



## Elizabeth Ovey

Call: 1978

### Barrister

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#### CONTACT

Email  
eovey@radcliffechambers.com

Email Clerk  
clerks@radcliffechambers.com

Telephone  
020 7831 0081

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#### ADDRESS

11 New Square  
Lincoln's Inn  
London WC2A 3QB

DX: 319 London  
Telephone: 020 7831 0081  
Fax: +44 (0)20 7405 2560

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Starting from a traditional Chancery base of property, trusts and wills, **Elizabeth's** practice has developed to include substantial pensions, retail financial services and professional negligence work. She describes it as a varying and fascinating mix of case law and black letter law with regulatory overtones and a hint of charity.

Elizabeth is a part-time judge of the Upper Tribunal, which gives her an additional insight into the tribunal side of the Courts and Tribunals Service, which now encompasses financial services, pensions and charity matters. Elizabeth is regularly involved in advising in connection with and attending mediations in her areas of practice. She is ranked as a leader in her field by *Chambers UK Bar* and *The Legal 500 UK Bar*.

#### PENSIONS

Elizabeth's practice has included pensions law for nearly 35 years, beginning with involvement in 1985 in a case concerning a small pension scheme specifically for Nottinghamshire miners. Her first pensions drafting experience came with the Finance Act 1989 and the many successive statutory changes have all contributed to her work. She has been involved in litigation since the days when there were still surpluses to be argued about. She continues to deal with both contentious and non-contentious matters.

Pensions law is now a significant part of Elizabeth's practice. She acts for various firms specialising in the pensions field or firms with substantial pensions departments, principally in connection with occupational pension schemes of various sizes, ranging from the main pension schemes of former nationalised industries to small self-administered pension schemes. Her clients include trustees, employer companies and individual members. She has also acted for the Pensions Ombudsman and the Pensions Regulator.

Elizabeth advises on issues of construction, sometimes associated with rectification, estoppel and related professional negligence claims, the practicalities of scheme specific funding, the limits of a scheme's power of amendment and the duties of trustees, particularly in the context of employers trying to grapple with scheme liabilities. She is also instructed on a wide variety of miscellaneous topics.

Reported cases include:

- *Airways Pension Scheme Trustees v Fielder* - Appearing in a determining

whether trustees bringing an appeal should be entitled to recover their costs from the pension scheme

- *Burgess v BIC UK Ltd* [2018] Pens. L.R. 13- Appearing in a case concerning the validity of grant of increases to pensions in payment
- *Bagniet v Teachers' Pensions* [2017] Pens. L.R. 13 - Acting in a case determining whether member entitled to compensation for delay in acting on transfer request
- *Arcadia Group v Arcadia Group Pensions Trust* [2014] B.T.C. 40 - Acting in a case concerning the power of trustees to amend a pension scheme with the effect of substituting CPI for RPI as the measure of inflation
- *LPA Umbrella Trust* [2014] Pens. L.R. 319 - Acting in relation to the effect of transfers to possible pension liberation vehicles
- *Danks v QinetiQ Holdings Limited* [2012] Pens. L.R. 131 - Acting in a case concerning the power for trustees to select CPI rather than RPI as the relevant index for increases to pensions in payment and revaluation
- *Prudential Staff Pensions Limited v The Prudential Assurance Company Limited* [2011] Pens. L.R. 239 - Acting in a case concerning the employer's duty of good faith in relation to the exercise of the employer's non-fiduciary powers under a pension scheme
- *HR Trustees Limited v German* [2011] Pens. L.R. 11 - Appearing in a case determining whether s91 of the Pensions Act 1995 prevents the compromise of disputed claims to pension rights
- *HR Trustees Limited v German* [2010] Pens. L.R. 23 - Appearing a case determining the validity of the conversion of a final salary scheme to a money purchase scheme, raising questions of construction, extrinsic contract and estoppel
- *Alitalia-Linee Aeree Italiane SpA v Rotunno* [2008] Pens. L.R. - Acting in a case concerning the meaning of "to secure" benefits under a scheme and trustees' entitlement to indemnity for costs
- *Re T&N and others* [2005] Pens. L.R. 1 - Acting in a case concerning the position of a pension scheme on directions application by administrators.

## **BANKING AND FINANCIAL SERVICES**

Elizabeth regularly acts for financial institutions (in particular banks and building societies) in constitutional matters, in drafting documentation, and in litigation, although with the conversion of many building societies into banks, constitutional matters have assumed less importance. Areas of particular significance have been the fairness of terms in both lending and savings documentation and regulatory compliance

In terms of litigation, she has been involved in a number of complex mortgage possession actions, including actions which reached the Court of Appeal. She has also been instructed on cases involving compliance with Consumer Credit Act requirements and the recovery of bank charges. She has also advised on the imposition of conditions by the FSA and on appeals to the Upper Tribunal.

Reported cases include:

- *Nelmes v NRAM plc* [2016] C.T.L.C. 106 - Acting in a case determining whether defendant to possession proceedings had a good unfair relationships claim
- *Twogates Properties Limited v Birmingham Midshires Building Society* [1997] EGCS 55 - Acting in a case considering the effect of s22 of the Building Societies Act 1986 in relation to estate agency subsidiary of a building society.

## **CONSUMER CREDIT**

Elizabeth advises both banks and building societies on lending and savings issues, particularly on matters of fairness. A particular area of work has been the repeated changes in documentation required for consumer credit loans from 2005 onwards. Much of the work has arisen from the introduction of MCOB, the changes

in regulations under the Consumer Credit Act 1974 and the enactment of the Consumer Credit Act 2006 and the continuing impact of the Unfair Terms in Consumer Contracts Regulations 1999, coupled with the FSA's Treating Customers Fairly initiative.

In terms of litigation, Elizabeth has been involved in a number of complex mortgage possession actions, including actions which reached the Court of Appeal. She has also been instructed on cases involving compliance with Consumer Credit Act requirements and the recovery of bank charges, although to date such litigation has settled.

In addition to general drafting work, Elizabeth was instructed by the lender in a possession claim in which the defence was based primarily on the Unfair Terms in Consumer Contract Regulations and the unfair relationships provisions of the Consumer Credit Act. The case also raised a point on non-disclosure of commission. The case went to the Court of Appeal, where the lender was required to give credit for the commission payment but was otherwise wholly successful and retained the order for possession granted at first instance. See *Nelmes v NRAM plc* [2016] C.T.L.C. 106.

### **PROFESSIONAL LIABILITY**

Elizabeth is consistently recommended as a leading junior for professional negligence law by *The Legal 500 UK Bar*, which comments that "she has a brilliant mind and is always a pleasure to deal with".

Elizabeth's initial involvement in professional liability resulted largely from the collapse of the property market at the end of the 1980s, as a result of which many financial institutions sought to recover their losses through negligence actions against their professional advisers (in particular, their solicitors) and she was instructed to act on behalf of building society and bank clients for that purpose. Her understanding of the conveyancing and mortgage background was particularly useful in this context.

Her professional liability practice now covers a much wider field. In addition to alleged negligence in conveyancing matters, she has dealt with cases against solicitors involving advice on financial and property transactions, the drafting of documents and the conduct of litigation, itself relating to a wide variety of matters. She has also been involved in claims against other professionals, such as insurance brokers, surveyors, accountants and actuaries. She is instructed by insurers on behalf of defendants, as well as by claimants. An increasing part of her professional liability practice in recent years has related to pension schemes.

Much of Elizabeth's work in the mortgages field is done against the background of a potential professional liability claim, so that advising on the main claim also involves dealing with the professional negligence aspects. A similar situation arises in her pensions work. She is also instructed in a professional liability claim against a consumer credit background, reflecting another of her specialist fields of practice. Her professional liability work is not confined to such areas, however, but extends to professional negligence in a wide range of matters where the underlying law has chancery aspects. Inevitably, many such cases are settled out of court.

Reported cases include:

- *Johnson v Gore Wood* [2002] 2 AC 1 – Acting in a case concerning solicitors' negligence in relation to service of an option, raising issues of recoverable loss.

### **PROPERTY**

Elizabeth has included property work in her practice throughout her career and continues to do so. Recent work has included a dispute over the existence and extent of a right of way.

Reported cases include:

- *Johnson v Gore Wood* [2002] 2 AC 1 – Acting in a case concerning solicitors' negligence in relation to service of an option, raising issues of recoverable loss
- *Cheltenham & Gloucester Plc v Booker* [1997] 1 FLR 311 – Acting in a case concerning the exercise of the court's residual discretion to permit a mortgagor to stay in possession pending sale by a mortgagee.

## **TRUSTS**

Elizabeth has included trusts as an area of practice throughout her career and continues to do so. Much of Elizabeth's pensions work also involves a thorough understanding of the underlying trust law.

Reported cases include:

- *Davis v Richards & Wallington Industries Limited* [1990] 1 WLR 1511 – Acting in a case concerning questions over destination of surplus, involving formalities for the execution of a definitive deed, executory trusts and when a power is taken to have been exercised
- *Gibbon v Mitchell* [1990] 1 WLR 1304- Acting in a case considering the effect of a mistake on a trust document.

## **WILLS AND ESTATES**

Elizabeth has included work relating to wills and estates in her practice areas throughout her career.

## **CHARITIES**

Although charity law is not a principal part of Elizabeth's practice, she has been instructed in matters involving charities from time to time over her years in practice and has been a member of the Charity Law Association for many years. She also has extensive experience of the practical difficulties of running a charity, having been a trustee of a variety of trusts related to the Methodist Church. She enjoys the occasional opportunity of combining her work in other fields with her interest in charities.

Elizabeth's most recent work of this nature has been to advise in connection with a dispute over the constitution of a mosque and a related application for an interim injunction to enable the applicant to attend the mosque during Ramadan. Elizabeth was also a member of the panel of three judges of the Upper Tribunal which decided *Independent Schools Council v Charity Commission* [2012] Ch 214.

## **RECOGNITION**

Elizabeth Ovey is recommended as a leading junior by *Chambers UK Bar*, *Chambers Global*, *Chambers HNW* and *The Legal 500 UK Bar* across six commercial and chancery fields: banking and financial; consumer credit; commercial chancery; traditional chancery; pensions; and professional negligence. Examples of recent directory comment are as follows:

- "Elizabeth is very careful and considered. She has good experience in the area of FCA regulated pensions, which a lot of pension barristers do not have, and therefore is a good senior all-rounder." (Financial Services Regulation, *Legal 500 UK Bar 2024*)
- "A keen legal mind, who can articulate complex pensions issues with precision and clarity. Counsel to have on your side." (Pensions, *Legal 500 UK Bar 2024*)
- "Technically strong, clear and concise advice and commercial approach." (Professional Negligence, *Legal 500 UK Bar 2024*)
- "Elizabeth is brilliant to work with. She has a quick turnaround, and is well priced and very clever." (Pensions, *Chambers UK Bar 2024*)

- *"A very strong barrister, who is always responsive."* (Chancery: Commercial, Chambers UK Bar 2024)
- *"Elizabeth is exceptionally good at explaining complicated matters and getting to the heart of what is important."* (Pensions, Chambers UK Bar 2023)
- *"Very diligent and responsive."* (Chancery: Commercial, Chambers UK Bar 2023)
- *"Elizabeth is exceptionally attentive to detail and technically excellent. She is very responsive and will make herself available on short notice around other commitments. She is a very experienced Junior."* (Financial Services Regulation, Legal 500 UK Bar 2023)
- *"She is calm and clear in her advice, whilst being very commercial."* (Banking and Finance, Legal 500 UK Bar 2023)
- *"Elizabeth is a fantastic junior with tremendous experience. She is attentive, responsive and incisive."* (Professional Negligence, Legal 500 UK Bar 2023)
- *"Elizabeth is exceptionally attentive to detail and technically excellent. She is very responsive and will make herself available on short notice around other cases."* (Pensions, Legal 500 UK Bar 2022)
- *"She is a stalwart who resonates empathy for the client and demonstrates technical dexterity on the most complex of pensions issues."* (Pensions, Chambers UK Bar 2022)
- *"Very knowledgeable and responsive, she gives clear advice."* (Chancery: Commercial, Chambers UK Bar 2022)
- *"Elizabeth is a fantastic junior with tremendous experience. She is attentive, responsive and incisive."* (Professional Negligence, Legal 500 UK Bar 2022)
- *"Elizabeth is a congenial barrister with excellent communication skills and rapier-like legal perception – her opinions are an intellectual tour de force."* (Pensions, Legal 500 UK Bar 2022)
- *"She is incredibly responsive and easy to work with."* (Financial Services Regulation, Legal 500 UK Bar 2022)
- *"She provides really clear and practical advice, which gets to the point and she is able to distill complex analysis into very accessible language. Elizabeth is also incredibly responsive and easy to work with."* (Banking and Finance, Legal 500 UK Bar 2022)
- *"She does excellent pleadings. She is brilliant."* *"She is really pragmatic, delivers very sensible advice and is really quick to turn things around."* (Pensions, Chambers UK Bar 2021)
- *"She's incredibly knowledgeable and her advice is clear and useful."* (Chancery: Traditional, Chambers UK Bar 2021)
- *"A careful, considered but very user-friendly barrister who provides excellent value to clients for their money."* (Banking and Finance, Legal 500 UK Bar 2021)
- *"Very good analytical skills in advising and drafting and an excellent communicator."* (Financial Services, Legal 500 UK Bar 2021)
- *"Very sharp on the law and has a nice calm manner which instils confidence even in tricky situations."* (Pensions, Legal 500 UK Bar 2021)
- *"She is a superstar."* (Professional Negligence, Legal 500 UK Bar 2021)
- *"She's excellent on complicated, technical matters."* *"She is very, very bright and experienced."* (Pensions, Chambers UK Bar 2020)
- *"She is superb and can turn around things quickly and very efficiently. She can turn her hand to various disputes and is very adept at dealing with a broad range of matters in an effective way."* (Chancery: Commercial, Chambers UK Bar 2020)
- *"Demonstrates strong judgment and is very succinct when making points."* (Chancery: Traditional, Chancery UK Bar 2020)
- *"Well regarded for banking litigation."* (Banking and Finance, Legal 500 UK Bar 2020)
- *"Deliberate and precise, and to be relied upon."* (Financial Services Regulation, Legal 500 UK Bar 2020)
- *"Hugely experienced pension barrister with a razor sharp intellect who picks matters up very quickly, and is thoroughly dependable when matters*

- have to be turned round promptly." (Pensions, *Legal 500 UK Bar 2020*)
- "Calm and unflappable, she has a measured but very effective style." (Professional Negligence, *Legal 500 UK Bar 2020*)
  - "Very sharp. She is always alive to weaknesses in legal arguments and has a very practical approach to taking matters forward." (Pensions, *Chambers UK Bar 2019*)
  - "Comes up with innovative solutions and achieves great results. She is very robust in going down a particular avenue, and sees solutions that aren't apparently obvious." (Chancery: Commercial, *Chambers UK Bar 2019*)
  - "The quality of her advice is very high. She is very thorough, very detailed and someone who demonstrates a real understanding of the law." (Chancery: Traditional, *Chambers UK Bar 2019*)
  - "Highly regarded for pensions-related work." (Professional Negligence, *The Legal 500 UK Bar 2019*)
  - "She is unflappable, measured and attentive in her forensic grasp of the detail." (Pensions, *The Legal 500 UK Bar 2019*)
  - "Pragmatic, detailed and excellent at finding solutions." (Financial Services, *The Legal 500 UK Bar 2019*)
  - "A heavyweight advocate, measured in her manner with clients and judges alike." (Banking and Finance, *The Legal 500 UK Bar 2019*)
  - "She is accessible, user-friendly and operates in the real world while being technically very thorough." "She is technically very strong and goes through documents carefully with a fine-tooth comb." (Pensions, *Chambers UK Bar 2018*)
  - "She is very sensible and she dispenses high-quality advice." (Chancery: Traditional, *Chambers UK Bar 2018*)
  - "She's measured, thorough and very well prepared." (Chancery: Commercial, *Chambers UK Bar 2018*)
  - "Very experienced." (Professional Negligence, *The Legal 500 UK Bar 2017*)
  - "She responds brilliantly under pressure, while working under incredibly tight timescales." (Pensions, *The Legal 500 UK Bar 2017*)
  - "She is intelligent and has a detailed grasp of the relevant law." (Financial Services, *The Legal 500 UK Bar 2017*)
  - "She is technically very strong and she's thorough in her advice and clear in her conclusion." (Pensions, *Chambers UK Bar 2017*)
  - "She is very measured and has a good style of communicating with clients; she gets points across in a way we can all live with given our different perspectives." (Pensions, *Chambers UK Bar 2017*)
  - "She is very thorough and very conscientious, and a lot of people respect her." (Chancery: Traditional, *Chambers UK Bar 2017*)
  - "She is a very surefooted advocate who is very bright and covers all the angles in her written advice. She's a really capable adviser to have on your team if you have a complex case." (Chancery: Commercial, *Chambers UK Bar 2017*)
  - "A strong communicator on paper, and a capable and versatile advocate." (Banking and Finance, *The Legal 500 UK Bar 2016*)

## **PUBLICATIONS AND SPEAKING**

- Joint editor of *Wurtzburg and Mills on Building Society Law* (looseleaf edition), Sweet and Maxwell
- Co-author of *Retail Mortgages: Law, Regulation and Procedure*, Sweet and Maxwell.
- Co-author of *The Law of Investor Protection* (2nd edition), Sweet and Maxwell
- Joint consultant editor of the mutual societies section of volume 18(1) of *Halsbury's Laws* (5th edition.):  
<http://lexisweb.co.uk/guides/sources/halsbury-s-laws-of-england>
- Co-author of the *Current Law Statutes Annotated* edition of the *Building Societies Act 1986*
- Member of the working party on the *Standard Conditions of Sale* (1st to 5th editions) and the *Standard Commercial Property Conditions* (1st to

3<sup>rd</sup> editions)

- Contributor of articles to the *Journal of International Banking and Financial Law*
- Member of the editorial board of the *Lexis PSL* pensions section.

Elizabeth contributes to seminars in her practice areas, whether organised by Radcliffe Chambers, external bodies or in-house solicitors' teams. She also speaks at conferences, most recently the 2018 Association of Pension Lawyers annual conference.

### **QUALIFICATIONS**

First class degree in jurisprudence (St. Anne's College, Oxford)

Deputy Social Security Commissioner 1998, becoming a deputy Judge of the Upper Tribunal in 2008

### **MEMBERSHIPS**

Chancery Bar Association; Association of Pension Lawyers; Charity Law Association; Professional Negligence Bar Association.

### **POLICIES AND OTHER DETAILS**

- Read Elizabeth's [Privacy Notice](#), [Data Protection Policy](#) and [Disposal Policy](#)
- VAT Registration Number: 342102414
- Bar Membership Number: 16302