Neutral Citation Number: [2024] EWHC 2765 (Ch)

Case No: PE-2023-000003

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

IN THE MATTER OF THE RADLEY COLLAGE PENSION AND ASSURANCE SCHEME

7 Rolls Building
Fetter Lane, London,
EC4A 1NL

Date: 4 November 2024

Before:

Mr Justice Thompsell

- -

Between:

(1) Sarah Margaret Ballard
(2) William James Alexander Bennett
(3) Deborah Blackmore
~~**(4) Thomas Michael Durie**~~
(5) John Francis Nugee
~~**(6) Deborah Janet Pluck**~~
(suing as Trustees of the Scheme)
(7) Radley College
(suing as Principal Employer of the Scheme and as representative of any Scheme Members in whose interests it would be for the Claimants to obtain the relief that they seek)

Claimants

- and -

Mr Jonathan Buzzard
(sued as a Representative Beneficiary of any Scheme Members in whose interests it would be for the Claimants not to obtain the relief that they seek)

Defendant

Mr Richard Hitchcock KC (instructed by **Blake Morgan LLP**) for the **Claimants**
Mr Nicholas Hill (instructed by **Doyle Clayton Solicitors Limited**) for the **Defendant**

Hearing dates: 8-9 October 2024

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APPROVED JUDGMENT

Remote hand -down: this Judgment was handed down remotely at 10.30 am on 4 November 2024 by circulation to the parties or their representatives by email and by release to The National Archives

Mr Justice Thompsell:

1. INTRODUCTION

1. The Radley College Pension and Assurance Scheme (the **"Scheme**") is a defined benefit occupational pension scheme established in 1962 to provide pensions for non-teaching operational staff of St Peter's College, Radley (now Radley College) (the "**College**"). As the Principal Employer under the Scheme, the College had responsibilities, including making contributions alongside those made by the members of the scheme and for dealing with any shortfall in funding that may arise from time to time.

2. The Scheme takes the form of a trust and, at the time under consideration in this judgment there were five trustees of the trust (the "**Trustees**").

3. The Claimants are the current trustees of the Trust as well as the College in its role as Principal Employer. During the course of the hearing, in response to an unopposed informal application, I agreed to remove two of the original Claimants, Mr Durie and Ms Pluck, as claimants on the grounds that they were no longer trustees of the Scheme.

4. The Defendant is a Representative Beneficiary. He is an active member of the Scheme who commenced pensionable service in 1987. He is directly affected by the validity of the SAAs (as defined below) and by the terms of the 2006 Deed (as is also defined below). He was originally appointed pursuant to CPR rule 19.9 to act as a representative of all members.

5. Again in response to an informal application, this time made on behalf of both the Defendant and the Claimants, I agreed to clarify his role as being a representative on behalf of any member of the Scheme in whose interests it would be for the Claimants not to obtain the relief that they seek. This was to acknowledge that not all members may have the same interests in relation to the claim. Some may wish to oppose it. Others, having regard to the financial effect that a failure of the claim may have on the College, may wish to support it in order to ensure that the College does not become motivated to close the Scheme to future accruals, or to take other action that would affect them. The interests of those members is best protected by the Claimants and I have agreed that the Seventh Claimant should be appointed to represent the interests of any members in whose interests it would be for the Claimants to obtain the relief that they seek.

6. The Claim concerns the validity of amendments purportedly made to the Scheme's provisions regarding pension increases. There are three main concerns.

7. First, there are questions concerning a Scheme Amendment Authority ("**SAA**") made or purportedly made by the Trustees from on or around 18 January 2001 to take effect from 2 February 2001 (the "**2001 SAA**"). In summary, and as discussed further below, the issue arises because there was a requirement for this document to be signed by all five of the Trustees, and although all five did sign, one of them purported to sign on behalf of the College, leading to a degree of doubt whether this requirement was met.

8. Secondly, the same issue arises in relation to two SAAs dated 8 June 2005 (the first of which was said to take effect from 6 April 2005 the "**2005 Pension Increase SAA**"). The question over the validity of the 2005 Pension Increase SAA was not referred to in the Claim Form but was identified by the Defendant after the claim was served on him, and both sides agree that this is an issue that should be dealt with by the court.

9. A further SAA (the "**2005 Pensionable Earnings SAA**") was executed on the same day, in the same form and signed in precisely the same way. This was intended to effect an amendment to the definition of "Final Pensionable Earnings" with effect from 1st September 2005. As it became apparent during the course of the trial that the signatures upon this document were affected by the same issues as those on the 2005 Pension Increase SAA, the Claimants made a late informal application for the court to consider rectification of this instrument alongside rectification of the 2005 Pension Increase SAA. This application was supported by the Defendant, and I consider it to be in the interests of the overriding objective for me to grant it so.

10. I will refer to these three documents together as the "**SAAs**" and to the two SAAs signed in 2005 as (the "**2005 SAAs**").

11. The third issue is that when new Rules were adopted for the purposes of the Scheme on 1 December 2006 (the "**2006 Deed**") to consolidate earlier rule changes and to reflect changes in the law, that document failed, erroneously, in the Claimants' submission, to reflect the intention of the College and Trustees, in that it fails to reflect the changes to the pension increase provisions adopted through the 2005 Pension Increase SAA.

2. THE ISSUES CONCERNING THE SAAS

The reasons for the SAAs

12. From 1 April 1994, the Scheme had provided increases to pensions in payment at a flat 5%. At that stage, there was no general requirement on occupational pension schemes to provide protection against inflation increases, but from 1997 onwards, successive statutory provisions were introduced to make increases mandatory and to set out a basis for a minimum level of increase.

13. First, for pension accrued from 6 April 1997, the Pensions Act 1995 introduced a minimum requirement for an annual increase of 5%, or the rise in retail prices, whichever was lower. This is referred to as "**5% LPI**".

14. Subsequently, reflecting lower rates of inflation, the minimum statutory requirement changed to a requirement for an annual increase of 2.5%, or the rise in retail prices, whichever was lower. This is referred to as "**2.5%LPI**". This minimum statutory requirement applied to pension benefits accruing from 6 April 2005.

15. In 2001 the Scheme was substantially in deficit. Its funding position deteriorated as that decade went on. This difficult financial position was thought to threaten the viability of the Scheme and left the College and the Trustees with difficult choices to make. The 2001 SAA and the 2005 SAAs were each entered into in response to a growing deficit in the funding of the Scheme.

16. The 2001 SAA was intended to have the effect that in respect of pensionable service on or after 1 February 2001, pensions were increased annually at 5%LPI rather than a flat 5%. It was also intended to reflect a change to the contribution rate and made changes to the arrangements relating to early retirement.

17. This was not enough to stem the continuing increases in the deficit and, as a result, the 2005 SAAs were later introduced. The 2005 Pension Increase SAA was introduced with the intent of reducing the annual increase in pension to 2.5% LPI with effect from 8 June 2005. The same instrument was also intended to effect a closure of the scheme to new entrants; and a change in the level of employees' contributions to the Scheme. The 2005 Pensionable Earnings SAA was introduced with the intent of changing the definition in the rules of the Scheme of the term "Final Pensionable Earnings" with effect from 1 September 2005.

18. In each case these measures were being adopted on the basis of actuarial advice and following a close consultation between the College and the Trustees. Having reviewed the evidence available, including minutes of College and of Trustee meetings and contemporaneous correspondence, as well as the witness statements of surviving Trustees, there is no doubt in my mind that it was the common intention of the College and of the Trustees (both as a body and individually) to adopt these changes.

19. However, whether the documentation that they entered into, on its face, had that effect has been open to doubt.

The requirements for amendments

20. For amendments to the Scheme Rules to be validly made, they had to conform with the Scheme's governing documentation. At the time the governing documentation was a Replacement Definitive Trust Deed and Rules dated 1 March 1996 ("**the 1996 Deed**"). The Scheme's power of amendment was set out in Clause 16 of the 1996 Deed ("**Clause 16**"). The relevant parts of Clause 16 are as follows:

> "THE Principal Employer may from time to time without the concurrence of the Members authorise the Trustees in writing to alter or add to the terms and provisions of the Rules and/or the trusts, powers and provisions of this Deed and any such alteration or addition may have retrospective effect. The Trustees shall forthwith declare any such alteration or addition to the Rules in writing under their hands and any such alteration or addition to this Deed by deed except that any alteration or addition to this Deed which is solely for the purpose of enabling the Scheme to satisfy any requirements of Relevant Legislation (and any variation or termination of such alteration or addition) may be under the Trustees' hands only and shall be as effective in all respects as if it had been by deed. This Deed and/or Rules shall stand amended accordingly with effect from the date of such declaration or from such other date (whether future or past) as is stated in such declaration. In the event of the Trustees making any such alteration or addition to the Rules the Trustees shall forthwith notify or arrange for the notification of each

> Member affected thereby individually in writing of the effect thereof
>
> Provided always that no such alteration or addition shall
>
> (i) operate so as to affect in any way prejudicially
>
> (1) any pension already being paid in accordance with the Rules or this Deed at the date such alteration or addition takes effect or
>
> (2) any rights or interests which shall have accrued to each prospective beneficiary in respect of pension or other retirement benefits secured under the Scheme up to the date on which such alteration or addition takes effect unless such operation (whether retrospective or otherwise) is necessary in order to enable the Scheme to satisfy any requirements of Relevant Legislation…"

21. It was accepted by the parties on both sides that this drafting envisaged three stages to be completed for there to be an alteration to the rules (other than an alteration required by "Relevant Legislation", where the Trustees could act without the cooperation of the Principal Employer):

    i) the procedure was started by the provision by the Principal Employer (i.e. the College) to the Trustees of a written authorisation to undertake the proposed alteration or addition (the "**Authorisation Requirement**");

    ii) the Trustees needed to decide that they would implement the proposed alteration or addition: as the College was empowered to provide an authorisation rather than a mandatory instruction, they were not required to implement the changes authorised if they did not consider this to be appropriate, but they were obliged to consider acting within the scope of the authority provided;

    iii) thirdly, once the Trustees had decided that they should adopt any alteration or addition that was within the scope of the authority provided to them, they were then obliged "forthwith" to declare any such alteration or addition to the Rules in writing under their hands (the "**Declaration Requirement**") .

22. The rule change would come about at the point when all the Trustees had signed such a declaration.

23. No doubts have been raised concerning the implementation of the first two of these stages. However there is (i) an issue relating to the 2001 SAA that the parties were unable to find a fully signed copy of it and (ii) an issue in relation to all three SAAs arising from the way the SAAs have been drafted and signed.

The format of the SAAs

24. At the time, the College and the Trustees, as was common for smaller pension schemes, engaged a life office to provide actuarial, administrative and legal services under a type of arrangement known as a Deposit Administration Contract. The College and the

Trustees obtained the services from Legal & General Assurance Society Limited ("**L&G**"). L&G provided the format of the SAAs that were used in 2001 and 2005. The wording of these documents did not fully reflect the process described above. Instead, they introduced the amendments with the following words (with very slight variations):

> "The Trustees of the Scheme have resolved, with the agreement of the Principal Employer, to make the following alterations to the scheme and Legal and General Assurance is hereby authorised to implement these alterations with effect from …"

25. The pro forma SAAs included signature blocks, allowing for a signature "For and on behalf of the Principal Employer" and for four signatures to be provided against the word "Trustee".

26. It may be considered that the principal reason for the SAAs being produced by L&G in this format was in order for them to provide instructions to L&G, so that it would be clear on what basis it should be administering the Scheme. However, I agree with the Claimants (and it is undisputed by the Defendant) that it was the intention of the Trustees that this document would also be the document evidencing the Trustees' adoption of the amendments, and therefore would (provided it was signed on behalf of all the Trustees) operate as the declaration required under Clause 16, thus fulfilling the Declaration Requirement and completing the procedure for adopting the changes.

Missing signatures in the 2001 SAA

27. The first issue to deal with is that arising in relation to the 2001 SAA because we do not have a version signed by all the Trustees.

28. Secondary evidence is admissible to prove the existence of the 2001 SAA. The probative weight of such evidence is a matter for the court to determine in each case: *Promontoria (Oak) Limited v Emanuel* [2020] EWHC 104 (Ch) per Marcus Smith J at [46]. The case was overturned in part on appeal (see at [2021] EWCA Civ 1682, [2022] 1 WLR 2004) but not on this point.

29. It is permissible to rely on secondary evidence even in respect of documents which are required to be in writing: *Read v Price* [1909] 2 KB 724. In that case the Court of Appeal (in the person of Cozens-Hardy MR) explained (at [730]) that a party:

> "may prove the existence of the writing by the ordinary law of evidence, and when the writing is lost and the proof of the loss is satisfactory to the Court, you may give secondary evidence of the contents of the lost document…"

30. In the case of the 2001 SAA, the parties have not been able to discover a version that was signed by all of the Trustees, however two copies that were part signed have been located.

31. Mr Seymour, who was the chair of the trustees at time (and is or was a barrister specialising in pensions law) in his witness statement explained that two versions of the SAA (each of which would have been dated 18 January 2001) were in fact generated, the second being a replacement for the first version because that had been lost. It is his

evidence, supported (with various degrees of confidence in their recollection) by the witness statement's of two other of the Trustees, Mr Robinson and Mr Clarke, that the first version both must have been signed by all Trustees. Mr Robinson supports Mr Seymour's recollection that a second version was signed by all the Trustees.

32. The version which seems to have a better claim to be the later version has been signed by Mr Beauchamp on the signature block "For and on behalf of Principal Employer", and had added after his signature in manuscript the words "Secretary to the Council of Radley College". The signature of two other Trustees and the date 18 January 2001 (apparently in the hand of Mr Beauchamp) also appear.

33. The other copy seems to be an earlier version, as it deals slightly differently and in a less sophisticated way with another point provided for in the SAA regarding early retirement. This version has been signed by Mr Beauchamp, It is not signed by any other Trustee and it is not dated. Again Mr Beauchamp's signature appears on the signature block "For and on behalf of Principal Employer". In this case also he has added words in manuscript. On this occasion the manuscript words read "Secretary to the Council of Saint Peter's College Radley". Someone, whom I assume to be Mr Beauchamp, has written in pencil initials against each of the blocks labelled "Trustee". It may be presumed that this was in order to tell each of the other Trustees where they should sign. This, and the fact that Mr Beauchamp himself signed it, indicates that this was a version for signing rather than a mere draft.

34. It seems to me the most likely explanation is that:

    i) what I take to be the earlier version of the 2001 SAA, which was signed only by Mr Beauchamp isa copy of the original form of the 2001 SAA circulated to the Trustees for their signature and that this was signed by them all and was either sent to L&G and later lost, or was lost before it was sent to L&G; and that

    ii) what I take to be a copy of the later version of the 2001 SAA was the confirmatory version that was produced by L&G after the first version was lost and also was signed by all the Trustees.

35. The Defendant does not dispute that one or other or both of these part-signed SAA's was signed by all Trustees. I agree that this is overwhelmingly clear on the basis of the witness evidence provided and from the fact that all parties, including L&G, proceeded to carry on the administration of the Scheme on the basis that the amendments provided for by the 2001 SAA had been duly approved and signed by each Trustee.

36. However, both parties agree also that there is no reason to believe that Mr Beauchamp signed a second time as Trustee, or that he amended the signature block that he had signed against on both copies that we have at a later date to confirm that he was signing also as a Trustee. He did not do this in relation to the 2005 SAAs and I agree that there is no reason to think that he would have done in relation to the 2001 SAA.

37. On the basis of all the evidence, and bearing in mind that it is not surprising that the definitive document has been lost some 23 years after it was signed, I consider that I should find as fact that the dated version of the 2001 SAA is the definitive version; that it was signed by the two remaining trustees who had not signed the copy that the court has; but that Mr Beauchamp did not sign it again and where he did give his signature

he did not change or add to the signature block or to the words that we can see that he added in manuscript.

38. Turning to the two 2005 SAAs, in each case we have a copy of a version that is signed by all five Trustees, but again Mr Beauchamp placed his signature against the rubric "For and on behalf of the Principal Employer". On this occasion, however, he did not see any requirement to add in manuscript any further wording.

The problem of Mr Beauchamp's capacity

39. On the basis that on the best evidence we have of how the 2001 SAA was signed, and on the basis of the copies we have of the 2005 SAAs, in each case there is a problem in regarding these as satisfying the Declaration Requirement. This is that whilst four of the Trustees have (or, I have found that) signed in a manner that demonstrates they were signing in their respective capacities as Trustee, the only signature given by Mr Beauchamp is said to be in a different capacity.

40. Mr Hill for the Defendant has cited various case law to support the proposition that a signature given "For and on behalf of the Principal Employer" cannot (at least on its face) be regarded as a signature given in another capacity, including in his capacity as a Trustee. In particular, here he cites in aid of this *Capital Cranfield Trustees Ltd v Beck* [2008] EWHC 3181 (Ch), [2009] Pens LR 71, in particular at [47]. In that case a change in the normal retirement date for that relevant scheme depended (or at least was argued to depend) on an announcement being made by the Employers under the relevant pension scheme. The announcement relied upon was stated to have been made by "the Company as sole Trustee". The court found that an announcement purportedly made by the Company as a trustee could not be effective as an announcement made by the Company as Employers.

41. Mr Hill argued also that cases dealing with capacity in the different context of commercial contracts demonstrated the importance of identifying the capacity in which a document had been signed. He derived from Lord Millett's speech in *Homburg Houtimport BV v Agrosin Private Ltd (The Starsin)* [2004] 1 AC ("***The Starsin***") at [175] and [176] the propositions that:

    i) the identity of the parties to a contract is fundamental and is a question of fact and may be established by evidence; and

    ii) where a contract is contained in a signed and written document, the process of ascertaining the capacity in which they entered into the contract must begin with the signatures and any accompanying statement which describes the capacity in which the persons signed.

42. As may be potentially relevant to the further debate below Lord Millett said also at [176] that:

> "Where a signature is accompanied by a description of the capacity in which the signatory has signed the description is not a term or condition of the contract. It is part of the signature and so part of the factual evidence of the identity of the party which is undertaking contractual liabilities under the contract."

43. However, this is not to say that there is no place for extrinsic evidence. Mr Hill also drew the court's attention to *Hamid v Francis Bradshaw Partnership* [2013] EWCA Civ 470, [2013] B.L.R. 447 ("***Hamid***"), where at [57] Jackson LJ summarised the principles to apply:

> "(i) Where an issue arises as to the identity of a party referred to in a deed or contract, extrinsic evidence is admissible to assist the resolution of that issue.
>
> (ii) In determining the identity of the contracting party, the court's approach is objective, not subjective. The question is what a reasonable person, furnished with the relevant information, would conclude. The private thoughts of the protagonists concerning who was contracting with whom are irrelevant and inadmissible.
>
> (iii) If the extrinsic evidence establishes that a party has been misdescribed in the document, the court may correct that error as a matter of construction without any need for formal rectification."

44. The issue in *Hamid* was whether Dr Hamid had engaged the defendant to provide engineering services on a building project (a) personally or (b) as director of, or alternatively agent for, a company. Jackson LJ concluded that Dr Hamid's unqualified signature was the critical evidence which dictated that he had entered into the contract personally (and was thus entitled to recover damages). This, however, was a case where there was no description of capacity.

45. On the basis of this case law Mr Hill argued that:

    i) The starting point is that Mr Beauchamp signed "*For and on behalf of the Principal Employer"*.

    ii) The description is not a term within the document but factual evidence that he was executing the SAAs on behalf of the Principal Employer.

    iii) The reasonable reader would have understood that Mr Beauchamp was signing on behalf of the College (and not as a Trustee). There was no mistake in the way that the document was drafted for execution by the Principal Employer: Mr Beauchamp signed to demonstrate to L&G that the Authorisation Requirement had been met.

46. I accept this argument up to a point, in that I see the difficulty in construing the document which Mr Beauchamp purports to sign on behalf of the College as being one which he has signed in his capacity as Trustee. However, this is not to say, however, that he did not *intend* to sign the document in his own capacity as Trustee.

47. Mr Hill accepted that there was, on the basis of Mr Seymour's witness evidence, an error made by L&G in that there should have been five trustee execution blocks in addition to the Principal Employer block. The fact is that, on each occasion, Mr Beauchamp found in front of him a form that had been designed by L&G. He would

have considered L&G as being experts in the administration of pensions. He ensured that the document was signed in the manner required by the signature blocks on that document. I have no doubt that in doing so it was his intention to demonstrate the approval of the SAA by both the Council and the Trustees.

The Claimants' arguments relating to Mr Beauchamp's capacity

48. The Claimants had essentially two arguments as to why the signature block under which Mr Beauchamp signed should be ignored.

49. The first was that on a true construction of the Scheme's power of amendment the SAAs were each effective to satisfy the Declaration Requirement. The SAAs amounted to a written declaration by the Trustees and each was in fact signed by each Trustee. The fact that Mr Beauchamp signed next to the words "For and on behalf of the Principal Employer" was irrelevant and should not be taken as an indication that he was not declaring the amendment along with his fellow Trustees. Viewed as a declaration under Clause 16, there was no further role for the College in the amendment power. The College had already authorised the Trustees, and having done so it had no further role.

50. The second argument was that even if Mr Beauchamp's signature was ineffective as a signature as a trustee, the steps taken by the Trustees to amend the Scheme fell short of the formal requirements of the power of amendment, only in the most insignificant of ways. In such circumstances, the court should apply the equitable maxim "equity regards as done that which ought to have been done" to cure the defect.

51. The maxim has been employed in analogous situations in three cases which deal with occupational pension schemes:

    i) in *Davis v Richards and Wallington* [1991] All ER 563, ("***Davis***"). Scott J applied the maxim in deciding that, even though a definitive deed had not been executed by various companies that were subsidiaries of that scheme's Principal Employer, as required by the amendment power, it nonetheless took effect as intended;

    ii) in *Harwood-Smart v Caws* [2000] PLR , ("***Caws***"). Rimer J (as he then was) held that an oversight whereby a provision in an interim deed which prevented scheme assets from being returned to an employer, had been omitted from the definitive deed, could be corrected by application of the maxim;

    iii) most pertinently, in *HR Trustees v Wembley* [2011] EWHC 2974 (Ch) (*"**Wembley**"*), where Vos J (as he then was) had to consider an amendment power in identical terms to the one in this case. The declaration by the trustees in ***Wembley*** had only been signed by four of the five trustees, and Vos J applied the maxim to cure that defect.

52. Mr Hill for the Defendant pointed out that *Wembley* had not been followed in any subsequent pensions case and submitted that it was wrong for reasons given by Newey J (as he then was) in *Briggs v Gleeds* [2014] EWHC 1178 (Ch), [2015] Ch. 212.

53. Although a great deal of time was spent during the hearing discussing the merits of the equitable maxim and of *Wembley*, I was saved from having to deal with the complex

issue of reconciling the case law on this point by another consideration which emerged during the hearing. This was that, rather than seeking to construe away the words in and surrounding Mr Beauchamp's signature block, in accordance with the Claimants' primary argument, or seeking to apply the equitable maxim, there was another solution. This was that the court could apply its powers of rectification to the signature blocks against which Mr Beauchamp had signed on the 2001 SAA and the 2005 SAAs on the basis of the copious evidence that was at hand that each of the Trustees, including Mr Beauchamp, had intended that his signature would be effective to create a declaration on behalf of the Trustees that would bring the 2001 amendments and the 2005 amendments into effect.

54. With the consent of the Defendant, I accepted that the court would consider an informal application by the Claimants' to rectify the signature blocks against which Mr Beauchamp had placed his signature in the three SAAs so as to make it clear that he was signing not only on behalf of the College, but also in his capacity as a Trustee.

55. Accordingly I next consider the law of rectification and the facts put forward by the Claimants to support their application that it should be applied in this case.

3. THE CASE FOR RECTIFICATION OF THE SIGNATURE BLOCK

Legal principles

56. The legal principles relating to rectification are now well settled. They were helpfully summarised by Trower J in his decision in *Mitchells & Butlers Pensions Ltd v Mitchells & Butlers PLC* [2021] EWHC 3017 (Ch); [2022] Pens. L.R. ("***Mitchells & Butlers****")* at [16] as follows (omitting the case references):

> "i) The claimant must establish a continuing common intention, whether or not amounting to an agreement, in respect of a particular matter in the instrument to be rectified.
>
> ii) The continuing common intention must be an actual, subjective intention, which is rightly a demanding test to satisfy and as a matter of policy should be difficult to prove ….
>
> iii) While an outward expression of accord must normally be proved, it is not required where the claim is for rectification of the rules of a pension scheme made pursuant to a power of amendment exercisable by the trustees with the employer's consent. In that context it is sufficient if the (subjective) intentions of the trustees and the employer coincide, so that they both independently have the same intention ….
>
> iv) The common intention must have continued to subsist at the time of execution of the instrument.
>
> v) It must be shown that, by mistake, the instrument did not reflect that continuing, common intention."

57. Trower J went on at [17] to say:

> "The remedy of rectification is available, not only in cases where particular words have been misused, but also in cases where particular words were used intentionally, but it was mistakenly considered that the words had a different meaning from that which they in fact have as a matter of their true construction … This principle applies where the words said to have been misused by the parties to the instrument were actually read and seen by them but misunderstood as to their effect. In other words, it applies where there was a failure (amounting to a mistake) to appreciate the effect of what had been seen."

58. I have considered whether the question of rectification of a signature block is affected by the observations of Lord Millett in *The Starsin*, quoted at [42] above, to the effect that where a signature is accompanied by a description of the capacity in which the signatory has signed, this is not a term or condition of the contract. I do not consider that it is.

59. First, Lord Millett's observations were made in the context of a contract, and different considerations may apply in the case of a document that is a declaration.

60. Secondly, Jackson LJ in *Hamid* provides authority that it is possible to resolve an issue concerning the identity of a party referred to in a deed by reference to extrinsic evidence. I do not think that the present case is one where I should apply the remedy of correcting an error as a matter of construction without the need for formal rectification, as was possible in that case. It is taking construction too far to construe the express words of Mr Beauchamp's signature block as saying something different to what they say. Nevertheless, I do consider that, in the context of a claim for rectification, it is appropriate to consider evidence whether Mr Beauchamp intended that in addition to signing on behalf of the College, Mr Beauchamp intended that his signature would operate as his confirmation as Trustee that he joined in the declaration being made.

The evidence of intent

61. In my view, the evidence is overwhelming that Mr Beauchamp, and the Trustees in general, intended that Mr Beauchamp's signature would be effective as the signature of a Trustee in addition to being his signature on behalf of the College.

62. Mr Beauchamp, along with Mr Seymour, took a leading role in promoting the 2001 SAA and the 2005 SAA. This is apparent from Mr Seymour's witness statement and from the contemporaneous documentation. In particular:

    i) Mr Beauchamp sent a letter to members of the Scheme on 4 December 2000 containing an announcement to members concerning the 2001 amendment saying that "the College and the Scheme Trustees have agreed" on these changes. As one of the Trustees, he must be taken as saying he had agreed.

    ii) The minutes of the meeting of the Trustees on 18 January 2001 stated that the College had approved scheme amendment authorities, including the move to 5% LPI and that the College's approval:

> "had been previously circulated to the Trustees who approve the changes and agreed to sign the Scheme Amendment Authority."

Mr Beauchamp was present at that meeting, and at a later meeting when these minutes were approved. He must be taken, therefore, to have confirmed the statement that the Trustees (including him) had approved the changes.

iii) Mr Beauchamp having been present at this and earlier Trustee meetings was aware of the requirement in the amendment power for the College to authorise the Trustees to declare (if appropriate) any amendments which the College wished to make the Scheme.

iv) It was Mr Beauchamp who circulated each of the SAAs with the intent that they be executed by all the Trustees.

v) Mr Beauchamp in his letter circulating the 2005 SAAs to the other Trustees for signature referred to these as "agreed changes to the existing scheme".

vi) Mr Beauchamp put his name (writing as "Trustee") to an announcement to scheme members in May 2005 explaining, amongst other things, the changes that were to be affected by the 2005 SAAs.

vii) Mr Beauchamp wrote to L&G on 9 June 2005 enclosing the two Scheme Amendment Authorities, with which we are concerned, "duly signed by the Trustees".

viii) The rubric under which Mr Beauchamp and the other trustees put their names in relation to both SAAs confirmed that the Trustees (which must be taken as including Mr Beauchamp) had resolved to make the changes mentioned in the SAA).

ix) Mr Beauchamp was involved in the continuing administration of the Scheme on the basis that the amendments made by all three SAAs had been duly approved, and therefore must have thought that it had been signed by each of the Trustees, including him.

63. Taken together, these points provide compelling evidence that Mr Beauchamp supported the changes being made by each of the SAAs, intended that they should be signed by the Trustees and understood that he was one of the Trustees. This amounts to powerful evidence that he did not intend, when signing his name against an execution block which indicated that he was signing on behalf of the College, to exclude the obvious point that he wished to sign also in his capacity as a Trustee.

64. I consider, therefore, that I should order rectification of the signature block on the 2001 SAA and the 2005 SAAs to confirm that Mr Beauchamp was signing in both capacities.

65. With the matter clarified by such a rectification, and with my determination (undisputed by the Defendant) that there is sufficient evidence for the court to find that the 2001 SAA was indeed signed by the remaining Trustees, there is no remaining issue about the effectiveness of the 2001 SAA or the 2005 SAAs.

66. The rectification of these documents operates to speak from the date of the signing of these documents, and therefore clarifies that all three SAAs were valid in accordance with their terms from the date of their inception.

4. THE CASE FOR RECTIFICATION OF THE 2006 TRUST DEED

67. I have referred to the legal principles relating to rectification at [56] and [57] above. In relation to the amendment of the 2006 Deed what needs to be shown is that:

    i) the Trustees and the College must have had a common intention as to a particular matter in the instrument to be rectified. Common intention does not require an agreement, merely that their intentions coincide;

    ii) that common intention must have existed at the time of the instrument sought to be rectified; and

    iii) by mistake the instrument did not reflect that common intention.

68. The error to be corrected in relation to the 2006 Rules is to reinstate the pension increase provisions as they existed prior to 8 June 2005, so that pensions were increased by 5%LPI rather than 2.5%LPI, as had been the case since 8 June 2005 pursuant to the 2005 SAA.

69. In *Mitchells & Butler* at [18], Trower J deals with the particular situation that applies to the 2006 Rules:

> "There will be cases in a pensions context where it is clear that the parties did not intend to effect a particular change even though they did not state to each other that they did not intend to effect that change, simply because the change was not in any form discussed: Industrial Acoustics v Crowhurst [2012] Pens LR 371 at [45] and Univar UK Limited v Smith [2020] Pens LR 23 at [213]."

70. It was accepted by the Defendant that if the SAA and the 2005 SAA were both valid there could be no objection to the application for rectification of the 2006 Trust Deed in the form contended for by the Claimants.

71. This in my view is correct. It is clear from the undisputed witness evidence and the contemporaneous evidence that the intention of the 2006 Trust Deed was to consolidate the existing amendments and to ensure conformity with changes in law. There is no suggestion whatsoever that it was the intention of anybody to reverse the changes that had been effected by the 2005 SAA. Indeed the recital to the 2006 Rules is incompatible with that suggestion.

72. Had this been the intention of the parties, there would be documentary evidence available about this. In particular, it is inconceivable that the College or the Trustees would contemplate such a reversal without taking the benefit of actuarial advice.

73. In addition, had this been the intention, the Scheme would not after the execution of the 2006 Deed have continued to be administered on the basis that the rate of increase for pensions earned from 08.06.05 was 2.5%LPI.

74. It is entirely clear to me that the drafting of Rule 16(e) within the 2006 Rules, in failing to reflect all the changes made by the 2005 Pension Increase SAA was a pure and simple mistake. It is appropriate that I order rectification accordingly.

5. CONCLUSION

75. The defects in the execution of the SAAs and in the amendments adopted to the 2006 Rules have been unfortunate in giving rise to costly litigation and to the use of the court's time that would have been unnecessary had these defects not existed. This is a cautionary tale that I am sure will be taken to heart by pension trustees and their advisers.

76. In concluding my judgment I should pay tribute to the way that this case has been conducted by both sides, and in particular by the Defendant, his solicitors and Mr Hill. The Defendant and his legal team have defended this claim in an entirely appropriate way, taking points that had a real prospect of success, whilst avoiding unnecessary cost and delay by accepting late amendments to the Claimants' case where it was obvious that the Claimants would succeed on these points but where a more aggressive litigant might have objected for the sake of it. This approach was entirely appropriate, and was in the interest of the Defendant, and those whom the Defendant represents.

77. In anticipation of this judgment, the parties have agreed the draft of an order, which I agree effects the matters dealt with in this judgment. This also awards the Defendant the costs of and incidental to these proceedings, to be paid by the Fifth Claimant, to be assessed on the indemnity basis if not agreed and I confirm my intention to order accordingly.