



A Game of Two Halves: Assignment, the Financial Services Compensation Scheme and Title to Sue; Determining Limitation Issues; and Relief from Sanctions

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Football fans who recall the early days of the Premiership may recognise the names of one or more of the five claimants who feature in this case with what the judge described as a “lamentable procedural history” (at [37]). The claimants are not the first professional sportspeople to be let down by the financial firms who were supposed to safeguard their pensions accrued during their playing careers. They were then let down by their legal representatives with the claims being (mis-)handled by no fewer than five solicitors firms in what was characterised as “pass the parcel” (at [44]). They were “badly let down by their solicitors” (at [37]). Despite proceedings being issued in January 2020 little progress was made, and four of the claimants had their claims struck out in mid-2023 for non-compliance with an unless order, although they were unaware of the fact until the eve of a first hearing before Master Davison in January 2025. Despite this unpromising background, in **Robert Lee and Others v James Hay Administration Company Ltd and Others** [2025] EWHC 2154 (KB) (20 August 2025) Master Davison restored their claims, and refused to strike out the causes of action of a fifth claimant. Despite the niche facts it is possible to salvage several useful procedural lessons from the case.

Title to Sue and Assignment

Axiomatically a claimant should be vested with a cause of action at the time of issuing proceedings. Assignment often complicates the picture, and especially in the financial services context transfer of rights to claim in exchange for the capped statutory compensation from the Financial Services Compensation Scheme (“FSCS”) where a regulated firm goes bust. The Financial Services and Markets Act 2000 does not mention assignment, but the regulatory rules made under it (“COMP”) envisage it will usually be a prerequisite for an award, for the purpose of the FSCS considering collective redress and recoupment of its outlay. Here four of the five had received the maximum £50,000 in respect of their insolvent financial advisory firm which had arranged their investments. The FSCS relies on standard text in its application form to effect the assignment which extends to all possible defendants. Critically COMP provides that if the FSCS does not pursue redress itself it must re-transfer any rights to suit to the claimants.

Lack of title to sue was the principal ground relied on by Standard Life (now Phoenix Life) to strike out the claim of Stephen Sedgley (an FA Cup winner alongside Lineker and Gascoigne in 1991), and the other firms adopted the same argument. However it is only a legal assignment under section 136 of the Law of Property Act 1925 which divests an assignor of all title to sue. Despite its importance the cases, which are numerous, discussing the nature of the assignment to the statutory bodies (including the FSCS’s predecessor, the Investors Compensation Scheme) do not feature in any of the three textbooks on the subject, save for the very well-known **Investors Compensation Scheme Ltd v West Bromwich Building Society** [1998] 1 BCLC 493 (where the issue was discussed at first instance). As the judge here noted in **Investors Compensation Scheme Ltd v Cheltenham & Gloucester Building Society** [1996] 2 BCLC 165 it was not even argued by the FSCS’s statutory predecessor that such a transfer was a section 136 legal assignment (one Geoffrey Vos QC) (at [12]). It appears to be either an equitable assignment or a *sui generis* form of transfer. On the basis it was an equitable assignment it could still be argued that the claims were an abuse of process if they were issued knowing the claim was vested in someone else, but only knowledge would do: **Pickthall v Hill Dickinson LLP** [2009] EWCA Civ 543, [2009] PNLR 31, [15]; **Munday v Hilburn** [2014] EWHC 4496 (Ch), [2015] BPIR 684, [20]. The judge here held (at [13]):

“The claimants in this case are former professional footballers. They are completely unsophisticated litigants. None of them signed, and there was not, a formal deed of assignment. The principal piece of paperwork they completed was in each case a FSCS claim form, the primary purpose of which was to obtain compensation up to the statutory limit of £50,000. The claim form was, in each case, directed against their financial adviser not these defendants.... I consider it very unlikely that they appreciated that the wording of the form meant that they had also assigned their rights against these defendants. It seems to me that at the very least they would have been ‘uncertain’ as to their title to sue. Subject to the requirement set out in the next paragraph, they appear to me to have a real prospect of showing that there was no abuse of process on their part.”

Furthermore if an equitable assignment any defect in title to sue was curable (at [14]; citing Mr Justice Marcus Smith and Nico Leslie, *The Law of Assignment* (3rd edn, 2018), para 26.105). When the point was taken by way of defence it was acknowledged in the

reply, and re-assignments obtained before Standard Life made its application. Under CPR Part 24 the claimants had at least a real prospect of showing they had title to sue, and their state of knowledge was not capable of being summarily determined.

Summary Determination of Limitation

The second strand of Standard Life's strike out application was limitation. This was perhaps unsurprising as the investments dated back to 2006 to 2009. It will be recalled the claim was issued in 2020. The claimants relied on both deliberate concealment under section 32(1)(b) of the Limitation Act 1980, and section 14A of that Act in respect of their claims in negligence. A preliminary problem was that the issues involved "multiple determinations of the state of mind of the protagonists" (at [7]) and were not "obvious candidates for summary determination" (at [9]). Whilst as a matter of principle such issues were not outside CPR Part 24 (as in **Davy v 01000654 Ltd** [2018] EWHC 353 (QB)) the issues raised here required both disclosure and oral evidence. Either a preliminary issue or trial was necessary.

Mr Sedgley's evidence was that he had received regular valuations from Standard Life showing a substantial pension, and only in about January 2017 learnt that the underlying funds were valueless. In September 2017 that was confirmed by a nil valuation from Standard Life itself. In the meantime, in June 2017, he had learnt that well-known footballer and pundit, Alan Shearer (a Newcastle United teammate of three of the claimants) had settled his claims against both his adviser and another life insurer. Applying the now leading decision of **Potter v Canada Square Operations Ltd** [2023] UKSC 41, [2024] AC 679, it was reasonably arguable that Mr Sedgley had not discovered any concealment until January 2017 at the earliest. In respect of section 14A the judge also had regard to **Haward v Fawcetts** [2006] UKHL 9, [2006] 1 WLR 682, [12-16] (Lord Nicholls) and [64] (Lord Walker) for the proposition (at [29]) "that there is not always a bright line distinguishing between facts and duties and that a claimant 'may know the basic facts but not know what, to an expert, they add up to'". Here the claims were based on the duties of pension providers, including custodian duties and valuation duties, which were only just being addressed by regulators at the time.

Disclosure and Deliberate Concealment

Perhaps of most concern to financial firms are the indications in the judgment as to the likely scope of disclosure where deliberate concealment is alleged. In Mr Sedgley's case, Standard Life's application centred on a letter of complaint in 2013 on his behalf, drafted with legal advice, against the financial advisory practice which became defunct. However these claims were based on the different role played by the Standard Life defendants, including custodian and valuation duties. The existence and extent of such duties was left open by the Court of Appeal in **Adams v Options SIPP UK LLP (formerly Carey Pensions LLP)** [2021] EWCA Civ 474, [2021] Bus LR 1568, [123-27], although they are now well-established in claims to the ombudsman: **Options UK Personal Pensions LLP v Financial Ombudsman Service Ltd** [2024] EWCA Civ 541, [2024] Bus LR 1307. The claimants relied on the regulatory conversation between the industry and the Financial Conduct Authority ("FCA"), including various regulatory documents cited in the Particulars of Claim, including the FCA's "Dear CEO" Letter dated 21 July 2014 (Judgment at [24]), which set out the regulator's expectations that firms' due diligence should at least encompass:

- » correctly establishing and understanding the nature of an investment
- » ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation
- » ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)
- » ensuring that an investment can be independently valued, both at point of purchase and subsequently, and ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc.).

The judge accepted the following submissions were reasonably arguable (at [25]):

"The Standard Life defendants had chosen to provide annual valuations to the claimant based on information which was provided by third parties and/or was historic. They withheld from Mr Sedgley the fact that they did not have any means of providing realistic or accurate valuations either from the outset or at any time subsequently, including on annual reviews. The

valuations were in fact valueless, or, worse, positively misleading. But Mr Sedgley did not know and was not to know that. The Standard Life defendants had also ceded any meaningful control of his pension assets at the outset and that remained the case throughout the life of the investment because the assets had been transferred to an offshore bond. Mr Sedgley did not know and was not to know that this meant, in practical terms, that his investment was neither safe nor secure. These failings amounted to or were in pursuance of what amounted to a policy and hence the ‘deliberate commission of a breach of duty in circumstances in which it [was] unlikely to be discovered for some time’ (the wording of section 32(2)). The policy was not reversed or partially reversed until 2017 when, for the first time, a realistic valuation of the flawed assets was given. In the meantime, there must have been internal discussions about Standard Life’s response to the letter of 21 July 2014. But no details of any such discussions had been given and no documents, of which there must have been many, had been disclosed.”

The need to disclose such internal discussions follows from the recognition in **Potter** that decisions within financial institutions to withhold information, whether as to commissions or the true valuation of assets, must necessarily be taken at a high level of management. Here Standard Life’s chief executive officer would have been expected to act in response to this articulation of what might be seen as relatively modest requirements for pension provider firms. Fundamental principles requiring them to treat customers fairly and to cooperate with their regulators were engaged.

How Not to Respond to Applications for Relief from Sanctions

Four of the claimants’ claims had been struck out for two years. However in breach of CPR 44.8 they were not informed of this by their then representatives, discovering their predicament on the eve of the January 2025 hearing. An adjournment allowed them to formally apply for relief from sanctions and put in evidence as to their knowledge of the proceedings. The sanction arose from solicitors for two of the financial firms assiduously making near monthly applications between April and July 2023 resulting in three orders arising from an initial failure to respond to a request for further information, none of which was determined at a hearing, heaping costs on costs, latterly upon the indemnity basis, on the claimants, totalling £22,996.22 of which only £3,000 was paid.

After the January 2025 hearing the claimants made their application for relief, paid the outstanding costs and engaged very competent new legal representation. The familiar three-stage test in **Denton v T H White Ltd** [2014] EWCA Civ 906, [2014] 1 WLR 3926 was engaged. As to the first the breach was serious in that the costs were not paid. Secondly, there was no good reason for the breach. But critically at the third stage (at [38](iii):

“the breach was attributable to fault on the part of the claimants’ advisors. It has been rectified and to strike out (or allow to remain struck out) a valuable claim because of the non-payment of costs amounting to less than £20,000 (now paid) would be to apply a sanction that was out of all proportion to the breach. The claimants acted with promptness when they came to learn of the true position and their former solicitors had already made an application for an extension, albeit that an application for relief from sanctions would have been the more appropriate application. The claimants are now in a position to take the claim forward in an efficient manner. No trial date or other timetabled direction has been affected by the breach.”

Overall the judge came down very clearly in favour of granting relief (at [6] and [45]).

Given we are encouraged not to needlessly oppose well-founded claims for relief, the reaction from the other team was, at least, surprising. The James Hay and AJ Bell defendants’ (who could hardly fail to appreciate that the claimants’ then representation was shambolic) response to the application had, was said by the judge (at [37]) to have “a degree of opportunism about it. The resources and energy they have invested in their resistance could perhaps have been better expended elsewhere.” Nevertheless that response extended to what the judge characterised as “an attack on the credibility and *bona fides* of the claimants.” Those firms’ solicitors made enquiries of the former representatives of the claimants “designed to elicit evidence as to the extent of the claimants’ ignorance of the steps taken by their solicitors on their behalf and of the orders made.” The judge considered this put them “on dangerous ground”. First, any response was likely to encroach on matters that were privileged. Secondly, any response was almost bound to be “defensive and self-serving” (at [42]). Subsequently counsel for those firms was also taken to task for attempting to use the provision of corrections as an opportunity to attack the reasonings and conclusions of the judge (Postscript to judgment, [47]-[50]).

The claimants were certainly down at half-time in this claim due to a succession of law firms' unsatisfactory handling of their claims. This may reflect what is often the inequality of arms between individual claimants seeking a "no win no fee" route to compensation and the firms which offer that service, and the slicker offering of the law firms engaged by financial professionals. Nevertheless the second half of the proceedings see the footballers on the front foot. A more level-headed half-time team talk amongst the financial firms and their lawyers would perhaps have led to a more appropriate response from that side.

Gerard McMeel KC acted for all five claimants, instructed by Northridge LLP.

[The new edition of *McMeel on the Construction of Contracts – Interpretation, Implication and Rectification* \(4th edn\) will be published by Oxford University Press in the Autumn of 2025.](#)



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Gerard McMeel is a leading commercial, banking and financial services lawyer, both as a practitioner, and an academic. He has over two decades experience of trial work, appellate advocacy, urgent commercial applications, arbitration, ADR and advisory work. He was appointed Queen's Counsel in March 2020. Gerard practises in all areas of commercial dispute resolution, with a particular focus on banking and financial services litigation. Gerard's commercial practice regularly includes advising on the construction or interpretation of contracts and other business documents, where he is the author of a leading text. He has a particular interest in unjust enrichment and restitution. His financial services practice includes: investor claims; commercial disputes involving financial firms and intermediaries; collective investment schemes; judicial review of the statutory bodies; and authorisation, regulatory and disciplinary matters under the Financial Services and Markets Act 2000.

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