



David Nicholls

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Expertise

Planning, Property, Leasehold Enfranchisement, International, Arbitration, Mediation

Overview

David has a busy practice with a particular emphasis on real estate and landlord & tenant. David joined Landmark Chambers in 2015 after many years in Lincoln's Inn where he gained valuable and wide-ranging expertise in commercial, chancery, and insolvency related matters, which continue to inform his practice today. Clients value his multi-disciplinary experience.

David's particular areas of specialism include:

- Real estate disputes
- Landlord & tenant (including enfranchisement and 1954 Act matters)
- Planning
- Commercial and business disputes (including insolvency)

In addition, David accepts instructions in professional negligence matters (particularly where they relate to property matters and conveyancing).

David is recommended as a leading junior by the *Legal 500* 2016 in property litigation. He regularly undertakes tribunal, county court, High Court, and appellate work throughout England & Wales (including appearing in the Court of Appeal as sole counsel) as well as acting in mediations and arbitrations, and advising or drafting in relation to non-contentious matters. His work often has an international element and he has been instructed by Belgian, French, Italian and Swiss law firms.

By way of illustration, David's current and recent casework for 2016-17 includes:

- Acting for a primary school seeking to evict a nursery from part of its premises
- Advising and drafting pleadings in relation to a party wall dispute
- Acting as trial advocate in an adverse possession claim
- Led by Tim Morshead QC in relation to a High Court claim for damages for trespass and breach of covenants
- Acting for partners in a family partnership dispute raising issues of partnership law, property law and company law
- Acting for the purchaser of a multi-million pound property at auction in circumstances where the vendor was attempting to rescind the contract
- Accepting an appointment for the purposes of making an Expert Determination in a partnership dispute.

In addition to his court practice, David gained valuable experience between 2014 and 2016 working in-house at HSBC in relation to the FCA Review into mis-sold interest rate hedging products, giving him a fascinating insight over an extended period into business from the client's perspective.

David is a former Chairman of the Young Bar (2012), a past President of the European Young Bar Association (2013-14), and has been an elected member of the Bar Council (2009-2015).

He is currently a Governor of the St Thomas More Language College in West London and he continues to serve as a member of the Finance Committee of the Bar Council.

David is a Member and Director of the American Counsel Association.

David is a regular speaker at conferences, both internationally and at home, and he has spoken on a range of legal, regulatory, governance and other matters in recent years, including conferences in Rome, Barcelona, and San Francisco.

Real estate disputes

David has considerable experience in all areas of real estate litigation. *Legal 500* recommends him as a leading junior in this field.

- David regularly advises on **adverse possession matters and boundary disputes**. He was recently instructed for a three-day trial on an adverse possession claim, having drafted the pleadings.
- David has considerable experience in relation to **conveyancing, land registration and trusts of land**. He is currently acting for a defendant vendor in a claim seeking specific performance and damages for alleged breaches of a contract for sale. The claim is likely to be tried in 2017.
- David has acted for a telecommunications company in a claim that raised issues under the **Electronic Communications Code**.
- David has over 7 years' experience acting for RBS and Natwest in relation to **commercial mortgage enforcement**. He has recently been asked to advise lenders in relation to the enforceability of proposed and actual security documents, in light of recent changes to the Consumer Credit Act 1974 and the regulations made under the Financial Services & Markets Act 2000.
- David regularly advises in relation to **average agreements** and he has recently drafted submissions for an arbitration on the correct interpretation of a clause in such an agreement.
- David has been instructed in several **party wall** cases, including successfully obtaining injunctive relief to restrain building work and, subsequently, when the proceedings were discontinued, David successfully argued that the usual costs order on discontinuance should not apply. David appeared in the Court of Appeal in *Freetown v Assethold* [2013] 1 WLR 7012, which is the leading case on the correct interpretation of the service provisions in the Party Wall etc. Act 1996.
- Complex and high-value **possession claims** are a regular feature of David's practice, including claims to recover

possession of a private room in a residential care home, part of school premises occupied under a Transfer of Control Agreement, part of a water park occupied by a ferry, and a recent claim to recover possession of two anaerobic digestion plants.

- David often is instructed in **professional negligence** claims with a property angle, including acting for a claimant in connection with her claim against her former conveyancing solicitors in the context of a mortgage fraud and acting for a leading firm of solicitors defending a claim for negligent conveyancing in the context of an intended (but ineffective) conveyance of a profit à prendre.
 - David frequently advises in relation to the enforceability of **restrictive covenants** and has recently been instructed in a dispute concerning **positive covenants**. He is currently being led by Tim Morshead QC in relation to a claim for trespass and breach of restrictive covenants concerning a prestigious golf course in Surrey.
 - David has extensive experience of cases concerning **rights of way and other easements**.
 - David is often asked to advise on the **Stamp Duty Land Tax** implications of property transactions.
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Landlord & tenant (including enfranchisement and 1954 Act matters)

David undertakes all types of commercial and residential landlord and tenant work. Recent and ongoing cases have involved

- Collective enfranchisement
 - Leasehold enfranchisement
 - 1954 Act claims
 - Forfeiture of leases, both residential and commercial
 - Breach of covenant cases, particularly in the context of renovations, building works, and Airbnb type lettings
 - Terminal dilapidations claims
 - Break clauses
 - Advising in relation to the 'staircasing' provisions in a shared ownership lease.
 - Acting for a commercial tenant who held over at the end of the term pending negotiations for a new lease, which were unsuccessful, and who is now being sued for rent said to be owing on the basis that there is a new lease by implication.
 - Advising in relation to the extent of demised premises.
 - Advising a housing association on strategy in relation to a prospective redevelopment of a residential estate comprising leasehold properties.
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Planning

David's recent experience includes advising in relation to a section 288 review and appearing in the Magistrates' Court to defend a section 179 prosecution for failure to comply with an enforcement notice. He has also advised on the consequences to a conditional contract for sale in the context of a judicial review of the local authority's decision to grant planning permission.

Commercial and business disputes, including insolvency

David's commercial practice is particularly focused on insolvency (corporate and personal), as well as banking, financial regulation, fraud, and general commercial disputes. He is also experienced in claims concerning guarantees, shareholder agreements, and partnerships. He has over 7 years' experience acting for Natwest and RBS in relation to commercial mortgages, guarantees, and security enforcement.

Recent and ongoing cases include:

- Acting for partners in a family partnership dispute raising issue of partnership law, property law and company law
 - Being appointed as an expert to make an Expert Determination in the context of a partnership dispute involving a small business
 - Advising HSBC in relation to the impact of insolvency in the context of the FCA Review into mis-sold interest rate hedging products and on claims brought in the Review by IPs.
 - Appearing in the Court of Appeal as sole counsel in the case of *Oraki v Dean & Dean* [2014] BPIR 266; [2013] EWCA Civ 1629, which is now the leading case on the application of section 282 in cases concerning the recovery of a trustee's costs and expenses upon the annulment of a bankruptcy order.
 - Advising a local authority on the recoverability of Council Tax and business rates in the context of an administration.
 - Drafting proceedings in relation to a claim brought by a commercial car rental company.
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Qualifications

David read Theology at Keble College, Oxford, graduating in 1999 with an upper second class honours degree. After working for a year in politics and publishing, he read law at City University (Diploma in Law) where he was awarded a Commendation in the Common Professional Examination.

He read for the Bar at the Inns of Court School of Law (Bar Vocational Course – Very Competent) and he was called to the Bar in November 2002 by Lincoln’s Inn.

While studying law, David won four scholarships from Lincoln’s Inn:

- Hardwicke Scholarship (2000)
- Lord Haldane Scholarship (2000)
- Tancred Studentship (2001)
- Megarry Scholarship (2002)

He was the winner of the Robert Wright Mooting Competition in 2001.

Following pupillage at Falcon Chambers (where his pupilmasters were Jonathan Small QC and Gary Cowen) and 11 Stone Buildings (where his pupilmaster was Marc Dight, now His Honour Judge Dight – Senior Chancery Judge in the County Court at Central London), David joined 11 Stone Buildings in October 2003 where he practised in real estate, landlord and tenant, insolvency, and commercial chancery for 12 years before joining Landmark Chambers in October 2015.

David is a qualified advocacy tutor for Lincoln’s Inn and he is a member of the Advocacy Training Council’s International Committee.

He is a member of the Chancery Bar Association and the Property Bar Association.

Recommendations

David has been recommended by *Legal 500* as a leading junior in property litigation for several years:

- “He couples a commercial pragmatism with forensic levels of preparation.” (*Legal 500*, 2021)
 - “Recommended for the insolvency aspects of property litigation.” (*Legal 500*, 2016)
 - “A solid and reliable barrister.” (*Legal 500*, 2015)
 - “He is unflappable, a very safe pair of hands, and has a calm temperament.” (*Legal 500*, 2014)
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Publications

David is currently contributing three chapters for the next edition of *Tolley’s Insolvency Law* and he is collaborating with Stephen Bickford-Smith in preparing the fourth edition of *Party Walls: Law and Practice*.

13 July 2016 Break clauses and entity identity errors

June 2011 Is *Goldacre* a gold mine for landlords? (article for the *‘Law and Finance’* journal)

February 2011 *Goldacre*: does it give landlords the Midas touch? (article for the *‘Insolvency Practitioner’* journal)

David has contributed practice notes on insolvency issues to *Lexis Nexis*.

Couples a commercial pragmatism with forensic levels of preparation

Legal 500

Cases

18 Dec 2013	Oraki v Dean & Dean [2014] BPIR 266; [2013] EWCA Civ 1629
14 Dec 2012	Freetown Limited v Assethold Limited [2013] 1 WLR 701; [2012] EWCA Civ 1657
29 May 2012	Spicer & Shinnars v Tuli [2012] EWCA Civ 845
21 May 2012	Freetown Limited v Assethold Limited [2013] 1 WLR 385; [2012] EWHC 1351 (QB)
13 Feb 2009	Wisestates Limited v Mulji (2009) WL 392173 (Lands Tribunal)
19 Nov 2008	L Morgan & Co v Jenkins O'Dowd & Barth [2008] EWHC 3411 (Ch)
20 Jan 2006	Donohue v Ingram [2006] BPIR 417; [2006] EWHC 282 (Ch)
17 Dec 2004	Adams v Mason Bullock [2005] BPIR 241; [2004] EWHC 2910 (Ch)
13 Feb 2004	Re Ujah [2005] BPIR 216; [2004] EWHC 367 (Ch)

Publications

15 Jun 2021	A New Look at Leasehold Restructuring
15 Jun 2021	A New Look at Leasehold Restructuring - are landlords out of the money? - webinar
17 Nov 2020	Company Voluntary Arrangements: The Impact of CVAs on Landlords and Sureties - webinar
21 Jul 2020	Deciding on the land and the rights to be acquired
21 Jul 2020	Delivering Major Infrastructure: Part 1 - Land acquisition - setting the strategy - Webinar
27 May 2020	Insolvent co-owners
27 May 2020	Property In Quarantine: Liquidation Foundation: The Basics of Property Insolvency - Part 4: Bankrupt individuals and property - Webinar
19 May 2020	Property in Quarantine: Liquidation Foundation: The Basics of Property Insolvency - Part 1: Introductory concepts - Webinar
19 May 2020	Liquidation Foundation: The Basics of Property Insolvency
22 Oct 2019	Introduction To Service Charge Provisions In Leases
25 Sep 2019	Priorities And Protection, And Providing Relief
18 Jun 2019	Leaseholder Enfranchisement - Above, Below, And Beyond
11 Apr 2019	Reliefs
12 Oct 2018	Premiums payable for a new lease and the role of relativity (Reiss v Ironhawk Ltd) (first published on Lexis®PSL on 12 October 2018)
11 Oct 2018	Party Walls: Injunctions and damages

27 Sep 2018	Charging orders - priorities, protection, and providing relief
25 Apr 2018	Completion Notices
23 Apr 2018	Collective Enfranchisement: Completion and post-completion issues
26 Apr 2017	Without Prejudice: Dos and Don'ts (paper)
26 Apr 2017	Without Prejudice: Dos and Don'ts
13 Jul 2016	Break clauses and entity identity errors
11 Feb 2016	Landlord and Tenant in an Insolvency Context
