



David E Grant KC

Year of Call: 1999
Year of Silk: 2022
Direct Access: Yes

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David E. Grant KC TEP is a chancery and **commercial** practitioner with specialist expertise in **pensions, trusts, will and estates, professional negligence, fraud and asset recovery, financial services, insolvency and employment.**

He has extensive advocacy experience in courts and tribunals up to the European Court of Justice. He has been instructed as an English law expert in proceedings in the US and Canada. He has also attended numerous mediations and round table meetings in a wide variety of cases. David is happy as sole advocate or leading a counsel team and enjoys the process of working with his instructing solicitors, lay clients, experts and other interested parties.

His clients have included many leading international businesses including the Atos Group, British Airways, BT, ITV, the Royal Bank of Scotland, Lloyds Bank, Aegon and Transport for London. He has also acted for the Pensions Protection Fund, the Pensions Regulator and the Pensions Ombudsman as well as leading professional advisers including Aon, Mercer and Barnett Waddingham as well as various high net worth individuals.

David has been recommended in a total of 4 areas in Chambers and Partners and the Legal 500 since 2007 and is currently described as "a go to practitioner in this area" and "analytical and creative at finding solutions to difficult problems", "he will do his utmost to find the answer to support the client's position".

Areas of Expertise

Pensions

David has been involved in some of the most high-profile pensions cases in recent years including appearing before the Grand Chamber of the ECJ in **Safeway Ltd v Newton & Anor [2020] Pens.L.R. 4** as to whether a scheme can be retrospectively levelled down.

David acts for employers, trustees, members, professional advisors and public bodies.

David has acted in nearly all the rectification cases in the last few years.

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Notable Pensions cases

McGaughey v University Superannuation Scheme Ltd [2022] EWHC 1233 (Ch)

Acted for two members of the USS who sought to bring a multiple derivative claim on behalf of the trustee company USSL against former and present directors. The claim was that the directors were in breach of their statutory duties in valuing the scheme at the height of market turmoil caused by Covid-19, when the scheme assets increased by c£20 bn subsequently and in adopting an unrealistically pessimistic investment return assumption which massively increased the amount of assets required to fund future liabilities.

Safeway Ltd v Newton & Anor [2020] EWCA Civ 869

The decision of the CA on the outstanding point as to whether s62 Pensions Act 1995 equalised the Safeway scheme.

Atos IT Services (UK) Ltd v Atos Pension Schemes Ltd [2020] EWHC 145 (Ch)

Whether a pension in payment can be indexed by reference to CPI having regard to the meaning of "the General Index of Retail Prices (all items)" and "where that index is not published". Judgment awaited January 2020.

Blatchford Ltd v Blatchford & Ors [2019] EWHC 2743 (Ch)

The first decision to consider whether the subjective intention test identified by the Court of Appeal in FSHC is to be adopted in pensions rectification cases.

Re G4S Pension Scheme [2018] Pens.L.R. 16

Leading decision on whether a member of a defined benefit scheme closed to future accrual but with a final salary link is in "pensionable service" such that the scheme is "open" as opposed to "frozen" for the purpose of pensions legislation.

Beaton v Board of the Pension Protection Fund [2017] EWHC 2623 (Ch)

Nugee J, meaning of "attributable to his pensionable service" which has led the DWP to amend the legislation.

Private Client & Trusts

David is experienced in contentious and non-contentious issues, acting for beneficiaries, trustees, executors and advisors in a variety of disputes and matters.

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David is particularly interested in cross-over matters whether concerning the tax consequences of asset recovery proceedings, the responsibilities of pension scheme trustees in matrimonial disputes or otherwise. He is currently advising on applications for clearance to HMRC, the abilities of executors to vary trusts under a will and the enforcement of compromise agreements in probate proceedings.

Notable Private Client & Trusts cases

McGaughey v University Superannuation Scheme Ltd [2022] EWHC 1233 (Ch)

Acted for two members of the USS who sought to bring a multiple derivative claim on behalf of the trustee company USSL against former and present directors. The claim was that the directors were in breach of their statutory duties in valuing the scheme at the height of market turmoil caused by Covid-19, when the scheme assets increased by c£20 bn subsequently and in adopting an unrealistically pessimistic investment return assumption which massively increased the amount of assets required to fund future liabilities.

Chambers v Thomas Miller Wealth Management Ltd BL-2018-001811

A successful application by Mr Chambers to trace a £3.7m pension pot transferred on false premises as part of a pensions liberation scheme to cheat HMRC into certain assets held by the defendants.

Phillips v Chatfeild-Roberts

PT-2017-000117 contentious probate claim as to the whether the testator's will should be proved having regard to capacity, undue influence and fraudulent calumny. Settled the day before trial.

Jones & Anor v Roundlistic [2019] 1 WLR 4416

Court of Appeal, leading decision on property and March 2018. Whether a term in a lease preventing sub-letting is unfair under the UTCCR 1999.

Webster v Ashcroft [2012] 1 WLR 1309

First decision on ability of promisee's estate to bring claim for proprietary estoppel when promisee became bankrupt after acquiring relevant equity to bring claim.

Professional Negligence

David acts for claimants and advisers alike in professional negligence claims, often with a pensions focus most noticeably

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Briggs & Ors v Alexander Clay & Ors [2019] EWHC 102 (Ch) which was the biggest, most complex and high profile pensions professional negligence case but settled the day before trial. The case generated a reported judgment [2019] EWHC 102 (Ch) on whether without prejudice correspondence could be relied upon in a claim against former advisors

David is current acting in 4 ongoing cases for (respectively) the trustees, solicitors and actuarial consultants concerning variously compliance with the power of amendment, formalities and the tax consequences of investment in residential property

Notable Professional Negligence cases

Stanley Gibbons v Alexander Clay & Ors HC13D003111

In which David persuaded the court to order expert legal and actuarial evidence.

PPF v Aon Consulting Financial Services Ltd & Ors HC-2014-002064

In which the court considered the appropriateness of expert evidence in a claim against actuarial consultant and lawyers.

PPF v Hill

Claim against former pension trustees / scheme advisors for breach of the investment regulations by investing solely in a commercial property portfolio.

Aon Pension Trustees Ltd v MCP [2012] Ch 1

The first appellate consideration of s27 of the Trustee Act 1925 (protection of trustees by means of advertisements).

Financial Services & Banking

David has acted in various claims for financial institutions, their employees or individual investors.

Notable Financial Services & Banking cases

Cologlu v Citadel

Claim concerning whether a high quantity trader was in breach of confidence when approaching a competitor with a business proposal.

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A Pensions Ombudsman appeal concerning the duties of a SIPP provider when an individual is persuaded to transfer his pension into a product investing in foreign property speculation.

Re Lehman Brothers International (Europe) (In Administration) [2014] Bus. L.R. 1186

Application for extension of time to prove debt.

British Telecommunications Plc v Luck [2014] EWHC 290 (QB)

Preliminary hearing on limitation by Teare J concerning allegations of fraud, dishonesty and concealment.

Bulgrains & Co Ltd v Shinhan Bank [2013] EWHC 2498 (QB) HHJ Gore

Whether claim on letter of credit for \$825,000 could be avoided on grounds of, inter alia, fraud.

Bank of Scotland v Johnson [2013] All ER (D) 193 (Jun)

Court of Appeal (Lloyd, Jackson, Beatson LJJ). Successful appeal as to conduct of judge below on appeal by way of review.

Employment & Discrimination

David acts in a wide range of employment claims brought in the courts, by way of arbitration and before the employment tribunal for employers and employees.

Notable Employment & Discrimination cases

Dwyer v Fredbar & Bartlett – Claim No. BL-2020-001411

The leading case on the enforcement of post-termination restrictive covenants in the area of franchises. The claimant/appellant franchisor sought to restrain the defendant former franchisee from trading in the exclusive marketing territory contrary to restrictive covenants. The defendants (whom David represented) contended that the contract is voidable for misrepresentation, that the claimant was in fundamental breach of contract and that, even if the post-termination restrictions survive, they are unreasonably wide and, hence, unenforceable. The trial judge held the covenants to be unenforceable. Dwyer appealed to the Court of Appeal who unanimously dismissed the appeal, holding that inequality of bargaining power is one of, if not the, most significant factors for determining the reasonableness of a restraint against trade.

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Mukoro v Independent Workers' Union of Great Britain UKEATPA/18/BA

Appeal as to whether an ET was justified in refusing to adjourn a case management hearing when the claimant had to attend emergency medical treatment and then, in her absence, striking out the claim on the basis that the proceedings were not in her interest or well-being.

Parsons v Airplus International Ltd 2017 EAT

Appropriate test of a qualifying disclosure in whistle-blowing claims.

Herry v Dudley Metropolitan Council [2017] ICR 610

Successful appeal against an award of costs against a disabled out of work employee and a leading decision on the effect of bankruptcy in ET claims.

Nabili v Norfolk Community Health and Care NHS Trust EAT 21 June 2016

Successful appeal Adjournment of disciplinary hearing in unfair dismissal claim.

Missirlis v Queen Mary University of London EAT 16 May 2016

Successful appeal on redeployment following redundancy in unfair dismissal claim. Consideration of Polkey exclusion.

Chenembo v Lambeth LBC [2014] EWCA Civ 1576

David acted for Lambeth in successfully resisting an appeal in a disability discrimination claim.

Insolvency & Restructuring

David has acted for a variety of creditors and bankrupts in a variety of cases in the courts and tribunals.

David has also made and resisted numerous applications in the Interim Applications Court for freezing orders, suspension of possession orders, discharge and variation of orders concerning bankrupts and insolvent corporations

Notable Insolvency & Restructuring cases

Re Lehman Brothers International (Europe) (In Administration) [2014] Bus. L.R. 1186

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Acted for the applicant, Contrarian Funds LLC, who claimed to be a creditor of LBI(E) and applied for a further extension of time in which to challenge the rejection of its proof of debt by the respondent administrators. The court considered whether the time limit for bringing an application to challenge the rejection of a proof of debt was concerned with litigation.

Snell v Sirin Fine Art Ltd (In Administration) & Ors, HQ12X01256 Master Fontaine 17 January 2013

Whether the Master has jurisdiction and, if so, should exercise her discretion to grant permission to continue proceedings against company in administration.

Re Rangers FC

High profile proceedings arising out of the administration of Glasgow Rangers and allegation of conspiracy against various parties including Collyer Bristow. Acted for the Trustees of a pension scheme who had loaned money to Rangers and sought to prove their debt.

Webster v Ashcroft [2012] 1 WLR 1309

A contentious probate case which involved a proprietary estoppel claim brought by the estate of the promise and is the first decision on the ability to bring such a claim when the promise became bankrupt after acquiring relevant equity to bring claim.

Herry v Dudley Metropolitan Council [2017] ICR 610

Acted for Mr Herry, a discharged bankrupt, in his successful appeal against an order for costs made by the ET. The EAT set out guidance on the effect of bankruptcy on ET claims.

Trustee Corporation Ltd v Nadir [2001] BPIR 541

Acted for Asil Nadir (of Pollypeck fame) in his dispute with his trustee in bankruptcy as to who was entitled to his pension given the existence of a forfeiture provision in the case of bankruptcy.

Commercial Litigation

David has experience in numerous commercial litigation matters including:

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- **Company law**
- Asset tracing
- Interim relief including freezing orders and search orders
- Restrictive covenants
- Property disputes

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Memberships

- Pensions Litigation Court Users Committee – Secretary
- **Association of Pensions Lawyers** – former chairman of Litigation Committee
- Bar Council – Race Working Group and Combar committee member
- **Combar** – former Executive committee member
- **Bar Council** – Pupillage Supervisor Network
- **Chancery Bar Association** – mentor
- **Employment Lawyers Association (UK)**
- **Financial Services Lawyers Association**
- **STEP**

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Languages

- French
- Serbian(basic)

Publications

- Will-Making in Difficult Circumstances: How to Comply with Formal Validity Requirements
- A poisoned mind: Some truths and misconceptions concerning fraudulent calumny (2020 Trusts Quarterly Review)
- The Rise and Potential Fall of Corrective Construction (2019 Trusts Law International)
- When all else fails: Rectification of voluntary settlements (2018 Trusts Quarterly Review)
- Further elephants in the room: pension trusts, professional negligence claims and what we still do not know (2015 Trusts Law International)

Awards

- Scholar of Worcester College, Oxford
- Major Scholar of the Inner Temple

Recommendations

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