

Overview

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Profile: Overview

Keith Rowley QC is described by Chambers UK as one of the best silks at the Bar for complex litigation and is well known as a commercial and Chancery advocate. He deals frequently with international disputes and has a particular specialisation in pensions law.

Experience and Expertise

Keith Rowley QC is regularly instructed by major firms in the City of London, large national firms and smaller provincial practices and his clients range from banks, insolvency practitioners, insurers and multi-national companies to smaller businesses and private individuals.

Earlier in his career, Keith Rowley was junior counsel for the Takeover Panel on the first challenge in the courts to one of its rulings in *R v Takeover Panel ex parte Datafin* and subsequently advised the Panel on a number of occasions (including successfully applying to set aside a subpoena issued against it on behalf of Lonhro in the litigation with the Australian entrepreneur, Alan Bond, and also in relation to Alan Sugar's attempt to take his Amstrad company back into the private sector).

He also acted for the trustees of the Champion Pension Scheme (successor to the well known Champion Sparking Plug business), one of the two UK pension schemes involved in the Federal-Mogul UK administration/US Chapter 11 proceedings. He was the only pensions silk to appear on the UK administrators' application for directions before David Richards J (*Re T & N Ltd* [2005] PLR 1) and the important section of the judgment dealing with English pensions law and explaining how the US group restructuring proposals were inconsistent with it is derived entirely from his submissions.

He led a team from chambers in *Weir & Ors v Secretary of State for Transport*, representing the Railtrack Private Shareholders' Action Group in the claim which they brought against Stephen Byers, the former Secretary of State for Transport, and the Department of Transport, for misfeasance in public office and breach of the shareholders' rights under Article 1 to the First Protocol of the European Convention on Human Rights, arising out of the decision to put Railtrack Plc into administration in October 2001. Although this claim was unsuccessful, in his judgment Lindsay J praised Keith's presentation of the shareholders' claim.

Other cases of note include *Jasmine Trustees Ltd v Wells & Hind* and *Prudential Staff Pensions Ltd v The Prudential Assurance Company Ltd and others*, which is now the leading case on the employer's duty of good faith in relation to the exercise of an employer's non-fiduciary powers under a pension scheme. He appeared last year in *Houldsworth v Bridge Trustees Ltd* (the Imperial Home Décor Pension Scheme), acting for the successful Trustee of the Scheme in the Supreme Court, and below.

Further details of reported cases are set out below.

Recommendations

Keith Rowley QC is consistently recommended by the legal directories as a leading silk for commercial chancery; traditional chancery; commercial litigation; pensions; professional negligence; and property law.

The directories have noted that he is "an incisive and brilliant tactician" with an "ultra-approachable demeanour" who "exudes authority" and "commands enormous respect for his perceptive and lucid advocacy". Other recent directory comment has included the following:

- "He is very responsive, especially for a QC. He also has a very calming and

methodical manner, so if anything troubles clients, he is brilliant at bringing it back to the fundamentals." (Professional Negligence, Chambers UK 2018)

- "He pays forensic attention to detail, is attentive to deadlines and is an incisive operator." "He always provides pragmatic advice and appreciates that litigation is not always the solution for the client." (Pensions, Chambers UK 2018)
- "A name consistently linked to big and important cases, who provides very detailed and well thought-out advice. professional trustees consult him in order to get major strategic opinions on big legal issues." "He is a forensic lawyer, who gets right down to the key issues." (Chancery traditional, Chambers UK 2018)
- "Very knowledgeable and authoritative, he demolished in the course of pre-action correspondence what looked like quite a good case on paper for the opposition." (Chancery commercial, Chambers UK 2018)
- "He's very thorough and very experienced. He often appears in hotly contested professional negligence claims." (Professional Negligence, Chambers UK, 2017)
- "He's very hands-on and he has gravitas and knows what goes down well with judges." (Pensions, Chambers UK, 2017)
- "He's very analytical and he masters complex issues and sees a way forward very well." (Pensions, Chambers UK, 2017)
- "He's very knowledgeable. He's quite understated in court, but has a quiet authority." (Chancery: Traditional, Chambers UK, 2017)
- "He is very good at seeing how the facts fit together in large cases and he quickly identifies what you need from witnesses." (Chancery: Commercial, Chambers UK, 2017)
- "His quality of advocacy is excellent." (Commercial litigation, The Legal 500, 2016)
- incisive and courageous with excellent judgment.
- a skillful handler of both opponent and client, with a gimlet eye for the best way forward in a case.
- the kind of person people sit up and take notice of, a great hit among clients due to his technical prowess and international expertise.
- an outstanding lawyer, clever, personable and always willing to help.
- does everything with pinpoint accuracy and attention to detail, someone you want on your team - his advice is crystal clear and spot-on.
- a real brawler, someone you want to go into battle on your behalf - fantastic on his feet has a fearsome intellect and the ability to cut to the chase.
- a clear-sighted barrister who has the ability to instantly absorb and marshal complex facts and produce insightful, commercially focused advice.
- great to work with, he impresses greatly with his wide range of legal knowledge, and his ability to resolve finely balanced arguments so as to deliver clear and practical advice to tight deadlines.
- solicitors find him genial, accommodating, but above all thoroughly excellent at all he does.
- has a very forthright approach and quickly gets to the heart of the issues.
- thorough and meticulous in his preparation, and a superb advocate who can really take the fight to the other side.
- a sure-footed guide who is resourceful and imaginative in seeking solutions and a real team player.
- a well-known figure across the Chancery and commercial spectrum, and is known to really get his teeth into the big cases.
- In recent years Keith has also been shortlisted as Barrister of the Year at The Lawyer Awards, and recommended in the Bar section of the Hot 100, which noted that: "it is testament to Rowley's skills as an advocate that recent years have seen him act in such mammoth cases."

Cases and Work of Note

- *The Pensions Regulator v A Admin and others [2014] EWHC 1378 (Ch)* - appearing with Elizabeth Ovey for The Pensions Regulator in proceedings relating to alleged pension liberation. Mrs Justice Rose's decision determines three preliminary points of law on the validity of five schemes under challenge. Two of the points concern the scope and construction of section 91 of the Pensions Act 1995 prohibiting the assignment or surrender of pension benefits.
- *Briggs & Ors v Gleeds (Head Office) (a firm) & Ors [2014] EWHC 1178 (Ch)* - appearing with Wendy Mathers for the Trustees of the Gleeds Retirement Benefits Scheme in CPR Part 8 proceedings. Mr Justice Newey's decision deals with the

consequences of the defective execution of 30 Scheme documents over a period of nearly 20 years.

- *Vaitkus v Dresser-Rand UK Ltd [2014] EWHC 170 (Ch)* - appearing for the claimant trustees in an equalisation claim in which the Court held that a notice issued to female members of a contributory pension scheme advising them that males and females would accrue future benefits on the same basis from 6 April 1991 (following the decision of the European Court of Justice in *Barber v Guardian Royal Exchange Assurance Group (C-262/88)* [1991] 1 QB 344) was sufficient to amend not only the original interim deed but also a subsequent definitive deed;
- *Sarjeant v Rigid Group Ltd [2013] EWCA Civ 1714* - appearing for the successful respondent trustees in an appeal concerning the construction of scheme rules in which the Court of Appeal held that a provision that, upon a winding-up, the members' benefits had to be provided as 'as nearly as practicable the same' permitted the trustees, by implication, partially to buy out the members' entitlement so as to maximise the recoverable section 75 debt. The first instance decision was upheld and *Stevens v Bell [2002] EWCA Civ 672*, which held that the rules of a pension scheme had to be construed in a purposive way, was applied;
- *Danks v QinetiQ Holdings Ltd [2012] EWHC 570 (Ch)* - power of trustees to amend pension scheme with the effect of substituting CPI for RPI as the measure of inflation;
- *Alexander Forbes Trustee Services Ltd v John Doe & Richard Roe [2011] EWHC 3930 (Ch)*, [2012] 19 PBLR - representing Richard Roe in his capacity as representative beneficiary; determination of the effect of Regulation 13 of the Occupational Pension Schemes (Winding Up) Regulations 1996 (SI 1996/3126) on section 73 of the Pensions Act 1995 in the context of a hybrid scheme;
- *Prudential Staff Pensions Ltd v The Prudential Assurance Company Ltd and others - [2011] All ER (D) 142 (Apr)* employer's duty of good faith in relation to the exercise of non-fiduciary powers under a pension scheme;
- *Houldsworth v. Bridge Trustees Ltd [2011] 1 WLR 1912*, [2010] EWCA Civ 179; [2010] WLR (D) 65, first instance judgment (sub nom *Bridge Trustees Ltd v Yates*) reported at [2008] PLR 261 whether equilibrium of assets and liabilities was a requirement of the statutory definition of either a money purchase scheme or similarly for money purchase benefits;
- *HR Trustees Ltd v German [2010] PLR 23* - identifying the power of amendment applicable to a pension scheme, whether the relevant power was complied with, the consequences of its exercise, the existence of an extrinsic contract between members and the employer and group estoppels;
- *Independent Trustee Services Ltd v Hope [2009] EWHC 2810 (Ch)*; [2009] WLR (D) 325 - whether trustees should take into account compensation available under the Pension Protection Fund when making decisions in relation to the assets of an occupational pension scheme;
- *Alitalia v Rotunno [2008] PLR 175* - whether "to secure" benefits under a scheme means that the scheme should be funded on the full buy-out basis and whether trustees are entitled to an indemnity from the employer in respect of their costs of the proceedings, before recourse is had to the fund;
- *Jasmine Trustees Ltd v Wells & Hind [2008] Ch 194 [2007] PLR 71* - Keith acted for defendant solicitors in respect of the ineffective appointment of trustees and the validity of their acts, as well as the meaning of the word "individuals" in s 37(1)(c) Trustee Act 1925);
- *Cripps v Trustee Solutions Ltd [2008] 1 All ER 826* - reversal of *Trustee Solutions Ltd v Dubery [2006] PLR 177* dealing with priorities on a scheme wind-up under section 73 (3) of the Pensions Act 1995 (Keith appeared for successful appellant, having not appeared below);
- *British Vita Unlimited v British Vita Pension Fund Trustees Ltd [2007] PLR 157* - the relationship between trustees' powers under a scheme's contributions rule and the scheme specific funding regime contained in Part 3 of the 2004 Act, as supplemented by Occupational Pension Schemes (Scheme Funding) Regulations 2005, following acquisition of FTSE 250 company by a US private equity house and employer/trustee funding dispute;
- *RWE Nukem Ltd v AEA Technology plc [2005] EWHC 78 (Comm)* - alleged breach of pensions warranties given on the sale of a nuclear waste reprocessing business; *Re T & N Ltd [2005] PLR 1* - details set out above;
- *Hearn v Younger [2005] PLR 49* - Keith represented the third, fourth and fifth defendants in this multi-million pound case which is the leading authority on members' claims to enhanced benefits by estoppel as a result of alleged

- inaccuracies in explanatory literature produced by the employer;
- *Weir & Ors v Secretary of State for Transport [2005] EWHC 2192 (Ch)* - the Railtrack case, details set out above;
- *Greenwood v Newman [2004] All ER (D) 214* - successful appeal from the Ombudsman in a case raising issues of principle as to the ostensible authority of the chairman of the trustees to make an agreement binding on the trustees as a body;
- *Inglewood Investment Company Ltd v Baker [2003] 2 EGLR 219* - the first adverse possession case to reach the Court of Appeal since *Pye v Graham*;
- *Babicki v Rowlands [2002] Lloyd's Rep PN 121* - Limitation Act 1980 s. 14A;
- *Bloor (Measham) Ltd v Calcott [2002] 1 EGLR 1* - estoppel and agricultural tenancies;
- *Independent Pension Trustee Ltd v Stevens [2002] 37 PBLR* - construction of scheme rules relating to surplus;
- *Harwood-Smart v Caws [2000] PLR 101* - ultra vires amendments and failure to include entrenched provisions in a scheme's definitive deeds;
- *London Borough of Lambeth v Blackburn (2001) 82 P & C R 39* - adverse possession;
- *Dent v Ellison Furniss Blank [2001] Lloyd's Rep PN 534* - correct date for assessing damages where claimant purchased and expended money improving property which was subject to a defect in title;
- *Gillett v Holt [2001] Ch 210* - proprietary estoppel and promises to leave property by will;
- *Worby v Rosser [2000] PNLR 140* - alleged liability of solicitor preparing a will to beneficiaries under a previous will;
- *Harwood-Smart v Caws [2000] PLR 101* - ultra vires amendments and failure to include entrenched provisions in a scheme's definitive deeds;
- *Telegraph Service Stations Ltd v Trafford BC [2000] 3 EGLR 145* - determination of compensation payable on compulsory purchase of major petrol station;
- *Finley v Connell [1999] 2 Lloyd's Rep PN 895* - settlement with principal debtor but implied reservation of right against surety;
- *Bogg v Raper (1998/99) 1 TELR 267* - solicitor-trustee entitled to rely on exclusion clause in will drafted by him;
- *Carter v TG Baynes [1998] EGCS 108* - negligence claim against solicitor who failed to advise his developer-client that land was subject to a restrictive covenant which prohibited further development;
- *Municipal Mutual Insurance Ltd v Harrop [1998] PLR149* - retrospective use of power of amendment to correct previous erroneous amendment;
- *Johnson v Bingley Dyson & Furey [1997] PNLR 392* - negligence claim against solicitor after his elderly client sold land to a developer at an undervalue;
- *Connor v Ritzman (1995) 70 P & CR D41* - assessment of damages recoverable from negligent solicitor where defect in title rectified at trial;
- *Re ILG Travel [1995] 2 BCLC 128* - rule 4.90 and agents' right of set-off on insolvency of tour operator;
- *Collins v Tipton & Coseley BS [1994] EGCS 120* - mortgagor's claim that security was sold at an undervalue;
- *Re William Makin Ltd [1992] PLR 177* - application of schemes surplus as between members and secured creditors;
- *Innovare Displays v Corporate Broking Services [1991] BCC 174* failed USM flotation;
- *R v Takeover Panel ex parte Datafin [1987] QB 815* - judicial review, details set out above;
- *Re Thompson's Settlement [1986] Ch 99*;
- *Lawlor v Gray [1984] 3 All ER 345* - share sale agreement.

Memberships

Chancery Bar Association; the Association of Pension Lawyers; and the Professional Negligence Bar Association.

