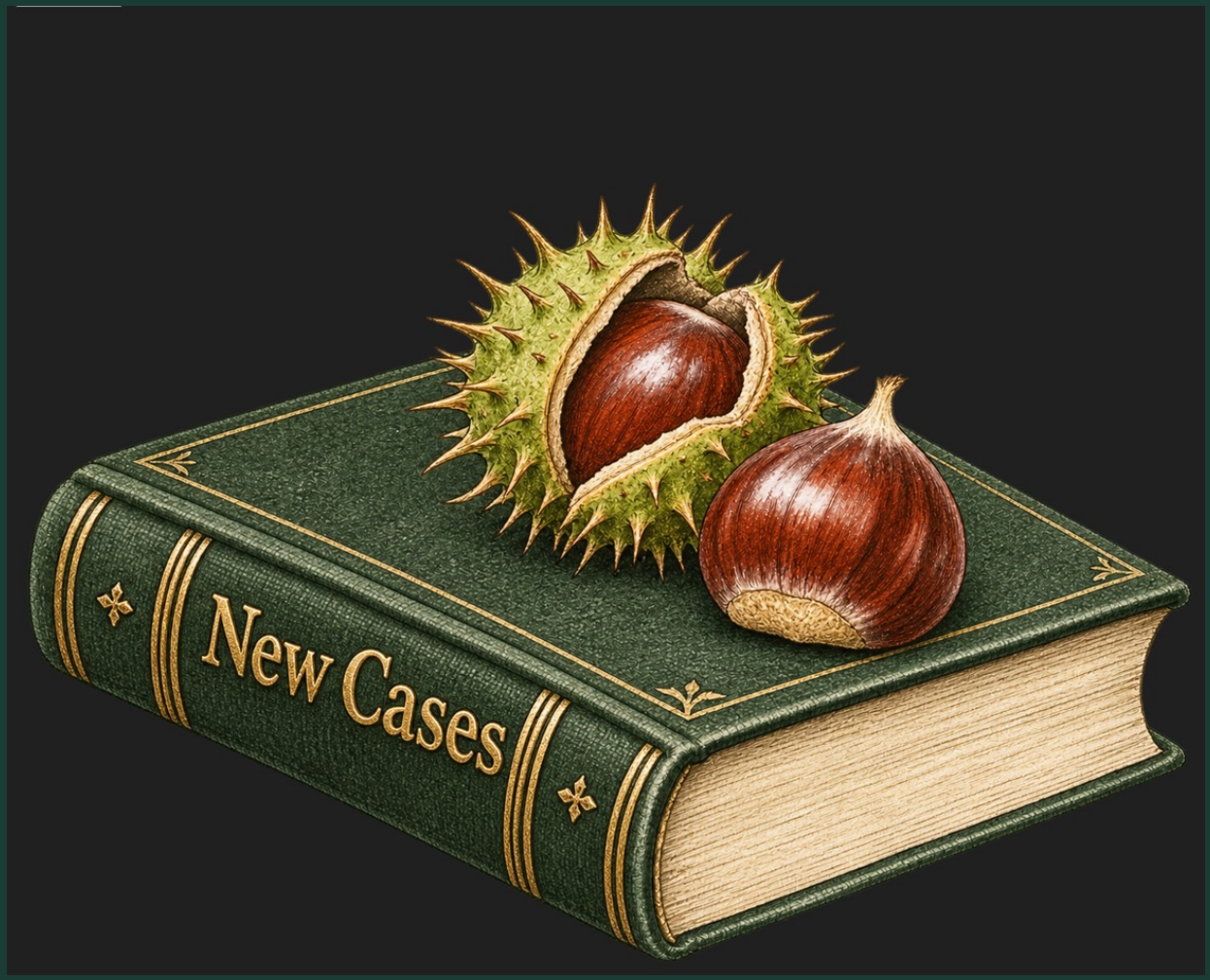
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Amendment powers: some recent cases and old chestnuts

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New Cases

Amending an amendment power



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Amendment of amendment power

1. Change procedure

Amend formal requirements

2. Restrict scope

Add a fetter

3. Expand scope

Remove a fetter

4. Transfer power

From one party to another

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1. Changing formal requirements

DOs



- Well-fitted suit light blue or white shirt
- Solid color tie
- Dark leather shoes
- Formal watch
- Closed-toe block heels
- Minimal jewelry

DON'Ts



- Casual blazer, short-sleeve shirt
- Bold tie or no tie
- Sneakers, loafers
- Excessive acces sories
- Open-toe shoes
- Large handbag

Formal Attire Guidelines

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Change formal requirements for amendments

- Cases where such changes were assumed valid:
  - *Harwood-Smart v Caws* [2000] Pens LR 101
  - *Briggs v Gleeds* [2015] 1 Ch 212

Change formal requirements for amendments

- Change to procedure held valid: *Trustees of Scottish Solicitors Staff Pension Fund v Pattison & Sim* [2015] CSIH 96

- Could a change to procedure be a detrimental modification?

2. Restrict scope of amendment power

- Adding fetters: *UEB Industries v Brabant* [1991] PLR 109, NZCA, *Wedgwood v Salt* [2018] EWHC 79 (Ch), *Soufflet Bairds Malt v Dear* [2026] EWHC 1480 (Ch)

- Illegitimate fettering of discretionary power by trustees? No – *Stena Line v Merchant Navy* [2010] EWHC 1805 (Ch)

3. Expand scope of amendment power

- Deleting fetters (e.g. if obsolete)

- No "vires" to do so?
  - *UEB Industries v Brabant* [1991] Pens LR 109, NZCA
  - *Air Jamaica v Charlton* [1999] 1 WLR 1399, UKPC
  - *HR Trustees v German* [2010] Pens LR 23, Ch D

Expand scope of amendment power

- Broad view of scope of amendment power:
  - *Re Courage Group's Pension Schemes* [1987] 1 All ER 528

- Width of amendment power:
  - *Lord Napier and Ettrick v R F Kershaw* [1999] 1 WLR 756
  - cf. *Hole v Garnsey* [1930] AC 472

Expand scope of amendment power

- Role of proper purpose doctrine?
  - *Courage*
  - *Bank of NZ v Board of Management of the Bank of NZ Officers' Provident Assn* [2003] UKPC 58
  - *IBM v Dalgleish* [2014] EWHC 980 (Ch)
  - *Grand View Private Trust Co Ltd v Wong* [2022] UKPC 47

4. Transfer amendment power between parties

- *Re Smith* (1969) SLT 94 – moving power from company directors to liquidators

- *Mettoy v Evans* [1991] 2 All ER 513 – transfer of discretion over surplus from trustees to employer: a question of width of the amendment power
  - *Muir v Inland Revenue Commissioners* [1966] 1 WLR 1269
  - *Blausten v Inland Revenue Commissioners* [1972] Ch 256

Transfer amendment power between parties

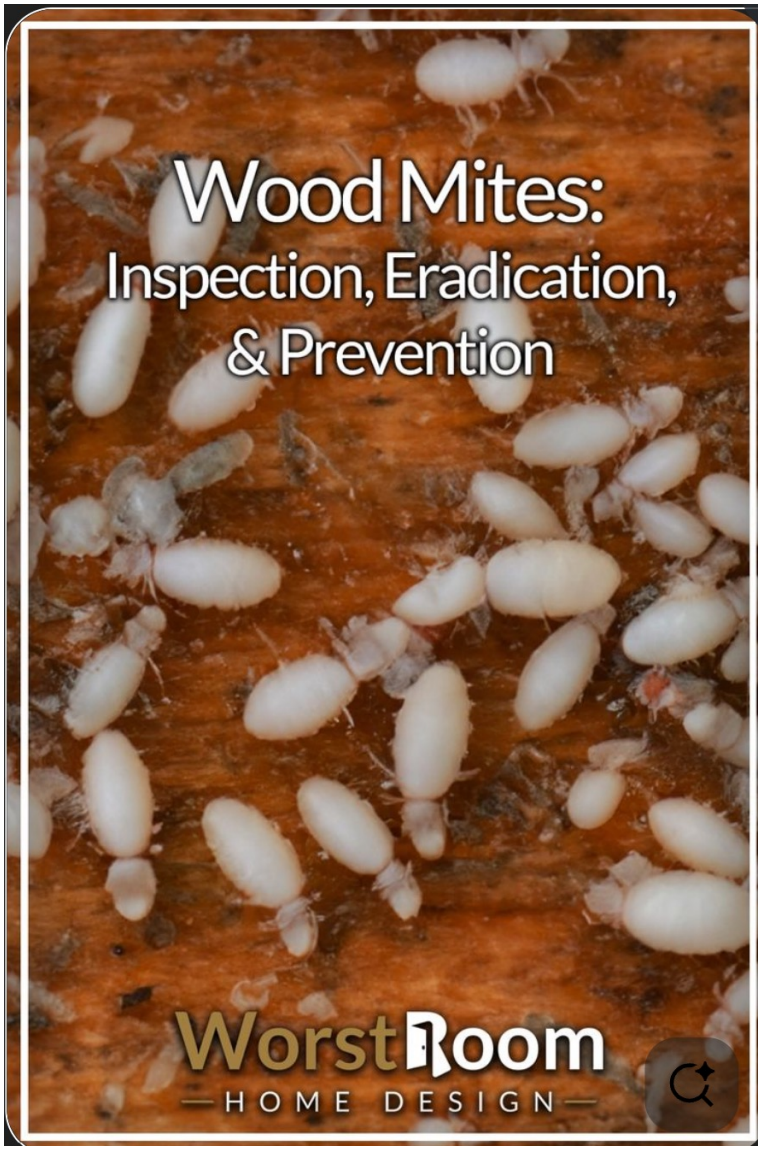
- Remove consent requirement - *Aitken v Christy Hunt* [1991] PLR 1
  - Compare *British Airways v Airways Pension Scheme Trustee* [2018] Pens LR 19, CA

- Impermissible release of power by trustees? – *Stena Line v Merchant Navy* [2010] EWHC 1805, cf. *Courage*

Express restriction on changing amendment power

- *Re Brunner's Declaration of Trust* [1941] 2 All ER 745, Ch D
- Can you create a new amendment power instead?
- *Verity Trustees*?

The “would” / “might” problem



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"Would" / "might": prejudicial effect

E.g. amendment to rate of pension increases

SCENARIO A: 5% pa increases → 4% pa increases

SCENARIO B: RPI increases → RPI capped at 5% increases

SCENARIO C: RPI increases → CPI increases

Uncertain prejudicial effect – some approaches

- Decide whether the amendment is overall prejudicial
  - e.g. the amendment power in *BBC* [2024] EWCA Civ 767

- Amendment only caught by fetter if it "would" (not "might") cause prejudice
  - *Newell Trustees v Newell Rubbermaid* [2024] EWHC 48 (Ch)

Newell Rubbermaid

- *Re Newell Rubbermaid UK Pension Scheme* [2024] EWHC 48 (Ch)



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Newell Rubbermaid

- The *Newell* fetter

Precluded amendments:

"such as *would* prejudice or impair the benefits accrued in respect of membership up to that time [the amendment date]"

Newell Rubbermaid

- Conversion from DB to DC not in breach of "would" fetter
  - "important that [prejudice] can be judged at the time of the amendment with some certainty as the administrator of the Plan needs to know if the amendment is valid or not" [219]

- But breaking of final salary link *was* caught by fetter
  - "the final pensionable salary link is now too well-established at first instance" [226]

The “would” / “might” issue

- Inconsistency with *Courage* line of cases on final salary linkage?
  - e.g. *Briggs v Gleeds* “shall be such as *would* prejudice …”

- Allows adverse changes to be made by adding a power to make them? Cf. *IBM v Dalgleish* [2014] Pens LR 335, Ch D

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The “would” / “might” issue

- Earlier cases where the point was not taken, e.g.
  - e.g. *FDR v Dutton* [2017] Pens LR 14, CA, *Virgin Media v NTL* [2024] Pens LR 14, CA

- Earlier cases where the point was taken:
  - *Mettoy v Evans* [1990] 1 WLR 1587, Ch D – but does this support the “would” / “might” distinction?
  - *Re Axminster Carpets* [2022] Pens LR 1, Ch D

The “would” / “might” issue

- Need to look at the whole clause, not just “would” or “might”
  - e.g. “would affect the nature of their rights” – “operates”

- Interaction with the law on severance / partial effect

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Thank you

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