

# Landmark Chambers

## Barrister CV

Katherine Traynor



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# Katherine Traynor

Call: 2019

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Kate practices across Chambers' main practice areas, with a focus on property law. She also has expertise in insolvency, tax, and commercial litigation, which is allied with specialist costs expertise.



## Expertise

Planning, Property, Rating and Valuation

## Contact Practice Managers

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## Practice Summary

Kate is a specialist property barrister with particular expertise in interrelated areas, including tax, insolvency, and rating law. She frequently appears in the First-tier Tribunal (Property Chambers), the Upper Tribunal (Lands Chamber), the High Court and the County Court and has recently appeared unled before the Court of Appeal.

Prior to joining Chambers in December 2021, she practised in Manchester and Liverpool as a specialist business and property barrister. She continues to accept instructions and regularly appears as Counsel in Manchester and Liverpool. In early 2021, Kate established a social group for junior lawyers, she has recently grown the social group, now known as 'the Junior Lawyers' Social Group'.

Before coming to the Bar, Kate worked for two national law firms practising in the commercial and costs departments, respectively. In 2019, she worked for Bond Turner Limited as a costs negotiator, where she worked on a variety of cost litigation

matters. Before that, she worked for DWF Costs as a costs advisor. In 2018 she worked for DWF LLP as a commercial paralegal, where she worked on a variety of commercial litigation matters. In 2017, she worked for a boutique law firm, Hodge Halsall Solicitors, where she assisted the Managing Partner on a range of legal issues.

Kate has a growing practice in planning, compulsory purchase, valuation, and rating law. She is currently undertaking her ATT and CTA exams, which offers a niche specialism in revenue law. Copies of her CV are available upon request.

Kate is often instructed as sole counsel, frequently appearing in the County Court, First-tier Tribunal and High Court, as well as acting on several cases as a junior. She has a busy trial practice but also appears in application hearings – especially for summary judgment and strike out, interlocutory applications and CCMC hearings.

Kate is a member of the editorial team for the **Encyclopedia of Housing Law and Practice** (Sweet & Maxwell).

#### Recent cases:

- Kate recently appeared unled for the Respondent in ***Smith v Secretary of State for Levelling Up, Housing and Communities*** [2023] EWCA Civ 514 on the principle of costs and successfully opposed the making of a costs order against the Respondent.
- Kate recently appeared (being led by Justin Bates) for the Appellant in ***Avon Ground Rents Limited v Canary Gateway (Block A) RTM Company Ltd*** [2023] EWCA Civ 616; a case concerning the issue of whether a shared ownership lease where the tenant has *not* “staircased” to 100% interest but is a term more than 21 years was a “long lease” for the purpose of the Commonhold and Leasehold Reform Act 2002.
- In 2022, Kate assisted with an appeal to the Upper Tribunal (Lands Chamber) in ***Riverside CREM 3 Ltd v Unsdorfer and others*** [2022] UKUT 98 (LC) (led by Justin Bates), a case on whether a challenge to the FTT’s power to vary a management order could be raised for the first time on an appeal.
- Advising on and drafting an application for permission to appeal to the Court of Appeal in the context of how the right to manage applies to a residential terrace and the interpretation of ‘premises’ for the purpose of s.72, Commonhold and Leasehold Reform Act 2002 (led by Justin Bates).
- Advising on and drafting the claim documents in the High Court, in respect of a debt action brought under regulation 20 of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, in the context of an alleged rate avoidance scheme (led by David Forsdick KC).

## Planning

Kate is developing a varied practice covering all planning and CPO law aspects. Examples of recent work include:

- Advising on an agreement to purchase land and whether a CPO is justified, where the only issue is the purchase price (led by David Forsdick KC).
- Advising a local authority in respect of an independent valuer’s determination under an Option Agreement and whether such determination was a resolution by arbitration or expert determination. Kate also advised on how and whether the decision could be challenged or set aside (led by David Forsdick KC).

- Advising on the submission of planning objections for an access road to run across the land and the prospects of successfully opposing the planning application.
- Advising on an application by a water undertaker for planning permission to develop infrastructure works on privately owned land.
- Advising on the prospects of challenging a planning decision by way of judicial review.
- Advising on an issue concerning the “owners’ of a development for the purposes of the Community Infrastructure Levy Regulations 2010 (as amended).
- Advising on prospects of successfully bringing an application for judicial review of an approved planning application for the erection of dwellinghouses.

## Property

Kate is building a practice across the full range of property disputes, covering a broad range of residential and commercial property cases. Her experience covers landlord and tenant cases, leasehold enfranchisement, party walls, boundary disputes, easements, and trusts.

Her notable experience includes:

- Assisting with an appeal to the Upper Tribunal (Lands Chambers) (***Riverside CREM 3 Ltd v Unsorfer and others* [2022] UKUT 98 (LC)**) on whether a challenge to the FTT’s power to vary a management order could be raised for the first time on an appeal (led by Justin Bates).
- Kate recently appeared (being led by Justin Bates) for the Appellant in ***Avon Ground Rents Limited v Canary Gateway (Block A) RTM Company Ltd* [2023] EWCA Civ 616**; a case concerning the issue of whether a shared ownership lease where the tenant has *not* “staircased” to 100% interest but is a term more than 21 years was a “long lease” for the purpose of the Commonhold and Leasehold Reform Act 2002.
- Advising on and instructed to attend an appeal in a case in which the Appellant alleged a beneficial interest in a property held under a deed of trust and that the Claimants had executed sham trust documents. Kate obtained an order striking out the Appellant’s Notice seeking permission to appeal, pursuant to CPR 52.18 and an order for costs, notwithstanding the fact that it remains primarily a matter for the applicant to persuade the court to grant permission to appeal.
- Advising on and drafting proceedings for injunctive relief in respect of trespass and breaches of the Party Wall Act 1996.
- A one-day trial in the Upper Tribunal concerning the modification of restrictive covenants pursuant to Section 84 LPA 1925.
- A three-day trial (with a further two days for judgment and submissions on costs) before HHJ Salmon on whether the Defendant had committed a trespass and interference with an express right of way.
- Advising on the impact of Bridge Facility Agreement in the sum of £1.7 million and the impact on possession proceedings.
- Advising on the passing of benefit of a restrictive covenant, having regard to sections 78 and 79 of the Law of Property Act 1925, as well as the reasonableness of the user restriction and refusal of consent.

## Residential Tenancies

Kate regularly acts for landlords and tenants in all types of residential property matters,

Recent court appearances include:

- A one-day trial involving rent arrears in excess of £20,000 and an allegation of disrepair and failure to protect a deposit, coupled with challenges to the validity of the notice.
- A two-day trial involving rent arrears in excess of £50,000 and an allegation of disrepair, together with a counterclaim in excess of £35,000 for losses arising out of the disrepair.
- Appearing in the First-tier Tribunal on behalf of a landlord in relation to a dispute about service charges and allegations of historic neglect.
- Appearing in the First-tier Tribunal on behalf of a landlord in relation to a dispute about service charges and administration of charges payable by a long leaseholder.
- Acting for landlords and tenants on various matters related to orders for sale, possession of residential premises, including sections 8, 21, tenancies falling outside the Housing Act 1988 and claims against trespassers.

Kate's recent drafting and advisory work has included:

- Whether a local authority landlord can be held liable for nuisance and/or trespass committed by a residential tenant who has a history of conduct of a similar kind and the possibility of judicial review against the local authority for refusing to take steps to abate the nuisance.
- Preparing written submissions for an application to the First-tier Tribunal (heard on paper) on behalf of a landlord in relation to a dispute about service charges and allegations of historic neglect.
- Advising on a claim for breach of covenant, trespass and damage to the leaseholder's reversionary interest following the erection of a staircase prior to the acquisition of the premises and re-grant of the leaseholder interest.
- Drafting particulars of claim for possession of a residential property on behalf of executors and trustees, following consent being withdrawn upon the proprietor's death.

## Commercial Landlord and Tenant

Kate's recent court appearances include:

- A three-day trial before Recorder Shaw on whether the Claimant had locus standi to bring possession proceedings, whether the trust deed under which the property was held was a sham and whether the Defendant had an interest in the property or right to possession. Kate has since appeared on various interlocutory applications on this matter, successfully dismissing the Defendant's applications on a without merit basis and obtaining injunctive relief against the Defendant for harassment.
- Successfully setting aside judgment in default and dismissing a claim for declaratory relief as to the reasonableness of the services charges on a technical point in respect of failing to comply with CPR r.6.9 and r.7.7.

- Successfully dismissing an application for a 'stay of the writ' and 'to set aside the possession order' on the basis that the Court had no jurisdiction, and the correct application would be for relief from forfeiture under section 146 of the Law of Property Act 1925, which ought to be brought by an N5A claim form.
- Obtaining a possession order and money judgment following forfeiture of a lease of commercial premises.
- Obtaining possession of commercial premises, following the unlawful occupation and trespass by a protestor alleging interference with his human rights.
- Acting for a landlord of commercial premises in relation to breaches of covenant and forfeiture of the commercial lease.

Kate has recently advised and drafted the following work:

- Advising on and drafting summary grounds in respect of an application to judicially review a local authority's decision for the repayment of a grant made under the business rate 'Small Business Rate Relief Scheme'.
- Advising on and drafting a defence regarding termination of a commercial lease and alleged non-compliance with the break conditions.
- Advising on and drafting proceedings in respect of the material non-compliance with the break conditions and indebtedness following a breach of the lease.
- Advising on the validity of a Section 25 Notice and expiry of the same without any executed lease, extension of time or application to the court.
- Drafting proceedings for possession of commercial premises following the expiry of the contractual term and unlawful occupation by a second entity.
- Advising on whether there had been a breach of lease or indenture by erecting or otherwise permitting to be erected structures within an arch space under a railway.

## Residential Leasehold Management and Disputes

Kate routinely acts in all types of residential leasehold management disputes. Notable cases include:

- Assisting with an appeal to the Upper Tribunal (Lands Chambers) (***Riverside CREM 3 Ltd v Unsorfer and others* [2022] UKUT 98 (LC)**) on whether a challenge to the FTT's power to vary a management order could be raised for the first time on an appeal (led by Justin Bates).
- Kate recently appeared (being led by Justin Bates) for the Appellant in ***Avon Ground Rents Limited v Canary Gateway (Block A) RTM Company Ltd* [2023] EWCA Civ 616**; a case concerning the issue of whether a shared ownership lease where the tenant has *not* "staircased" to 100% interest but is a term more than 21 years was a "long lease" for the purpose of the Commonhold and Leasehold Reform Act 2002.
- Advising on and drafting an application for permission to appeal to the Court of Appeal in the context of how the right to manage applies to a residential terrace and the interpretation of 'premises' for the purpose of s.72, Commonhold and Leasehold Reform Act 2002 (led by Justin Bates).
- Advising on and drafting an application for permission to appeal to the Supreme Court in the context of a long-running dispute regarding the exercise of the statutory rights of tenants of flats to acquire the "right to manage" pursuant to the

## Leasehold Enfranchisement and Right to Manage

Kate is developing a varied practice in the context of leasehold enfranchisement. Recent work includes:

- Advising on whether the sole leasehold ownership of a flat entitles the joint freeholders to a leaseback and whether the flat was let to a person who was a qualifying tenant immediately before the 'appropriate time',
- Advising on potential professional negligence in the context of the acquisition of the freehold interest via auction.
- Advising on service of notices by the freeholder under section 5 of the Landlord and Tenant Act 1987 and the issue of Rights of First Refusal.
- Advising on the validity of a Section 21 Counter-Notice under the Leasehold Reform Housing and Urban Development Act 1993.

## Squatters and other Trespassers

Kate routinely acts in squatter and trespasser claims. Recent work includes:

- Attending a hearing on behalf of a bank for possession against persons unknown who were unlawfully occupying residential premises and causing serious damage to the commercial premises of the high street bank.
- Attending a hearing on behalf of a local authority for possession of several car parks against trespassers who were engaging in anti-social behaviour, including substance abuse, and threatening the parking attendees.
- Attending a hearing for possession on behalf of a local authority for possession of a strip of land outside of a job centre, wherein an individual was camping outside in protest against the job centre.
- Attending a hearing for possession of commercial premises that were in the process of substantial redevelopment and valued at c.£10m but were being occupied by persons unknown for the purpose of a 'rave'.
- Drafting an application and advising on a writ of restitution after an unlawful trespasser returned to commercial premises after the execution of a writ.

## Insolvency and Restructuring

Kate regularly acts on a variety of insolvency and restructuring cases. She is well-versed in both corporate and personal insolvency and is instructed at all stages – acting for companies and creditors in seeking bankruptcy, winding up and administration orders.

Kate has particular expertise in cases involving insolvent developers and off-plan purchases, whether that be acting for the administrator, creditor, or purchaser.

Kate regularly acts on a variety of insolvency and restructuring cases:

- Advising on an application under paragraph 71 of Schedule B1 of the Insolvency Act 1986, and whether the disposing of the development free of circa. 300 Unilateral Notices would be in the interest of the administration.
- Advising on whether the transfer of a development of luxury apartments, as debt/equity swap to clear a debt of circa. £10m would give rise to a claim of preference.
- Advising on the principle of 'purchaser lien' and the purchasers' interest in the context of an off-plan purchase, following the appointment of Administrators and request for a Unilateral Notice to be removed.
- Advising on and preparing an application under sections 212, 238 and 241 of the Insolvency Act 1986 and Insolvency Rules 1986.
- Appearing for the creditor in an application to set aside a statutory demand for liabilities under a court order in the High Court and subsequent order of a costs award.
- Appearing for a creditor in an application for a bankruptcy order for liabilities under a court order in the High Court and successfully dismissing the debtor's application opposing the petition.

## Rating and Valuation

Kate is developing a varied practice covering all aspects of rating law. She has advised on the following:

- Advising on and drafting the claim documents in the High Court, in respect of a debt action brought under regulation 20 of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, in the context of an alleged rate avoidance scheme (led by David Forsdick KC).
- Advising Receivers on liability for business rates in respect of unoccupied properties and in respect of a car park continuing in operation, with the Receiving collecting the car park monies for the receivership estate.
- Advising in respect of the appropriateness of exemption from empty rates assessment by virtue of Reg 4(e) of the Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008.
- Advising in respect of the tenant's liability for business rates whilst not in occupation and in the currency of litigation concerning the exercise of a break notice.
- Advising in respect of an application under s.44A of the Local Government Finance Act 1988 and on the issue of judicial review (led by Luke Wilcox).
- Attending a hearing in respect of National Non-Domestic Rates on the application of s.45 of the Local Government Finance Act 1988.
- Attending a hearing in respect of summonses for council tax on the issue of whether the demands were served as soon as reasonably practicable, as required by regulation 19 of the Council Tax (Administration and Enforcement) Regulations 1992.
- Advising in respect of an individual's liability for council tax and exemptions under Class G of the Council Tax (Exempt Dwellings) Order 1992.

Kate spoke at the Annual Rating Conference 2022.



## Costs Litigation

Kate has a developing costs practice, with her knowledge of costs and litigation funding being beyond her year of call. Before coming to the Bar, Kate worked as a Costs Negotiator and Advisor for two national solicitors' firms.

Kate has considerable experience in costs and litigation funding, which encompasses arguments on points of law, detailed assessments, technical appeals and providing formal advice to insurers and litigation funders. Kate also has comprehensive experience of applications for security for costs, fixed costs, and disputes concerning the conduct of solicitors and clients.

Kate's technical capability, married with her practical advice and personable approach, allows her to deliver first-class service in all aspects of costs litigation. Further, having spent a considerable period in solicitors' firms, Kate is well placed to understand the wider picture, along with the commercial needs of all aspects of costs and litigation funding.

Recent work Kate has undertaken includes:

- Appearing in ***Smith v Secretary of State for Levelling Up, Housing and Communities*** [2023] EWCA Civ 514 on the issue of costs and applicable principles.
- Advising on and appearing in an application for a non-party costs order under CPR 46.2 against a third party appearing behind a 'phantom' Claimant.
- Advising on an application by the Claimant for a wasted costs order where evidence of fact as adopted by the witness statement of the Defendants' solicitor is alleged to be fabricated.
- Advising on and appearing in detailed assessment hearings, as well as oral review hearings.
- Advising on and appearing in technical appeals following assessment of costs.
- Advising on and appearing in appeals in respect of sanctions under CPR 3.14.
- Advising on and appearing in an application for costs, wherein the Claimant filed a notice of discontinuance in the claim before formally accepting a 'drop hands' offer on costs.
- Advising on and appearing on behalf of the Defendant in the handing down of judgment, wherein the Claimant had beaten their Part 36 Offer.
- Advising on whether CPR 3.14 applies to incurred costs or whether the sanction thereunder applies to future costs only.
- Preparing Points of Dispute and advising on the assessment procedure pursuant to CPR Part 47, following the discontinuance of a claim in accordance with Part 38.
- Preparing Points of Dispute and advising on the application of the Medway Oil principle.
- Advising on an application for sanctions arising out of non-compliance under CPR 47.7 and CPR 47.14.
- Advising on the cost consequences of non-acceptance of Part 36 offers.
- Advising on the basis for departing from Part 36 cost consequences on the basis of injustice.
- Advising on and preparing witness evidence in respect of a show cause order.

- DBAs and the enforceability of CFA's.
- Obtaining and/or setting aside default cost certificates
- Providing advice and drafting in relation to the status of solicitors' bills and costs under the Solicitors Act 1974.

## Qualifications

- Bar Professional Training Court (Very Competent) – BPP University
- Postgraduate degree, with a focus on International and Commercial Law (Distinction) – The University of Liverpool
- Undergraduate degree, LLB, (First Class) – Edge Hill University
- Currently undertaking the ATT and CTA pathway

## Cases and inquiries

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## Publications

Contractual machinery and valid demands

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Property Law Nuts & Bolts, Part 3: 'Leasehold Service Charges – How they Work'

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Provision of information: The current regime and proposed changes

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Annual Rating Conference 2022

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The latest decision on the Pallant v Morgan equity (Dixon v Willan and others)

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Preliminary Issues/Split Trials/Expedition

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Some Preliminary Dispute Resolution Procedures

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The latest decision on LTA 1954 telecoms rent valuation (EE v Morriss)

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