

# Landmark Chambers

## Barrister CV

Richard Clarke



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## Richard Clarke

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Richard is an experienced and versatile advocate who specialises in all aspects of property litigation.

### Expertise

Property, Public and Administrative



## Contact Practice Managers

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## Practice Summary

Richard is a specialist property barrister whose practice spans the full range of property litigation. He has extensive experience in residential and commercial landlord and tenant cases, as well with cases concerning easements, covenants, boundaries and adverse possession. Richard acts for both landlords and tenants and his clients include government agencies, local authorities, portfolio landlords and individuals.

Richard regularly acts unled in complex and high-value litigation, including at appellate level. His recent reported cases include **R (Sensar Ltd) v Chief Land Registrar** [2021] 4 W.L.R. 36, a judicial review concerning the operation of s73(5) of the Land Registration Act 2002, and **Football Association Premier League v Lord Chancellor** [2021] 1 W.L.R. 3035; [2021] Costs L.R. 415; [2021] 2 Cr. App. R 16 (Divisional Court), an appeal concerning whether the investigate costs of a private prosecution are recoverable.

He regularly acts for and advises parties on applications for landlord consent under residential leases. His cases include acting for a tenant challenging their landlord's refusal to grant consent to alterations. He successfully acted for a landlord challenging a substantial fine issued by a local authority under s249A of the Housing Act 2004, with the Tribunal reducing the fine by over

90%. Richard has significant experience of service charge claims before the First-tier Tribunal.

Richard is the author of '*A Practical Guide to Alienation, Alteration and User Covenants in Commercial Property*' (July 2023, Law Brief Publishing), a book for solicitors and surveyors on the workings of covenants in commercial property.

## Property

Richard has a broad property practice encompassing commercial and residential landlord and tenant as well as real property matters. Richard also has significant experience in public law cases, enabling him to act and advise in those cases where property and public law overlap – for example disposals of land at an undervalue and where the vires of a public sector landowner are challenged.

### Landlord and tenant

Richard regularly advises and acts in both residential and commercial landlord and tenant cases. Richard has a busy advisory practice which includes advising landlord and tenants:

- On the correct construction of leases.
- On the validity of notices.
- On their rights under the Landlord and Tenant Act 1954.
- In forfeiture claims, for both commercial and residential premises.
- On applications for consent and whether consent has been unreasonably withheld.
- On high value disrepair and dilapidation claims.

Richard is an experienced trial advocate. Recent work includes acting on the behalf of an investor seeking to enforce a guarantee arising from an investment in a restaurant. The guarantor resisted liability on the basis that they had been forced to sign it under duress and that the interest payable was an unlawful penalty clause. The Court upheld the guarantee, finding that the agreement was not void by reason of duress and the interest clause was not an unenforceable penalty.

Richard has particular expertise in complex or unusual possession claims. Richard's past cases include:

- Advising landlords on the status of occupiers where the basis of occupation is unclear/informal, including whether the occupiers are licensees or tenants. Richard recently successfully acted for the landlord in a possession claim to recover a public house where a former tenant had admitted a third party to the premises who then sought to claim a tenancy by estoppel.
- Representing the claimant in a mortgage repossession claim for c.£1,000,000 arrears. Issues included whether the terms of the mortgage amounted to a clog on the equity of redemption and whether the mortgage and/or Claimant's conduct created an unfair relationship pursuant to section 140 of the Consumer Credit Act 1974.
- Representing the landlord in residential possession proceedings, successfully arguing at trial that the occupier was a licensee rather than a tenant, and successfully defending the judgment on appeal.

- An urgent possession claim against trespassers in the High Court where there was risk of hazardous waste being deposited on the land.
- Acting on behalf of an NHS Trust to recover a hospital bed against a patient who refused to leave.
- Acting on behalf of a landlord to recover possession of a dwelling house sub-let as a traveller pitch without their consent.

Richard regularly appears in the First-Tier Tribunal in residential service charge cases.

## Land Registration and Adverse Possession

Richard's cases often include land registration issues. He acted as sole counsel for the Chief Land Registrar in ***R (Sensar Ltd) v Chief Land Registrar*** [2021] EWHC 13 (Admin); [2021] 4 W.L.R. 35, a complex judicial review concerning the meaning of s73(5) of the Land Registration Act 2002 which also included an issue as to whether a previous judicial review gave rise to an estoppel.

Richard has significant experience in adverse possession cases. His past work includes:

- Appearing before the First Tier Tribunal (Property Chamber) for an applicant who sought to be registered as proprietor of adjoining land on the basis of adverse possession.
- Advising parties on whether they have acquired / lost title to land, both registered and unregistered, by reason of adverse possession, including riverbeds, tenanted land and boundary features.
- Acting for a landowner before the First Tier Tribunal (Property Chamber) in an adverse possession application regarding neighbouring land.
- Advising a tenant on whether they had acquired a loft space above their demise by adverse possession and/or encroachment.
- Acting for parties in boundary disputes. Issues in past cases have included the interpretation of conveyances, boundary agreements and whether disputed land has been acquired by adverse possession.
- Drafting a defence and counterclaim in High Court proceedings over the correct location of a boundary, and whether the boundary had moved by reason of adverse possession.

## Leasehold Enfranchisement and Right to Manage

Richard regularly advises parties on lease extension and enfranchisement issues, including parties' rights under the Leasehold Reform, Housing and Development Act 1993 and the validity of notices. Recent work includes:

- Appearing in the First Tier Tribunal in claims to determine the premium payable in lease extensions.
- Advising the purchasers of a property divided into flats whether the long leaseholders of the property can bring a collective enfranchisement claim.
- Advising a tenant on whether their property is a 'house' for the purposes of the Leasehold Reform Act 1967 where the lease excluded parts of the structure.

## Commercial Landlord and Tenant

Richard specialises in commercial landlord and tenant claims, including:

- Landlord and Tenant Act 1954 renewal claims, both opposed and unopposed
- Forfeiture proceedings
- Disrepair and dilapidations claims
- Rent reviews
- Disputes concerning the correct construction of leases and the validity of notices.

Recent work includes:

- Acting for a group of tenants in 1954 Act claims where new leases were opposed on the basis that the landlord intended to redevelop both the premises and the wider area.
- Acting for a landlord in proceedings to forfeit a lease due to persistent disrepair.
- Advising a tenant on its obligations under a lease in a high-value dilapidations claim.
- Advising a tenant on the correct construction of a rent review provision, in particular the assumptions used to calculate the new rent.

## Restrictive Covenants

- Richard's covenants work includes:
  - Acting for a landowner in High Court proceedings against a development being undertaken on adjoining land in breach of covenant.
  - Acting for a defendant in proceedings where alterations to their home were alleged to be in breach of covenant.
  - Advising landowners on the enforceability and construction of restrictive covenants over their land, as well on applications to the Upper Tribunal to modify and discharge restrictive covenants.

## Easements and Profits a Prendre

- Richard's easements work includes:
  - Advising a servient landowner on the nature and extent of a right of way over their land.
  - Advising parties on whether they have acquired / become subject to rights of way.

## Residential Tenancies

Richard often acts in complex or unusual residential landlord and tenant disputes. He has particular experience in complex possession claims. His past cases include:

- Acting for a landlord in a claim to recover possession of a public house where the previous tenant admitted the defendant who then refused to vacate and argued they had acquired a tenancy by estoppel
- Acting on behalf of an NHS Trust to recover a hospital bed against a patient who refused to leave
- Acting on behalf of a landlord to recover possession of a dwelling house sub-let as a Traveller pitch without their consent.

## Public and Administrative

Richard has significant experience in public law cases, enabling him to act and advise in those cases where property and public law overlap.

Richard worked as an employed barrister for the Government Legal Department before joining Chambers in April 2013. Richard was on the Attorney General's C Panel of Junior Counsel from 2018 - 2023.

Past cases include:

- ***Football Association Premier League v Lord Chancellor*** [2021] 1 W.L.R. 3035; [2021] Costs L.R. 415; [2021] 2 Cr. App. R. 16; [2021] Crim. L.R. 866. Acting as sole counsel for the Lord Chancellor before the Divisional Court in an appeal concerning whether investigative costs, incurred pre-issue, are recoverable by a private prosecutor under the Prosecution of Offences Act 1985.
- ***R (Sensar Ltd) v Chief Land Registrar*** [2021] EWHC 13 (Admin); [2021] 4 W.L.R. 35. Acting as sole counsel for the Chief Land Registrar in a complex judicial review concerning the meaning of s73(5) of the Land Registration Act 2002.
- ***(on the application of Buckingham) v NHS Corby Clinical Commissioning Group*** [2018] EWHC 2080 (Admin); [2018] A.C.D. 111 – led by David Lock KC, Richard acted for the Interested Party in these judicial review proceedings successfully challenging the decision to close the Corby Urgent Care Centre and replace it with a same day GP access hub. Issues included whether there was legitimate expectation of consultation and whether the decision was vitiated by an unrecognised conflict of interest.
- ***R (Tarmac Trading Ltd) v Hertfordshire County Council*** [2016] EWHC 2794 (Admin); a challenge to the Defendant's grant of planning permission for an inert waste recycling facility in the green belt (led by James Maurici KC).
- ***R (Cruelty Free International) v Secretary of State for the Home Department*** [2016] EWHC 1644 (Admin): a case concerning whether the Defendant had correctly applied the requirements of EU law when granting an animal testing centre an exemption from the need to provide dogs with outside access.
- ***R (Whitby) v (1) Secretary of State for Transport (2) Network Rail*** [2015] EWHC 2804 (Admin); [2016] EWCA Civ 444: Richard acted on behalf of the Network Rail in this challenge against significant railway development in Manchester on heritage grounds.

## Costs Litigation

Richard has a growing costs practice. Notable cases include:

- Acting as sole counsel for the Lord Chancellor before the Divisional Court in an appeal concerning whether investigative costs, incurred pre-issue, are recoverable by a private prosecutor under the Prosecution of Offences Act 1985: **Football Association Premier League v Lord Chancellor** [2021] 1 W.L.R. 3035; [2021] Costs L.R. 415; [2021] 2 Cr. App. R. 16; [2021] Crim. L.R. 866.
- Acting for a public authority in a detailed assessment arising from a personal injury claim.
- Advising parties on issues relating to cost budgeting.
- Acting on behalf of a claimant in a relief from sanctions application arising from a failure to comply with an unless order to pay costs.

## Qualifications

- LLB (first class) from Southampton University: 2006
- Bachelor of Civil Law (BCL) from Oxford University: 2007-2008
- Bar Vocational Course: 2008-2009.

## Cases and inquiries

26 06 18	Secretary of State grants permission for called-in Swindon solar park
26 06 18	Called-in Swindon solar park inquiry closes
30 05 18	Perry v London Borough of Hackney [2014] EWHC 3499 (Admin)
29 05 18	R (Whitby) v (1) Secretary of State for Transport (2) Network Rail [2015] EWHC 2804 (Admin); [2016] EWCA Civ 444
29 05 18	Headcorn Parish Council v (1) SSCLG (2) Maidstone Borough Council
24 05 18	R (Save Britain's Heritage) v (1) North East Lincolnshire Council (2) Associated British Ports
24 05 18	R (Cruelty Free International) v Secretary of State for the Home Department [2016] EWHC 1644 (Admin)
24 05 18	R (Tarmac Trading Ltd) v Hertfordshire County Council [2016] EWHC 2794 (Admin)

## Publications

