



## **Toby Watkin**

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## **Expertise**

Property, Arbitration, Mediation

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## **Overview**

Toby is an established and experienced practitioner dealing with all areas of property-related work. Called to the bar in 1996, Toby joined Landmark Chambers in 2010 after many years in Lincoln's Inn. He has appeared in significant cases in the Supreme Court, Privy Council, Court of Appeal in relation to property related matters, and regularly appears in the High Court, the County Court and all the specialist property courts and tribunals in England & Wales.

Toby is instructed in all areas of property litigation, including Real Property Disputes, Conveyancing & Land Registration, Landlord & Tenant disputes, issues relating to Mortgages & Receivers, and Property-related Professional

Negligence. He has significant experience of cases involving the Electronic Communications Code (new and old). He regularly lectures and writes on property-related matters.

Toby is frequently involved in very high-profile property litigation. In the last few months he has appeared in two major cases on the law of easements: *Regency Villas v. Diamond Resorts* (whether a general right to use recreational facilities within a resort was capable existing as an easement - judgment of the Supreme Court awaited) and *Starham v. Greene King* [218] ECLR 8 (whether a general right to 'use' land was capable of existing as an easement or restrictive covenant, or was a mere licence). In 2017 Toby acted for the successful landowner in a multi-million pound dispute with a national housebuilder relating to the remediation of land in the Northeast for housing development. In 2018 he acted for the successful landlord (London Borough of Southwark) in relation to high-profile litigation relating to the Dulwich Hamlet Football Club, which was widely reported in the national press.

He has significant experience in obtaining injunctions to protect land and buildings from trespass, either by protesters or by 'urban explorers'. He is very familiar with the intricate procedural and legal issues which arise in relation to claims brought against 'persons unknown'. In this field he has recently acted for Chelsea Football Club (*Chelsea FC v. Brewer & Orts*, 2017) the Bullring, Manchester Arndale, Brent Cross and 12 other major shopping centres (*Intu v. Taylor & Otrs* (LTL 27.4.18)) and a number of tall buildings under construction across the City of London (*Multiplex Construction v. Law & Otrs*).

He is valued for his hands-on, commercial approach to problems, for his clear advice, and for his great experience as a trial advocate. Toby also has wide experience of Alternative Dispute Resolution, and is both an ADR Group accredited mediator and a qualified arbitrator (MCI Arb: AHKI Arb).

As well as his litigation practice Toby is often asked to advise in relation to points arising from transactional work, and drafted of tenancy agreements and other instruments for a large social landlord, as well as the disciplinary rules for two professional bodies. Toby also assisted in the drafting of the Funding Code under the Access to Justice Act 1999.

For 10 years Toby served on the committee of the Property Bar Association (for 3 years each as its Treasurer and Secretary). He is also a member of the Chancery Bar Association, the Chartered Institute of Arbitrators and the Hong Kong Institute of Arbitrators.

Toby's wider interests include classical music (listening and performing), sailing and cycling.

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## Real Property Disputes

Toby regularly advises upon issues relating to the ownership of, and rights over, real property including disputes relating to adverse possession and boundaries, easements and covenants (including rights of light), and party walls. As well as litigation within the High Court and County Court, Toby now undertakes a considerable amount of work before the Adjudicator to HM Land Registry, and in the Lands Tribunal.

As an example of Toby's practice, in the last few months:

- He appeared for three successful defendants in an 8 day High Court (Chancery Division) trial relating to three properties said to have been transferred in breach of trust.
  - He appeared in a leading recent case relating to the recovery of property transferred to avoid creditors (*4 ENG v. Harper* [2010] BCC 746).
  - He has advised a major estate in relation to the enforceability of various covenants and the validity of an option agreement.
  - He has advised a major landlord in relation to easements potentially impeding further residential development;
  - He has advised a nationwide developer in relation to the enforcement of an agreement relating to rights of light.
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## Conveyancing and Land Registration

Toby regularly advises in relation to disputes arising from agreements for the purchase of land, and land registration. In *HWE Timm Ltd v. Timm* Toby appeared for the successful claimant in a claim relating to the circumstances in which a pending action land charge should be discharged to permit the sale of land to fund the litigation.

In the last few months:

- He appeared for the successful right-owner in a claim before the Adjudicator to Her Majesty's Land Registry to remove the burden of a right of way registered against the title to adjacent land.
- He appeared for the successful proposed purchaser in a claim to recover the deposit from the proposed vendors of a

- former wool mill in the North East after a failure to complete the purchase.
- He successfully resisted a claim by a developer within London's Docklands for damages against a proposed purchaser for failing to complete an off-plan purchase.
  - He has recently advised in relation to the enforceability of various provisions within a sale, build and leaseback agreement of a large mixed-use development.
  - He has recently advised a group of purchasers of off-plan properties within a large residential development in relation to the recovery of their deposits upon the collapse of the development scheme.
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## Landlord & Tenant

Although majority of Toby's practice now relates to commercial property, he has wide experience in all areas of all landlord and tenant (including private residential and social housing). Toby is regularly instructed in relation to:

- Dilapidations claims: Toby is currently involved in a number of high value dilapidations claims. He recently acted for the successful landlord in a dispute relating to the replacement of a heating system within a prestigious West End residential development.
- Forfeiture: Toby regularly advises landlords and tenants in relation to the forfeiture of leases. He recently appeared for the successful landlord in litigation surrounding the forfeiture of a lease within the County Hall development on London's South Bank, and has written a forthcoming article in relation to the ability of parties to agree relief from forfeiture.
- 1954 Act lease renewals: Toby has recently advised the central bank of a European country in relation to the lease renewal of its UK headquarters and a major west-end landowner in relation to the opposition of a lease renewal of a west end store.
- Insolvency and disclaimer of leases: Toby regularly advises clients in relation to the effects of tenant insolvency. He has recently advised a major bank in relation to the disclaimer of the lease of a major industrial site in the west midlands, and as to resulting issues affecting subtenants and guarantors.
- Service Charges: Toby has considerable experience of residential service charge disputes. Although he has previously acted for tenants, most of his work is now for major landlords. In the last few months he has acted for two different major landlords in relation to high value service charge disputes litigated within the Leasehold Valuation Tribunal.
- Rent review: Toby regularly advises in relation to issues surrounding rent review, and is currently involved in a very high value rent review dispute in relation to London commercial premises.

Although most of Toby's work is now commercial, he has considerable experience in residential landlord and tenant, including in the field of social housing, and still regularly appears for landlords in the LVT in service charge disputes. In *Lambeth v. O'Kane* [2006] HLR 2 Toby appeared for the successful landlord in the Court of Appeal in a dispute about the informal creation of leases.

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## Mortgages & Receivers

Toby is regularly involved in cases relating to mortgages and receivers. He appeared for the successful claimant in one of the leading cases relating to the duties of receivers, *Medfordth v. Blake & Others* [2000] Ch 86, which established (contrary to the view of the Privy Council in *Downsview Nominees v. First City Corp Ltd*) that Law of Property Act receivers and managers, and those appointed under agricultural mortgages, owed a duty to the mortgagor and anyone with an interest in the equity of redemption to manage the property with due diligence. Toby has also lectured a number of times on topics connected with mortgages and receivership.

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## Property-Related Professional Negligence

Toby regularly advises and acts in relation to professional negligence claims arising out of property work. For example, in the last few months he has advised or appeared in claims relating to:

- A valuer's negligent valuation of commercial premises
  - A solicitors' negligent failure to protect a pending land action by registration
  - A managing agent's negligent failure diligently to pursue insurance claims on behalf of its instructing landlord
  - A solicitor's negligent failure to preserve the tenant's security under the Landlord & Tenant Act 1954
  - A structural engineer's negligence in approving premises as being structurally adequate to support a tenant's use, resulting in a £500k dilapidations claim against the tenant.
  - A solicitor's negligence claim arising out of a fraudulent residential purchase agreement.
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## Alternative Dispute Resolution

Toby has wide experience of alternative dispute resolution, both in representing clients, and more recently acting as a mediator. He became a member of the Chartered Institute of Arbitrators (MCIArb) in 2005 and an ADR Group accredited mediator in 2010. As a mediator Toby has specialised in property-related disputes.

Toby has also been involved in a number of cases before the courts in which issues relating to alternative dispute resolution have arisen, including appeals from arbitration awards and disputes relating to expert determinations. In *Flight Training International v. International Fire Training Equipment Ltd* (2004) Toby successfully represented a multi-national company in High Court litigation about to the proper construction of a dispute resolution clause.

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## Qualifications

Toby is a graduate in law of John's College, Cambridge and was called to the bar by the Inner Temple. He was awarded scholarships by both.

Since 2004 he has been a committee member of the Property Bar Association, and was its treasurer from 2008 to 2010. He is a member of the Chancery Bar Association and was a founder member of the Social Housing Law Association. He is a member of the Chartered Institute of Arbitrators (MCIArb). In 2005 Toby was appointed as Secretary to the Investigation Committee of the Academy of Experts (its disciplinary investigation body). He is also a qualified ADR Group Accredited Mediator.

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## Recommendations

Toby is ranked as a leading junior in Real Estate Litigation by both *Chambers & Partners* and the *Legal 500* for several years.

Recent editions of these directories have described him as having "an encyclopaedic brain", being "fiercely intelligent, commercial, great with clients and a pleasure to work with", and as doing "an excellent job of getting to grips with complex and heated property disputes".

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## Cases

12 Dec 2005	Styles v Smith
29 Jul 2005	London Borough of Lambeth v O'Kane / Helena Housing Association v Pinder
13 Feb 2004	Flight Training International v International Fire Training Equipment Ltd
19 Feb 2001	HWE Timm (Farmers) Ltd v Timm
24 May 1999	Medforth v Blake & Otrs

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## Publications

02 May 2019	The Terms of the Code Agreement
03 Feb 2012	Applications to discharge restrictive covenants under s.84 of the Law of Property Act 1925
14 Apr 2010	Protesters, Gypsies & Travellers: Possession after Meier- Possession after Meier
25 Jun 2009	Mortgages in Possession in Receivers- Avoiding Common Pitfalls- Shortfalls on Sale

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