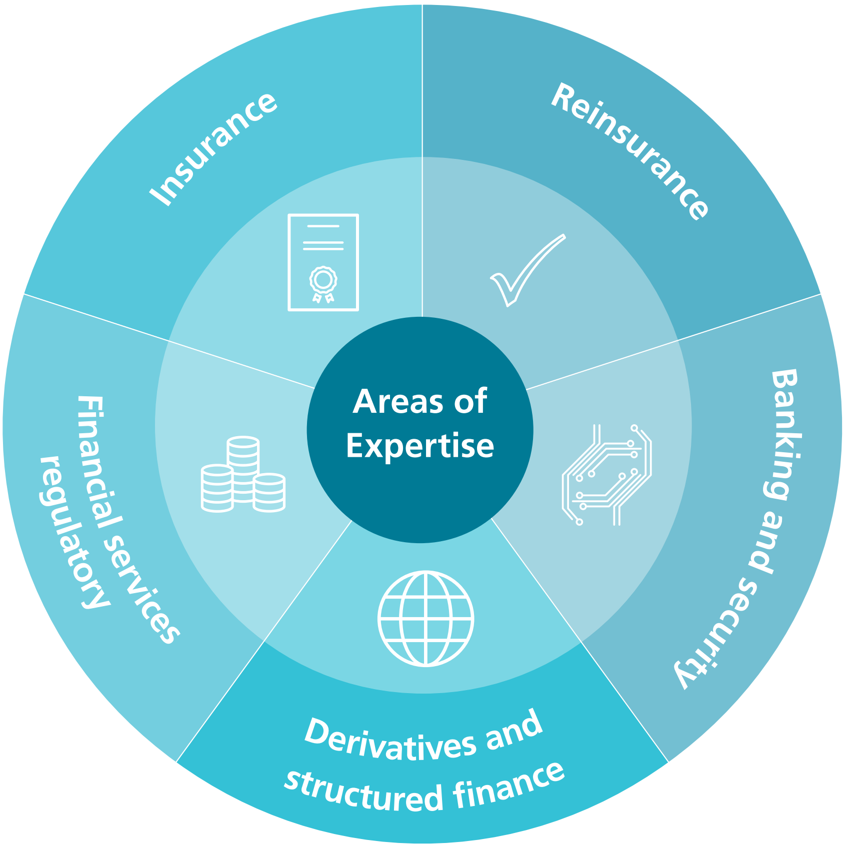
Your World First

C/M/S/ Law . Tax

Acting as Your Transaction Counsel on De-Risking Transactions

Transaction Counsel Role: A New Trend

Acting as legal adviser on de-risking transactions, such as pension buy-ins/outs and longevity swaps, often requires high levels of legal specialism outside of pensions law. Typically this could include expertise in:



Very few law firms have sufficient depth of expertise in these areas or an established track record in de-risking transactions of this nature. In order to meet this challenge, there is an increasing trend for trustees to appoint Transactional Counsel to advise them on de-risking transactions and to work alongside their existing legal adviser.

This brochure outlines the role, summarises what CMS can bring to you as Transaction Counsel and outlines our market-leading de-risking experience more generally.

The importance of the existing advisor

A Transaction Counsel does not replace the trustee's existing legal advisor. That advisor's historic knowledge of the scheme remains important to any de-risking transaction and it is likely to be more efficient and cost effective for the existing adviser to advise on, for example, scheme data, benefit specification and any potential rule changes required as part of the transaction. Accordingly, it is extremely important that the both sets of advisers establish a **collaborative and effective** working relationship.

Scope of the Transaction Counsel role

This will vary, depending on the transaction. However, for a buy-in/out, our role would usually include the following:

- **Agreeing the Request for Quotation (RfQ)**
- **Review of short-listed insurers' standard terms and conditions**
- **Reviewing insurers first round responses to RfQ**
- **Advice on 'Go/No Go' decision**
- **Negotiating buy-in policy (and associated arrangements such as collateral) with selected insurer**
- **Advice on entering into the final form policy**

Where we add value

Market leaders

CMS established a team specialising in de-risking transactions over seven years ago. Members of our team have acted on most of the large-scale transactions in the market, including collateralised buy-ins, as well as intermediated, disintermediated and index-based longevity swaps (see 'Relevant Selected Experience' on page 6). We are recognised as market-leaders, maintaining for the eleventh consecutive year our place in the top tier of both the contentious and non-contentious categories in the Chambers and Legal 500 directories, with more individually ranked pensions lawyers than any other UK law firm.

A reputation for Innovation

We have acted on many 'firsts' in the pensions de-risking market, including:

- The first index-based longevity swap entered into by a pension scheme – **Pall UK Pension Scheme**.
- The first longevity swap entered into with a group insurer – **the Trustees of the Phoenix UK Pension Scheme**.
- The first de-risking transaction to combine longevity swaps and buy-ins – **SSE**.
- The first buy-in transaction to include the issuance of a bond by the employer – **London Heathrow**.

This gives us considerable insight into current issues and trends in the market.

Market Insight

The depth of our transactional experience means we are advising at the cutting edge of the market. Issues on which we have advised recently include:

Buy-ins

- **Collateral & Security**: The Total transaction (£1.6bn) involved one of the most innovative collateral structures used in the market to date, recognised by an FT innovation award.
- **Tranching**: A potential means of mitigating credit risk where collateral is not sought; this approach requires experience in multi-party, concurrent negotiations.
- **Umbrella contracts**: An effective way of allowing future tranches to be written efficiently.
- **Trustee termination events:** A new trend, introducing potential complexity around the 'return of premium' calculations.
- **Matching adjustment & Solvency II**: We have advised both trustees and providers on the impact of certain buy-in/out terms on these rules.

Longevity swaps

- **Disintermediated transactions**: Structural questions: UK-based, offshore spv and captive structures.
- **Small-scale longevity solutions**: We have advised on most solutions in the market (e.g. Zurich/Mercer, Club Vita, Insight).
- **Combining longevity swaps and buy-ins**: The SSE transaction was the first to do this.
- **Converting longevity swaps to buy-in**: We have acted on the only conversion to date of a longevity swap to a buy-in.

Multiple perspectives

We are a trustee-focused pensions practice. However, partners in our team have also acted for insurers, banks and reinsurers in the de-risking market. This distinguishes us from our competitors and gives us invaluable insights on our de-risking transactions.

Depth of relationships

Our pensions team has been advising in the de-risking market for many years. We pride ourselves on our relationships with employee benefit consultants, providers, reinsurers, and other legal advisers. In the last six months, we have acted on transactions involving every major benefit consultant.

Collaboration

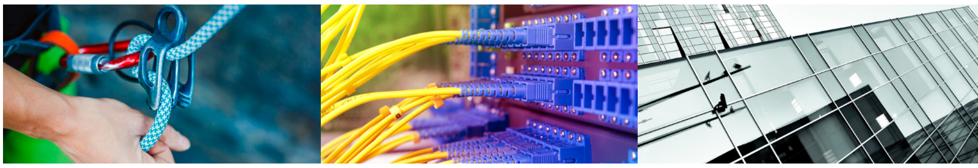
Law firms approach transactions in different ways. Our approach is unquestionably collaborative. De-risking transactions are invariably the beginning of a long relationship between the pension scheme and its chosen provider and there is little to be gained from an antagonistic approach. The depth of our relationships with advisors and providers help considerably in ensuring a successful transaction for all stakeholders.

> We hired CMS because they have the best knowledge [and] can use the phrase 'when we did this previously'. Other firms cannot.

Pension Insurance Corporation

> Highly original, innovative and at the cutting-edge of the development of the longevity market.

Market Commentator



Relevant Selected Experience

Pension Buy-ins/outs

Our team acts on between 15-20 buy-in/out transactions per year. Particular recent highlights have been:

Stanhope Pension Trust (£4.7bn)
Advising the trustee on one of the UK's largest ever pension transfer deals, securing the benefits of over 39,000 people.

London Heathrow (£350m)
Advising the trustee on the first buy-in transaction to include the issuance of an index-linked bond as part of the transaction.

Total UK Pension Plan (£1.6bn)
Advising PIC in relation to the large and highly innovative £1.6bn buy-in (including advising on a parallel longevity reinsurance arrangements with Hannover Re) – *we were awarded 2nd place in the FT Innovation Awards for the structuring and negotiating of this transaction.*

Marks & Spencer (£500m)
Advising Phoenix on its first buy-in transaction with M&S.

Small schemes longevity solutions

Zurich/Mercer solution
Advising Zurich on its development, alongside Mercer and Pacific Life Re, of a streamlined longevity swap process for smaller schemes – *this resulted in a number of follow-on transactions on which we acted.*

Club Vita
Assisting Hymans Robertson in the development of Club Vita's longevity hedging solution.

Index-based longevity transactions

Pall UK Pension Scheme (£90m)
Advising the trustees on the first index-linked longevity derivative for deferred lives.

Aegon (£12bn)
Advising a capital markets investor acquiring a proportion of the index-based longevity risk assumed by Deutsche Bank AG under a derivative with Aegon.

Aegon/Bluesquare Re (€1.4bn)
Advising SCOR on its reinsurance of a proportion of the longevity/mortality risk hedged by Aegon by reference to an index.

Longevity swaps – Intermediated transactions

Manweb Pension Scheme (£1bn)
Advising the trustees on an intermediated longevity swap with Abbey Life.

Bell Canada Pension Plan ($5bn)
Advising SCOR in connection with a longevity transaction with Sun Life Assurance Company of Canada covering members of the Bell Canada Pension Plan – *this was the first transaction of its kind in Canada.*

ScottishPower Pension Scheme (£2bn)
Advising Abbey Life on the longevity swap and associated reinsurance arrangements.

Longevity swaps – Disintermediated transactions

SSE Pension Schemes (£1.6bn)
Advising two SSE pension schemes on linked transactions comprising a longevity swap (with L&G) and two buy-ins (with PIC) – *this was the first transaction in the market to combine a longevity swap and buy-in transaction and to use L&G's UK disintermediated longevity offering.*

PGL Pensions Scheme (£900m)
Advising the trustees on a longevity swap with the Phoenix group life insurer, Phoenix Life Limited – *this was one of the first longevity transactions to use a group insurance entity to directly access the reinsurance market.*

Aviva Staff Pension Scheme (£5bn)
Advising SCOR on its reinsurance of a proportion of the longevity risk transferred by the trustees of the Aviva Staff Pension Scheme through an Aviva Group Insurer (instead of a traditional intermediary) – *this was the largest pension scheme longevity swap at the date it was transacted and the first fully disintermediated longevity transaction in the market.*

Confidential (£700m)
Advising a UK insurer on a disintermediated longevity swap with associated reinsurance and collateral arrangements – *this was the first disintermediated transaction in the market in which the insurer (a UK authorised entity) did not form part of the scheme employer's group.*

Our De-Risking Partners

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