

**WG HART WORKSHOP FOR 2019**  
**ON**  
**PENSIONS: LAW, POLICY & PRACTICE**

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*On Thursday 20 and Friday 21 June 2019, the Institute of Advanced Legal Studies, Slaughter & May and the UCL Faculty of Laws jointly held the WG Hart Legal Workshop for 2019 on Pensions: Law, Policy & Practice. Over 80 academics and practitioners attended the conference, to discuss and debate many challenging problems and questions of public policy and legal practice in the pensions area.*

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**N**ine sessions were held over the two days. The first began with a presentation by Scott Donald (UNSW) on the pension fund as a ‘virtual’ institution, in which he explained how network analysis can help to identify nodes which are systematically important in the running of pension schemes but are often unmonitored by regulators. Charles Cameron (Slaughter & May) then examined the meaning of ‘prudence’ in trustee decision-making and urged employers and trustees to engage in greater dialogue and information-sharing to help calibrate trustees’ exercise of their discretionary powers. Deborah Mabbett (Birkbeck) then critiqued the backward-looking outlook of most pension fund trustees, arguing that they are excessively concerned for the rights of existing members and insufficiently concerned for the rights of future members.

In the second session, Brian Sloan (Cambridge) gave an overview of the impact of ‘pension freedom’ reforms of 2015 to the rules governing the assessment of liabilities to pay for social care, while Hilary Woodward and Rhys Taylor (Pensions Advisory Group (PAG)) introduced the work of the PAG which aims to provide better guidance on pensions matters to parties seeking divorce settlements at the family court and their legal advisers.

In the third session, David Pollard (Wilberforce Chambers) discussed whether the rules governing interpretation of pension documents differ from the rules governing the interpretation of other legal documents, while

Paul S Davies (UCL) considered whether different rules govern the rectification of pensions documents as opposed to other legal documents.

In the fourth session, Lydia Seymour (Outer Temple Chambers) reviewed the recent firefighters' and judicial pensions cases, in which the government's new rearrangements have fallen foul of the law against age discrimination. Alysia Blackham (Melbourne) then offered an analysis of the mandatory superannuation system in Australia and its implications for our normative discussions of 'fairness'.

The final session of the day was led by Sinéad Agnew (UCL) who gave a paper on the history of the use of the trust form in 19th-century pension schemes and argued that the Rowntree and Cadbury's choice of the trust form at the turn of the 20th century reflected a gradual rather than a revolutionary advance on previous scheme structures. Finally, Jo Grady (Sheffield) gave an overview of the Universities Superannuation Scheme dispute and the empowering effects which this has had in encouraging members of the scheme to enter into dialogue with their employers.

The second day of the conference opened with a paper by Jessica Hudson (UNSW) and Charles Mitchell (UCL) on the legal consequences of the flawed exercise of powers in pension schemes. This was followed by a paper from James Kolaczkowski (UWE) on the normative role and purpose of occupational pension schemes and their handling by courts in recent cases.

In the second session of the day, Debbie Webb (Willis Towers Watson) introduced delegates to the recent history of changes to actuarial practice, focusing on significant changes to the premises on which pension-funding obligations are assessed, as a result of 1990s legislation, and the increased role of the regulator, following changes made in the 2000s. Paul F Brice (Grant Thornton) then presented an overview of the employer covenant and the bases on which employers can adjust their level of financial commitment to pension funds and the degree of investment risk undertaken by trustees. In the last paper of the session, Sandeep Maudgil (Slaughter & May) and Hans van Meerten (Utrecht) explained the extent to which the Netherlands currently has collective defined contribution pension schemes and examined the feasibility of introducing such schemes into the UK.

The final afternoon began with a discussion by Bernard Casey (SOCIAL ECONOMIC RESEARCH) and Noel Whiteside (Warwick) of the phenomenon of members leaving (as opposed to opting out of) pension schemes, a problem which is often caused by workers changing their employment

status. Debora Price (Manchester) then spoke about the important and oft-neglected role of the state pension, which continues to provide the primary means of subsistence for a majority of people in old age, particularly women given the persisting gender pensions gap, which exceeds (and will continue to exceed) the gender pay gap.

The last session saw a robust three-way exchange between Lord Sales (UK Supreme Court), Alan Bogg (Bristol) and Mark Freedland (Oxford) and Dan Schaffer (Slaughter & May), on the meaning and desirability of recent cases in which the courts have drawn on public law principles to resolve pensions disputes. Lord Sales argued against such developments in his critique of *IBM v Dalgleish*, contending that the public law principles of legitimate expectations and ‘*Wednesbury* reasonableness’ are designed to resolve different types of problem, and that sufficient scope exists to develop private law principles to reach fair and justified results in pensions cases. Bogg and Freedland countered that rolling back the law in this way would undo the beneficial advances which have been made in recent years by the infiltration into employment law of public law doctrine. Schaffer argued that the *Wednesbury* irrationality standard identified in the *Braganza* case leaves decision-makers with an appropriate degree of discretion and provides a certain principle on the basis of which clear legal advice can be provided to trustees.

Conference delegates contributed their own insights to all the foregoing discussions in the open sessions that followed each presentation, and the wide variety of perspectives which they brought to bear on these made for a highly stimulating and thought-provoking event. All the participants were introduced to new ways of thinking about familiar problems and agreed that interdisciplinarity of this kind is a significant aid to understanding and innovative thinking.

The conference organisers, Sinéad Agnew, Paul S Davies and Charles Mitchell, will publish the proceedings as an edited volume in 2020.