, then in any event it must be necessary to compare the surrounding circumstances in each case to ensure that those in the latter case did not require one to construe albeit the same words differently when used in the different context.

4.18 Neuberger J (as he then was) commented to the same effect in in 2003 in *Crest Nicholson Residential (South) Ltd v McAllister*[36]. He noted that care must be taken but that using previous decisions is not illegitimate and may help "certainty and consistency":

> [30] Obviously, when construing an expression in a document, one must be very careful of relying on authority. Indeed, there are cases which suggest that, in such a case, it is almost impermissible to refer to authorities as to the meaning of other documents, even when they involve interpreting the same expression. However, it does appear to me that it is not illegitimate to bear in mind the desirability of certainty and consistency in relation to the court's approach to the prima facie meaning of fairly common expressions in conveyances, leases, and, indeed, other types of document. It is desirable, where possible, for people to know with a reasonable certainty what their rights may be: uncertainty breeds costs, worry, and litigation. Where, as in *Dobbs' case*, the Court of Appeal has taken a pretty clear view as to the natural meaning of an expression such as "a private dwellinghouse", it seems to me that, while accepting that the same expression can obviously have a different meaning

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34 [2017] UKSC 24, [2017] AC 1173 at [13].

35 [1989] 1 QB 488, CA, at 495.

36 [2002] EWHC 2443 (Ch), [2003] 1 All ER 46 (Neuberger J). Reversed on appeal, but not on this point. See also *Canary Wharf Investments (Three) v Telegraph Group Ltd* [2003] EWHC 1575 (Ch), [2003] 3 EGLR 31 (Neuberger J), at [19].

> because of its textual or factual context, as the decision in *Downie's case* indicates, the court should be slow to depart from that meaning without some reason. I am reinforced in that view in this case, because both Romer LJ and Evershed MR referred to authority as assisting them in construing a covenant whose central words were identical to those in the present case (see [1952] 2 All ER 827 at 830, 831, [1953] 1 QB 48 at 53, 54).

4.19 In another pension trust case on the meaning of the word "retires", *AGCO Ltd v Massey Ferguson Works Pension Trust Ltd*[37], Rix LJ (with whom the other two members of the court agreed) overturned the decision of Neuberger J at first instance and, after reviewing the authorities on the meaning of 'retires', held, at [63]:

> I would therefore respectfully differ from the view of Neuberger J, who appears to have regarded the authorities as of little assistance, but also to have considered that such assistance as they gave supported the employee's primary contention of the possibility of a wider meaning for the word "retires" ...

4.20 In the remedies judgment in *IBM United Kingdom Holdings Ltd v Dalgleish*[38], Warren J referred to this:

> [514] Although AGCO was concerned with the meaning of a particular word in a particular context, the judgment of Rix LJ, in particular, is important in two respects. First, it distils the learning at that stage on the meaning of the word "retire" and demonstrates the proper approach to construction. Secondly, it removes the possibility of the temptation (which I would otherwise be unable to resist) of following the lead of Neuberger J in thinking that the authorities are of little assistance. That possibility is removed by the apparently disparaging words of Rix LJ at [63] of his judgment.

4.21 In another pension trust case (dealing with changes in the inflation index to be used), *Ove Arup & Partners International Ltd v Trustees of the Arup UK Pension Scheme*[39] HHJ Cooke noted a need to refer to the particular context of a previous decision:

> [12] I bear in mind also the often repeated judicial statements that in matters of interpretation, each document is to be interpreted in its own context, and decisions as to the meaning of words in one document are not of direct assistance in construing similar words in another document, unless they lay down general principles. This did not prevent both counsel from referring me to instances in which, in the numerous cases that have considered whether a similar change to CPI could be undertaken by other schemes, different judges have considered what constitutes, for instance, "replacement" of an Index. I have not referred to those instances in this judgment, since they do not lay down general principles and even to the extent they indicate what the judge considered to be the normal or ordinary meaning of a word, it would be so necessary to expand on the

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37 [2003] EWCA Civ 1044, [2004] ICR 15, [2003] OPLR 199. See also *Tonicstar Ltd v Allianz Insurance PLC* [2018] EWCA Civ 434, [2018] 2 All ER (Comm) 1080, [2018] Bus LR 2347 per Leggatt LJ at [21] on an earlier decision forming part of the commercial background and on the value of certainty and on the latter point also *Barnsley v Noble* [2014] EWHC 2657 (Ch) per Nugee J at [290].

38 *IBM United Kingdom Holdings Ltd v Dalgleish* [2015] EWHC 389 (Ch), [2015] Pens LR 99 (Warren J) at [514].

39 *Ove Arup & Partners International Ltd v Trustees of the Arup UK Pension Scheme* [2020] EWHC 1064 (Ch), [2020] Pens LR 21 (HHJ David Cooke).

particular context that it would be questionable whether any real assistance could be derived for this case.

5. Summary on looking at previous decisions on a particular word or phrase

5.1 The case law can indicate that looking at previous decisions on the meaning of particular words or phrases can be dangerous. Clearly the interpretation exercise must look at the particular instrument and its factual context.

5.2 Care also needs to be taken when looking at previous decisions to consider the changes in legislation that have occurred since the case was decided (or the relevant instrument executed).

5.3 Having said this, there are many cases where an approach of considering previous decisions has been considered to be helpful. Obviously the degree of help will depend on the degree of similarity of the cases. If the relevant clause is identical and performs a similar purpose in both instruments, both dealing with a similar type of trust, then there is a strong argument that the previous decision should be cited and, in practice relied upon.

5.4 At the least, the prior decision could be considered a "useful cross-check" as found by Leech J in *CMG Pension Trustees Ltd v CGI IT UK Ltd*[40].

5.5 For a similar approach in relation to contracts, see Sir Kim Lewison '*The Interpretation of Contracts*'[41]. Lewison comments that advocates will cite authority, giving three main reasons:

1. citation may establish a general principle;
2. authorities can provide analogies and illustrations;
3. citation can establish a climate of judicial opinion.

5.6 Lewison is dealing with contractual interpretation, but these comments seem equally apt to trusts as well as contracts

5.7 Lewison goes on to comment (at 4.89) that there is a difference between interpretation of contracts made on standard terms and those which are one off. Such a distinction could well apply to trusts, perhaps where an obvious precedent document has been used[42].

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40 [2022] EWHC 2130 (Ch) (Leech J) at [98].

41 Sir Kim Lewison *The Interpretation of Contracts* (8th ed, Sweet & Maxwell, 2024) at Chapter 4, section 11 (One off contracts).

42 See *Lewin on Trusts* at 7-017.

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