

# Landmark Chambers

Barrister CV


Andy Creer



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## Andy Creer

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The primary areas of Andy's practice are real property, commercial Landlord and Tenant, and the Electronic Communications Code.

### Expertise

Property



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## Property

The primary areas of Andy's practice are real property, commercial L&T and the Electronic Communications Code. She works for institutional landlords like the BA Pension Trustees, Lunar SARL, U&I and BNP Paribas, and for many high-profile tenants including Leon Restaurants, Hermes, Ted Baker and for the Secretary of State for Health and Social Care.

She has trial experience of opposed and unopposed lease renewals under the 1954 Act. She has advised on expert evidence and merits on dilapidations claims on office, industrial and warehousing, and mediated a £3.5m dilapidations claim involving Ford Castle.

Many of Andy's cases involve site development whether it be specific issues like the enforceability of restrictive covenants, rights to lights claims or site aggregation strategies.

She has conducted expert determinations (both as a party and as an expert) in cases involving the interpretation of lease provisions and disputed overage clauses and has acted as a legal assessor in an arbitration. She has advised the National

Trust,

Her work on property damage has included sinkholes and landslips. She ran the first trial in England & Wales involving Japanese knotweed and her subsequent articles on liability have been cited by DEFRA (Risk & Policy Analysts Report, September 2020) and in the latest RICS Guidance “Japanese Knotweed & Residential Property” (1<sup>st</sup> edition Jan 2022).

Recommended as a leading property junior by both Chambers UK and Legal 500, Andy is noted for her excellent forensic analysis skills and incisive witness handling. One expert building surveyor compared the experience to being “cross-examined by a smiling Doberman”.

Andy came to the Bar after a successful career in industry, latterly as the director of an international manufacturing company. This experience, allied with her first degree in business and finance, means she provides clients with commercially-focused advice.

In her spare time her creative outlet is writing quizzes and compiling puzzles. Her ‘dingbats’ have become a popular Christmas tradition.

#### **Reported Cases:**

- ***Panton & Ors v Brophy & Ors*** [2019] EWHC 1534 (Ch) – obtained a vesting order for new trustees of the Thames Tradesmen Rowing Club
- ***London Borough of Camden v Morath & Ors*** [2019] UKUT 0193 (LC) – instructed via Advocate (BPBU) on behalf of a leaseholder seeking to resist a variation of her lease under s.35 of LTA 1987.
- ***Evolution (Shinfield) LLP & Ors v BT PLC*** [2019] UKUT 0127 (LC) – first trial of a claim to determine an agreement under Part 6 of the New Code (led by Brie Stevens-Hoare QC)
- ***Stockport Metropolitan Borough Council v Punj Lloyd Ltd*** [2018] EWHC 3776 (Admin) – successful respondent to an appeal by way of case stated in respect of the Local Government Finance Act 1988 where the Council relied on a landlord's specifically enforceable obligation against a guarantor to take an overriding lease to claim £1.2m in rates.
- ***Red & White Services Ltd v Phil Anslow Ltd*** [2018] EWHC 1699 (Ch) – endorsement of a costs cap for future incurred costs.
- ***Williams v Network Rail Infrastructure Limited*** [2017] UK CC Cardiff (02.02.17) – on proximate nuisance caused by Japanese knotweed.
- ***Farrar v Leongreen Ltd*** [2017] EWCA Civ 2211 – on whether a claim for *mesne* profits and a claim for possession against a trespasser are based on the same cause of action ('claims in trespass').
- ***Spielplatz Ltd v Pearson*** [2015] EWCA Civ 804 – consideration of annexation of structures following the House of Lords decision in *Elitestone v Morris* [1977] 1 WLR 687.
- ***Thandi v Sands*** [2014] EWHC 2378 (Ch) – dispute over beneficial interest in portfolio of 16 properties following bankruptcy.
- ***Swan Housing Association Ltd v Gill*** [2012] EWHC 3129 (QB) - on the county court's jurisdiction in cases involving adverse possession in light of the Land Registration Act 2002.
- ***Aksu v LB Enfield*** [2012] EWCA Civ 60 – renewal tenancy opposed on ground (b).

- **Murphy v Wyatt** [2011] EWCA Civ 408 – whether the Mobile Homes Act 1983 provided security of tenure retrospectively to a tenancy which did not preclude the siting of a caravan on a 1.7 acre site.
- **Chelsea Building Society v Nash** [2010] EWCA Civ 1247 – effect of a lender's settlement with one debtor on their joint liability.

## Boundary and Ownership Disputes

Andy has a particular interest in boundary disputes, especially in trying to help parties resolve their issues without recourse to litigation.

### Notable Work

- 4-day trial on boundary dispute and claim involving encroachment of Japanese knotweed.
- Mediation on boundary dispute on development site.
- Advising on boundary and trespass issues and whether an account of profits was possible.
- Acting on claim following breach of a Tomlin order which had settled a boundary dispute.
- Defending claim for trespass on basis of ownership acquired by adverse possession.
- Advising on ownership of drainage ditch on agricultural land.
- Obtaining a mandatory injunction and indemnity costs at trial in a boundary dispute over an 8-inch wide strip of land.

## Commercial Landlord and Tenant

Andy has particular expertise in 1954 Act renewals, having acted on cases involving all of the s.30 grounds. She is noted for her shrewd tactical approach and her numeracy, which is especially useful in reviewing expert evidence in dilapidations claims and rent valuations. She advises on the interpretation of leases, notably rent review provisions, break clauses and GAGAs. She has wide experience of claims involving forfeiture, insolvency and disclaimer.

### Notable Work

- Advising Safeway PLC in respect of a claim involving a regional distribution centre.
- Acting for BNP Paribas on the site development strategy of a retail park.
- Advising Shoe Zone Retail on a ground (f) claim.
- Advising Honda on a rent review claim.
- Terminal dilapidations of prestigious London office development (led by Zia Bhaloo KC)
- Trial on unopposed lease renewal with issues including MEES provisions.
- Presenting written and oral submissions in a £3.2m Commercial Rent (Coronavirus) Act 2022 rent arrears arbitration.
- Successfully resisting without notice application for injunctive relief following forfeiture of commercial premises.
- Obtaining an injunction with penal notice against directors and guarantors to enforce lease covenants.

- Acting for the landlords in an opposed renewal of a site earmarked for development by Aldi Stores Ltd.
- Resisting summary judgment in a High Court debt claim for unpaid rent during the COVID-19 pandemic.
- Drafting PACT submissions on an interim rent application where the tenant was seeking a differential rent during Lockdown.
- Advising on unlawful withholding of consent to assign and issues of economic repair of commercial offices (with John de Waal QC).
- Advising on vacant possession strategy for landlord of shopping centre redevelopment.
- Considering whether a lease is *void ab initio* under s.2 of the Competition Act 1996 (led by Tim Ward KC).
- Obtaining an order for an expedited trial of a preliminary issue involving the proposed development of a medical centre.
- Representing Caffé Nero on opposed and unopposed lease renewals.
- Advising on claims under s.17 of the Landlord & Tenant (Covenants) Act 1995.
- Mediation on a £3.5m dilapidations claim.
- Advising NCP on claim by tenant for breach of repairing covenants.
- Advising on the site aggregation strategy for a new development by the owners of the Burlington Arcade.
- Acting for a major port on a PN claim following an expert determination on a rent review.
- Advising on the s.18 statutory cap and supercession claims on multi-million pound retail centre.
- Acting for Pizza Hut on the trial of a preliminary issue. Successfully obtained a renewal tenancy where landlord opposed on grounds 30(1)(f) – redevelopment and (g) – own use.

## Conveyancing Disputes

Andy's work includes both specific performance, and rescission, of contracts for sale. She also handles professional negligence claims arising from conveyancing transactions.

### Notable Work

- Advising on misrepresentation claims against vendors of properties affected by Japanese knotweed and bamboo.
- Advising on appeal in claim involving interpretation of rights of access under contract for sale.
- Advising on effect of agreement where purchasers were let into occupation prior to completion.
- Considering merits of purchaser's purported rescission for fraudulent misrepresentation in respect of the existence of planning permissions.
- Advising on claims for rectification.

## Easements and Profits a Prendre

Andy has successfully resolved a number of easement cases, including claims involving interference with rights of way and excessive user. She is adept at interpreting the grants and reservations in the chain of historic transactions.

## Notable Work

- Defending claim for declaratory relief that proposed development would not constitute an actionable interference (led by Zia Bhaloo KC).
- Attending mediation on claim for prescriptive rights where permission was implied by conduct.
- Mediation on alleged trespass by leaseholders, where freeholder claimed right of way under doctrine of lost modern grant.
- Advising on a dispute about an easement for the supply of water.
- Considering the interplay of a Private Act of Parliament and wayleaves under the Electricity Act 1989.
- Obtaining an interim injunction for breach of a right of way which was hindering on-site development.
- Looking at express grant and prescriptive rights of way based on a 'coal man's' access behind a row of terraced houses.

## Insolvency

A niche part of Andy's practice involves the interplay of the insolvency regimes on property rights. She acts for both private individuals and insolvency practitioners.

## Notable Work

- Advising on relief from forfeiture after a proposed restructuring under Part 26A of the Companies Act 2006.
- Considering the effect of a CVA on an agreement for lease.
- **Stockport Metropolitan Borough Council v Punj Lloyd Ltd** [2018] EWHC 3776 (Admin) – on a guarantor's liability for Non-Domestic Rates following the disclaimer of a lease.
- Acting on the return date of a without notice injunction where the company was in deadlock.
- Advising on tenant in common's rights after the dissolution of the co-lessee.
- 5,000+ page trial on a claim by a Trustee in Bankruptcy under s.423.
- Advising on the effect of the disclaimer of a lease and third-party rights.
- Applications for vesting orders under both the Companies Act 2006 and Insolvency Act 1986.
- Opposing a claim by an alleged beneficiary under a Deed of Trust against Trustees in Bankruptcy. Although witnessed by a solicitor, as a result of meticulous cross-examination the Deed was held to have been back-dated and a sham: **Thandi v Sands** [2014] EWHC 2378 (Ch).
- Defending a claim for misfeasance by a trustee in bankruptcy brought by a beneficiary under an alleged trust of land.

## Land Registration and Adverse Possession

Andy has dealt with a number of complex title disputes involving rectification of the register and indemnities. She acted in key case of **Swan Housing Association Ltd v Gill** [2012] EWHC 3129 (QB), which decided that the county court has no jurisdiction in a claim for adverse possession of registered land.

## Notable Work

- Advising on adverse possession brought as a counterclaim in complex rights of way matter.
- Drafting defence to adverse possession claim in respect of parcels of land on a country estate.
- FtT trial on adverse possession, where title had been acquired against a leasehold interest.
- Mediation on adverse possession claim involving stables and equestrian land.
- Advising LPA Receivers on the exercise of an option which was granted between related entities to prevent alienation of the title.
- Acting on a contested claim for a restriction to protect a beneficial interest under a resulting or common intention constructive trust, where both sides alleged documents had been fabricated.
- Application for a Norwich Pharmacal order in fraud case.
- Opposing an application to register a restriction for Coutts & Co.

## Leasehold Enfranchisement and Right to Manage

Andy's work mainly involves lease extension claims, including considering the validity of s.42 notices, on steps to find a missing landlord and Part 8 claims where a freeholder fails to serve a counter-notice. She acts for tenants, management companies and landlords in service charge disputes before the FtT and has had a number of trials on the appointment of a manager under s.24(1) LTA 1987.

## Notable Work

- Advising on the repercussions of concurrent leases under Schedule 11 of the 1993 Act.
- Advising on lease extensions involving a split reversion.
- Considering a chain of liabilities in a series of leases in a residential development.
- Advising on the interplay between a deed conferring a right to specific performance and rights of first refusal under the Landlord & Tenant Act 1987.
- **London Borough of Camden v Morath & Ors** [2019] UKUT 0193 (LC) – successfully opposed appeal on whether a sub-lease made 'satisfactory provision' for the landlord's liabilities under its own lease.
- **Farrar v Leongreen Ltd** [2017] EWCA Civ 2211 – appeal on application of 2<sup>nd</sup> and 3<sup>rd</sup> categories of *res judicata* as espoused by Lord Sumption in **Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd** [2013] UKSC 46.
- Advising on whether a binding settlement has been reached in a lease extension claim.
- Mediating on a qualified covenant for alterations in a residential block of flats.
- Advising on claims involving the development of loft space and the usage of roof terraces.
- **Spielplatz Ltd v Pearson** [2015] EWCA Civ 804 - whether occupiers of a chalet built on a plot of land which was let as a bare plot have an Assured Tenancy.

## Mortgages, Charges, Charging Orders and Securitisation

Andy regularly handles complicated mortgage related cases, including those involving undue influence and capacity issues. She has acted on claims involving remedies for defective charges and the difference between equitable charges and equitable mortgages. She advises on the marshalling of assets, subrogation claims and the powers of LPA Receivers.

### Notable Work

- Obtaining a mandatory injunction on a without notice basis against mortgagees in possession where their inaction invalidated the landlord's insurance.
- Acting for LPA Receivers on borrower's urgent application for an injunction to prevent sale at an auction.
- ***Budhdeo v The Alternative Bridging Corporation (Cheval) Ltd*** [2018] EWHC 1294 (QB) – acting for bridging loan lender on an appeal of case management decisions, including specific disclosure, amendment and requirement for expert evidence.
- Submissions on Court's jurisdiction following the expiry of the mortgage term.
- Application by a mortgagee for a vesting order following disclaimer of a lease.
- Advising on mortgagee's claims for relief from forfeiture of both commercial & residential leases, including breaches occasioned by an AirBnB.
- Considering whether a sale was conducted by the agent of a mortgagee in possession or an LPA Receiver, so as to avoid a claim that the transfer was a transaction at undervalue.
- 4-day trial on the beneficial ownership of property raised in opposition to the making of final charging orders.
- Whether parties to a settlement agreement can 'contract out' of s.36 of the AJA 1970.
- 2-day trial for bridging loan company faced with defences of illegality *non est factum*, fraud and breach of Consumer Protection Regulations.
- Advising on the enforcement of various security given for a loan agreement (including personal and company guarantees, legal charges and a chattels mortgage).
- Advising the Bank of Scotland on the rights of mortgagees in claims for possession of shared ownership leases.

## Professional Negligence Claim Related to Property

Andy has acted for both insurers and individuals in professional negligence claims arising in a property context.

### Notable Work

- Claim against solicitors arising from advice on rectification in respect of the grant of easements.
- Advising on a professional negligence claim which had resulted in the failure to complete the purchase of a site for development as PBSL accommodation.
- Acting on a loss of chance claim in a professional negligence action arising from a lease extension (led by Nigel Jones KC).



- Acting for developer in architect's professional negligence claim involving complicated issues of valuation and the duty to mitigate (led by Joanne Wicks KC).
- Advising Barratt Homes on professional negligence claims and mitigation of loss through applications to vary service charge provisions under s.35 of the LTA 1987.

## Property Development including Overage disputes

A number of Andy's cases arise in the context of site development, which require legal accuracy, pragmatic solutions and a fast turnaround. She is noted for her forensic analysis of figures and spreadsheets. As one partner put it when recommending Andy to her developer client, *"If the valuation surveyor has made a miscalculation, she will find it."*

She advises on the interpretation and enforceability of restrictive covenants and option agreements. She has recently acted on potential rights to lights claims and site aggregation strategies. She has acted as an adjudicator in an expert determination involving the interpretation of an overage agreement and as a legal assessor in arbitration.

### Notable Work

- Advising with David Holland KC on potential rights to light claims in neighbouring developments.
- Securing rescission of a Party Wall Act award and determination of an underlying boundary dispute, with indemnity costs on part of the claim.
- Advising the National Trust and three other well-known charities on a professional negligence claim in the drafting of an option agreement by an executor.
- Advising on a claim against a landowner for specific performance of an option.
- Reviewing the calculation of a purchase price and the quantum of abnormalities.
- Acting on an indemnity claim in respect of the installation of drainage systems allegedly causing nuisance to neighbouring property.
- Opposing an application for summary judgment in a claim to enforce a Joint Venture agreement.
- Successful 4-day trial seeking mandatory injunction for breach of restrictive covenants (& awarded indemnity costs).
- Advising on a boundary dispute and clearing restrictions from title.
- Application in the High Court for specific performance of obligations within an overage agreement.
- Acting as the expert in an expert determination on the interpretation of overage provisions.
- Advising on obtaining vacant possession of a building used for religious purposes on a Wembley development.
- Advising on evidence where a vendor had made misrepresentations about the local development plan.
- Drafting an overage agreement (as a third-party expert) in a ToLATA claim.

## Telecommunications

Andy has extensive experience of the Electronic Communications Code. Most of her work is advisory, helping to guide professional and lay clients through the limitation on property rights imposed by the Old Code, transitional provision and (New) Code. Under the Old Code she advised landlords including Manchester Airport Group, Essex County Council and the Derbyshire Fire & Rescue Authority. Since the introduction of the (New) Code she has been involved with sites owned by Punch Taverns, Brunel University and the Humber Bridge. She has acted against all the major operators – Arqiva, BT, Vodafone/Telefonica, CTIL, EE & Hutchison 3G.

#### **Notable Work**

- Hearing of a preliminary issue on the nature of the agreement (lease/licence).
- Acting for national developer to remove NATS installations from major development site.
- Advising on whether a data centre fell within a permitted user clause.
- Resisting a Site Survey Access request where the investigative works would invalidate a warranty for a new roof.
- Mediation on §24 consideration in context of a potentially ultra vires Old Code agreement.
- Advising on valuation of Code sites under the 1954 Act.
- ***Evolution (Shinfield) LLP & Ors v BT PLC*** [2019] UKUT 0127 (LC) – on rights to removal under §38 where apparatus interferes with access to neighbouring land.
- Advising developers like St Modwen Developments Ltd and Bovis Homes Ltd.
- Acting for commercial property investors like Lunar Office SARL and the BA Pension Fund Trustees.
- Drafting claims under Part 6 for removal of apparatus.
- Producing the Respondents' Statement of Case in Part 5 claims (§31(4)(c) redevelopment grounds).
- Advising on the transitional provision under Schedule 2 of the Digital Economy Act 2017.

#### **Trusts of Land and other Equitable Claims**

Andy has been involved in a number of ToLATA cases, involving cohabitees and family members, and has handled constructive trust issues in contentious probate. She has advised on the replacement of trustees under the 1925 Act and claims for breach of fiduciary duty.

#### **Notable Work**

- 6-day trial on proprietary estoppel claim with evidence spanning 30 years.
- Advising Interim Managers (appointed under the s.76(3)(g) of the Charities Act 2011) on claim against trustees.
- Application for a vesting order under s.44 of the Trustee Act 1925.
- Mediation in a claim for wilful default by a constructive trustee.
- 2-day trial in a claim for an equitable account.
- ***Panton & Ors v Brophy & Ors*** [2019] EWHC 1534 (Ch) – obtained a vesting order for new trustees of the Thames Tradesmen Rowing Club (an unincorporated club) following the dissolution of the 'joint tenant'. The landlord (who intervened)

sought to rely upon a legal technicality to evict the club from premises it had occupied for >30 years.

- Acting in the High Court on a claim for a beneficial interest arising in a family context where legal title had also been transferred and charged.
- Advising through BPBU on a potential beneficial interest as a defence to a possession claim.
- Considering the Court's powers to partition land as an alternative to an order for sale.
- Successfully cross-examined partner and established that certain documents had been fabricated in 3-day ToLATA trial.

## Recommendations

"A true specialist in 1954 Act work." "She is technically excellent and very commercially focused in the advice that she gives. She is very approachable and connects well with clients. Her knowledge of the facts of the matter and the legal issues immediately builds confidence with clients."

**Real Estate Litigation, Chambers and Partners, 2024**

"Andy is no-nonsense. She is bright and hard headed with her advice but is charming to work with and we really appreciate her candour. A good advocate and always has the ear of the court."

**Property Litigation, Legal 500, 2024**

"Andy Creer always provides an excellent service - really thorough and commercial."

**Real Estate Litigation, Chambers and Partners, 2023**

"Andy is very thorough in her work, responsive and committed to her clients. She is particularly skilled when it comes to knotty issues, particularly in the area of nuisance."

**Property Litigation, Legal 500, 2023**

"She is terrific." "One to watch."

**Real Estate Litigation, Chambers and Partners, 2022**

"Tenacious attention to detail and really good on her feet." "Incredibly thorough and technical." "Fantastic expertise in property law."

**Real Estate Litigation, Chambers and Partners, 2020**

"She is brilliant and extremely experienced in real estate. Always incisive, practical and positive in her advice."

**Chambers and Partners**

"Methodical, down to earth and a very good advocate." "She has a very good grasp of complex detail but can also see the bigger picture." "She is incredibly knowledgeable, very approachable and responsive."

## Real Estate Litigation, Chambers and Partners, 2021

"Her advice is always laced with a clear understanding of the lay client's commercial drives and objectives."

**Legal 500**

"She has a fantastic attention to detail and is very technically able."

**Legal 500**

"A very technical lawyer with a commercial approach."

**Legal 500**

## Cases and inquiries

25 06 19	London Borough of Camden v Morath & Ors [2019] UKUT 0193 (LC)
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21 06 19	Panton & Ors v Brophy & Ors [2019] EWHC 1534 (Ch)
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15 04 19	Evolution (Shinfield) LLP & Ors v BT PLC [2019] UKUT 0127 (LC)
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30 10 18	Stockport Metropolitan Borough Council v Punj Lloyd Ltd [2018] EWHC 3776 (Admin)
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23 05 18	Red & White Services Ltd v Phil Anslow Ltd [2018] EWHC 1699 (Ch)
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21 12 17	Farrar v Leongreen Ltd [2017] EWCA Civ 2211
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## Publications

Contributor to "Risk & Negligence in Property Transactions" Law Society Legal Handbooks [2018] (edited by John de Waal KC).

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