

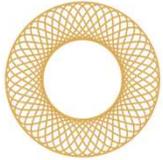
Outer Temple

White Paper Talk

Correction Exercises

How should you approach correction exercises arising from errors uncovered during a buy-in – and avoid potential payment, data and tax problems?

Wednesday 11th March 2026
David E. Grant KC

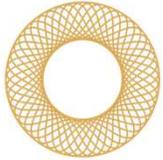


The talk in a nutshell – 4 crucial points

- Absorb and apply everything you hear today
- Spot any error before, and not after, buy-in
- Address the error promptly
- Call your customary clerking contact



“mistakes were made (but not by me)”



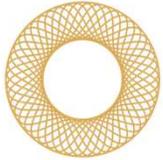
Mismatch between administration and scheme provisions

- Can arise in difference circumstances
- Can lead to overpayment or underpayment

First, amendment issues - scheme wide effect

- Invalid amendment – no deed
- Excessive amendment – purported breach of fetter on PoA
- Erroneous amendment - meant to provide for 2.5% CPI but provided for 5% CPI

“do as I do, not as I say”



Mismatch (.../ctd)

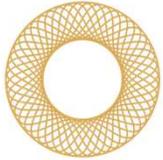
Second, failure to apply provisions on scheme- or class- wide basis

- Treats certain aspect of pay as non-pensionable when should be pensionable
- E.g. bonuses

Third, failure on an individual basis

- Overpayment



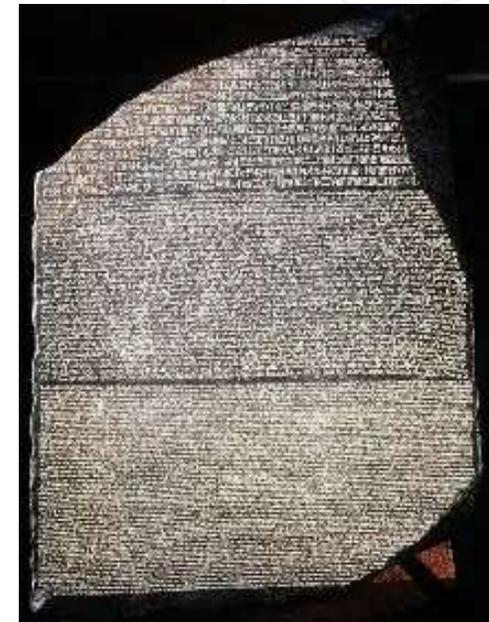


The long tail of pensions disputes

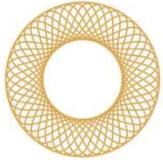
Places for People [2025] EWHC 3371 (Ch)

- 1993, 1994, 2001, 2004, 2007, 2011 deeds
- 1993 deed only found in 2023
- Some of errors spotted in 2015.
- Proceedings issued 2025

This is not unique – even plain vanilla rectification claims can take a long time

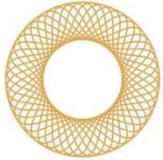


“Can you see anything? Yes, wonderful things”



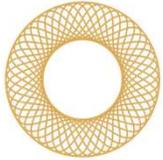
What is the objective of trustees / administrators?

- Resolve uncertainty and determine the proper trusts of the scheme
- Clarify what benefits have to be funded and paid
- Mitigate any losses
- Seek to recover from professional adviser(s)



Is the point so straightforward that court proceedings are not needed?

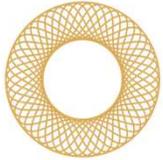
- Can proceedings be avoided?
- Is the construction sufficiently clear?
- Will an opinion from counsel suffice?
- Sliding scale of certainty, cost and speed
- Merit in gathering evidence to resist a prospective Ombudsman or other member complaint
- Is cost-saving in some instances off-set by reduced protection?



Pros and cons of various options

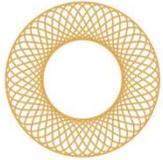
- Take no action
- S48 AJA Application
- Member consent exercise
- Blessing application / re *Benjamin* order
- Corrective construction
- Rectification – summary judgment/disposal
- Paper application
- Compromise a claim
- Contested claim





How else can cost of proceedings be contained?

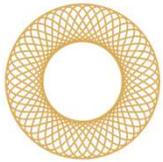
- The court is not a rubber stamp
 - *KO UK Pension Trustees v Barker* [2024] EWHC 3661 (Ch) [28]
 - Masters routinely say the same about rectification
- As for rectification, is there any alternative to court proceedings?
 - Paradox – “convincing evidence” and tribute to “meticulous” preparation vs some observations of “overbloated” claims
 - Is a simpler corrective construction solution available?



Tension between employer and trustee

- If the trustee receives advice indicating there is a problem, what options do the employer have?
- Is there an opportunity to negotiate on other matters?
- Impact on failure to mitigate arguments

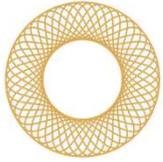




Sample Legal Issues

- Ineffective/invalid amendment – equitable maxims and estoppel
- Excessive amendment – severance and fetter on power of amendment
- Erroneous amendment – corrective construction/rectification
- See:
 - *HR Trustees v Wembley* [2011] EWHC 2974 (Ch)
 - *Gleeds* [2014] EWHC 1178 (Ch)
 - Next talk

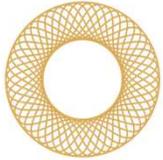




Data and administration issues

- Is the documentation clear?
- Which members are affected?
- Particular problems where there is a transient workforce
- Communication to members as part of any court process
- Pension tracing service

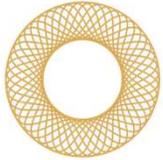
“data, data, data, I cannot make bricks without clay”



Places for People – identify and classify all the benefit changes

- Not all benefit changes put through the model
- Five Buckets
 - Inadequate data
 - Immateriality
 - Member optionality
 - Actuarial equivalence
 - Beneficial change

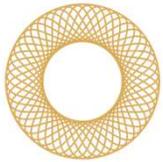




Can one turn a **blind eye** to beneficial changes?

- Depends on nature of employer
- And strength of covenant
- Questions of proportionality and give and take – can one set-off different issues?

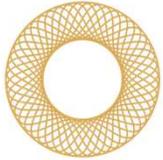




Tax issues

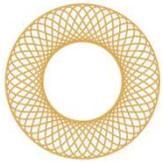
- Annual allowance issues - are additional benefits to be viewed as genuine arrears of pension accruing throughout service rather than when calculated and paid?
- In compromise –
 - Will there be Revenue consequences if the compromise benefit is not something which could have been paid under the Scheme?
 - Can the payment be reshaped, e.g. where Revenue limits are or might be breached?
- If HMRC do not provide non-statutory clearance, what next?





Dangers of bringing proceedings and compromising after buy out

- May not be legally or factually possible to vary or revisit policy
- If so, any additional benefits have to be realised outside the scheme
- Tax dangers of cash payments and £10,000 limit
- Income tax due – trustee to account to HMRC
- Obligations to assist affected members to recover IT from HMRC?
- Unauthorised payment charge and surcharge – ss208, 209 FA 04
- Scheme sanction charge – s239 FA 2004

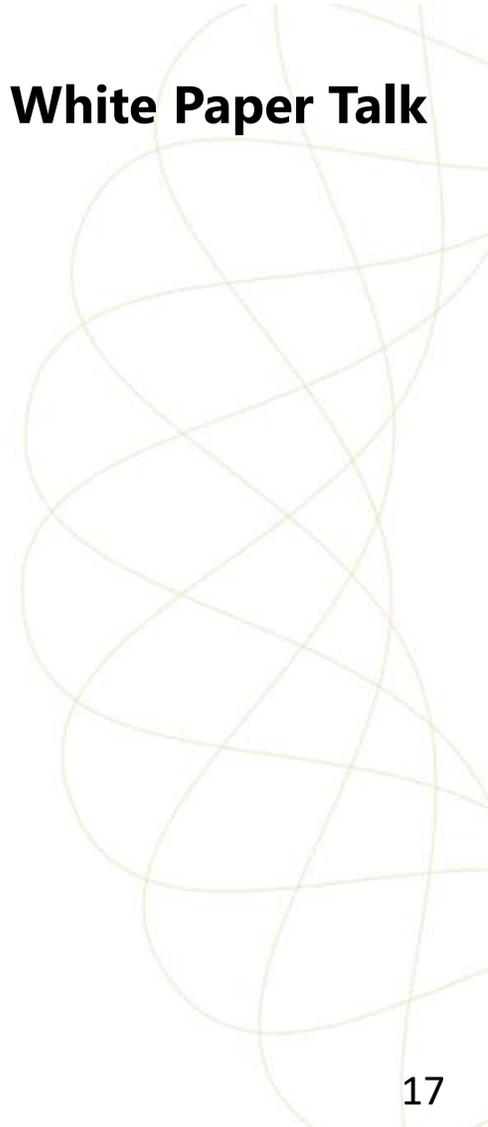


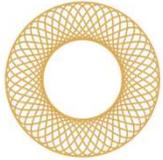
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Question time



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Thank you

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