

Landmark Chambers

Barrister CV


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David Nicholls

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David is a property litigator, with more than 20 years' experience as trial counsel and appellate advocate in all manner of real estate disputes. His practice encompasses the whole range of property litigation, with a particular focus on commercial property.



Expertise

Property, Rating and Valuation, Planning

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Practice Summary

David's busy practice focuses on commercial property litigation. He is frequently instructed as a trial advocate in relation to a wide range of property disputes.

David specialises in disputes relating to:

- **land ownership** (adverse possession, boundary disputes, trusts of land, and land registration and conveyancing issues)
- **land rights** (restrictive covenants, easements, profits, highways, and party wall matters)
- **landlord and tenant** (commercial and residential)
- **commercial property** (including property development, insolvency, mortgages, charging orders and securitisation).

David is particularly interested in competing land rights and the resolution of disputes relating to the development and use of land, acting for developers and other landowners in the strategic planning and successful implementation of the potential development of land, using the tools of litigation where necessary.

Such cases typically involve rights such as easements and restrictive covenants and may require obtaining necessary the consents. In one recent High Court case (2022), David successfully acted for the commercial leaseholder of a development site who sought a declaration that the freeholder had unreasonably refused consent for the proposed development.

David is often instructed in the context of neighbour disputes, whether residential or commercial. Typical cases may concern land ownership, such as boundary disputes and adverse possession claims; or they may involve building work, such as party wall cases. David is a co-author of '**Party Walls: Law and Practice**' (4th ed.) and has significant expertise in party wall matters, including appealing awards and obtaining urgent injunctive relief. In one case, David successfully obtained a mandatory injunction after a four-day trial requiring the removal of the offending structure (**Ormiston-Kilsby v Fattahi** (2019) (Oxford County Court)).

David's expertise extends to all aspects of real estate law and landlord and tenant law, including insolvency and professional negligence disputes. David has many years' experience in dealing with land securities such as mortgages and charging orders, and he is fluent in relation to the application of insolvency law to property disputes. He acts for companies and individuals, bank and office-holders.

With regard to landlord and tenant disputes, typical instructions include:

- Representing a tenant of a flagship store in Central London in connection with its multi-million pound claim against the landlord for multiple breaches of the lease (2025).
- Acting for a commercial landlord in a three-day trial opposing a tenant's claim that the landlord had unreasonably refused consent for change of use (2022).
- **No Curfew Limited v Feiges Limited** [2018] EWHC 744 (Ch) (High Court): David acted for the successful Defendant in this challenge by the landlord to a rent-review arbitration on the ground of mistake.

David is particularly adept at responding swiftly to urgent instructions, including last minute applications for injunctive relief, or even last minute instructions as trial counsel. For instance:

- In June 2023, David successfully obtained an urgent injunction with less than 24 hours' notice to restrain an imminent sale of development land in a complex and long-standing contractual dispute.
- In September 2022, David was instructed to take over a right of way case four days before the start of a three-day trial when the previous barrister was taken ill. The case involved nearly a dozen witnesses and half a dozen experts, plus documentation exceeding 20 lever arch files. David was able to achieve a successful outcome for his clients in their claim which concerned the weight and width of vehicles that could use a 200m track providing access to a Welsh sheep farm (**Lamport v Jones** (2022) (Cardiff County Court)).

David is regularly instructed in the Tribunals and Courts in relation to claims for rights of way and on land registration issues, such as adverse possession.

David is the consultant editor of two volumes of **Halsbury's Laws: Auction** (vol. 4 (2020)) and **Mortgage** (vol. 77 (2021)).

Property

David has a wide-ranging property practice covering a wide range of areas of expertise.

Boundary and Ownership Disputes

David has many years' experience in relation to boundary and ownership issues, in both the Tribunals and the Courts. He has extensive experience in relation to party wall matters, being the co-author of the leading text book **Party Walls: Law and Practice, 4th edition**. He can readily advise on party wall disputes, as well as preparing any requisite court papers, whether by way of an appeal from a Party Wall Award or to seek an injunction to restrain building works. His clients include residential property owners, commercial developers, landlords, and others.

Recent and significant cases in this practice area include the following:

- ***Heaver v National Highways Limited*** (2023) (High Court) – David successfully represented the Claimants who applied on short notice for an urgent injunction to restrain the imminent sale of a plot of land providing access between a development site and a trunk road.
- ***Gore v Bunt*** (2022-2023) (County Court) David acted for the successful claimants in this boundary and trespass claim, which arose after their neighbour cut down a row of trees on the boundary line.
- Advising and acting for a client who was sued for damages owing to an alleged failure to disclose the presence of Japanese knotweed (2019).
- ***Ormiston-Kilsby v Fattahi*** (2019) (Oxford County Court) – David acted for the Claimant in this four day trial, which concerned the Defendants' failure to comply with the Party Wall etc. Act 1996. David was successful in obtaining a mandatory injunction requiring the Defendants to take down the offending building work.
<https://www.landmarkchambers.co.uk/court-grants-mandatory-injunction-requiring-the-removal-of-an-extension-erected-without-complying-with-the-party-wall-etc-act-1996/>
- ***Freetown v Assethold*** [2012] EWCA Civ 1657 (Court of Appeal); [2012] EWHC 1351 (QB) (High Court): David appeared at all levels in this party wall case, which is now the leading case on the application of the postal service provisions to section 15 of the Party Wall etc. Act 1996 (in which the Court of Appeal confirmed that the time limit for appeals against awards begin on the date of deemed receipt of the award, not the date of posting).
- Acting for a claimant seeking an injunction and damages in relation to building work that was carried out by the defendant, causing trespass and damage to the Claimant's land.
- Advising on party wall issues in relation to a commercial development.
- Advising in relation to rights concerning subterranean mines and minerals.

Landlord and Tenant

David has extensive experience in relation to all matters concerning commercial landlords and tenants and has acted for both.

Recent and significant cases include:

- Drafting proceedings for a tenant of commercial premises to challenge the cost of energy charges levied by the landlord, in circumstances where the lease requires the tenant to pay those costs direct to the landlord (2022- 2023).
- **Follett v Abeysingha** (2021-2023) (High Court): David acted for the defendant leaseholder in defending the landlord's claim for terminal dilapidations relating to mixed commercial and residential property.
- Acting for a claimant landlord seeking possession of part of commercial premises that have been taken over by the defendant who is now using them to run his own business (2021-2023).
- **Wong v Sheet Anchor Investments Limited** (2022) (Southend County Court): David successfully acted for the defendant landlord at trial in opposing a claim by the tenant that the landlord had wrongfully refused consent for change of use of commercial premises. [For more information click here.](#)
- **Sadar v Gainford Hotels Limited** (2018) (Newcastle County Court): David acted for the landlord in successfully resisting a claim for a declaration that a forfeiture was unlawful.
- **VF Northern Europe Services Limited v Wilkie-Smith** (2018) (Newcastle County Court): David acted for the successful tenant in this unopposed 1954 Act renewal, the principal issue at trial being the rent under the new lease. [For more information click here.](#)
- **No Curfew Limited v Feiges Limited** [2018] EWHC 744 (Ch) (High Court): David acted for the successful Defendant in this challenge by the landlord to a rent-review arbitration on the ground of mistake. Although the Court concluded that the arbitrator had not had power to amend his award under the Arbitration Act 1996, the amendments were not set aside because they had not caused substantial injustice to the landlord. [For more information click here.](#)
- **Holy Trinity Primary School, Dartford v Tawakalita-Balogun** (2017) (Dartford County Court): David acted for the successful claimant at trial in recovering possession of part of school premises which had been occupied by the Defendant pursuant to a Transfer of Control Agreement. [For more information click here.](#)
- Acting and advising in relation to forfeiture, waiver of forfeiture, 1954 Act renewals (opposed and unopposed), and lease / licence cases.

Insolvency

David has over 20 years' experience of all aspects of personal and corporate insolvency, particularly with regard to property insolvency disputes. He acts for individuals, companies, insolvency practitioners, office-holders, banks and other financial institutions.

Recent and significant cases include:

- **Re Robatoo** (2023) (High Court): David acted for the successful petitioning creditor who presented a winding up petition in relation to commercial rent arrears.
- Advising about the impact of liquidation and administration on a forfeiture.
- **Oraki v Dean** [2013] EWCA Civ 1629 (Court of Appeal); [2012] EWHC 2885 (Ch) (High Court): David successfully represented the Trustee in Bankruptcy at all levels in this hotly contested case, which is now the leading authority on the

application of section 282 of the Insolvency Act 1986 in cases concerning the recovery of a trustee's costs and expenses upon the annulment of a bankruptcy order.

- ***Donohue v Ingram*** [2006] EWHC 282 (Ch) (High Court): David successfully acted for the respondent Trustee in Bankruptcy in this insolvency appeal in which the bankrupt's wife sought to argue that her circumstances were exceptional for the purposes of section 335A of the Insolvency Act 1986.
- ***Adams v Mason Bullock*** [2004] EWHC 2910 (Ch) (High Court): David successfully acted for the respondent petitioning creditor in this insolvency appeal in which the debtor unsuccessfully sought to reargue on the hearing of the bankruptcy petition a point that had been abandoned on the hearing of his application to set aside a statutory demand.
- ***Re Ujah (a bankrupt)*** [2004] EWHC 367 (Ch) (High Court): David acted for the applicant who was the wife of a bankrupt and who sought to suspend execution of a writ of possession on the family home.

Conveyancing Disputes

David has been involved in many conveyancing disputes, both for residential sellers and purchasers, as well as for investors and developers.

Recent and significant cases include:

- Advising in relation to the validity of a notice to complete and the timing of service, in the context of a very high value conveyancing transaction involving multiple properties in London W1 (2022-2023).
- ***Ahuja Investments Limited v Victorygame Limited*** [2020] EWHC 1153 (Ch) (High Court). David acted for the defendants in these High Court proceedings who sought summary judgment on its counterclaim in the context of a claim for fraudulent or negligent misrepresentation and breach of contract in connection with the purchase of an investment property.
- ***L Morgan & Co v Jenkins O'Dowd & Barth*** [2008] EWHC 3411 (Ch) (High Court). David successfully acted for the claimant solicitor who sought to enforce solicitors' undertakings given by the defendant firm of solicitor to redeem charges on properties that were the subject of a conveyancing transaction.
- Advising in relation to the sale and purchase of land at auction.
- David is the consultant editor of *Auction* (vol. 4 (2020), Halsbury's Laws).

Easements and Profits a Prendre

David is frequently asked to advise and represent a range of clients in relation to easements, both in the Tribunals and the Courts. As well as rights of way, he has dealt with easements to park and easements to advertise.

Amongst his numerous cases, the following should be mentioned:

- ***Lampont v Jones*** (2022) (Cardiff County Court): David acted for the successful Claimants in this right of way dispute that was tried before His Honour Judge Jarman KC over three days. The principal point in issue was the width and weight of vehicles that could use a 200m track that provided the sole means of access to the Claimants' sheep farm in West Wales.
- ***Ovens v Scott*** (2021-2022) (Oxford County Court): David acted for the defendants in this claim concerning the extent and user of a rural right of way providing the sole means of access to the defendants' home, which settled following a mediation

over two days.

- **Dolden v St Aubyn** (2021-2022) (First-tier Tribunal) – David acted for the Respondents in this application to alter the register of title relating to a shared driveway, which settled after a mediation over two days.
- **Dickinson v Cassilas** [2017] EWCA Civ 1254: David acted on a *pro bono* basis for the Appellants in the Court of Appeal in this case which concerned the construction of a deed of transfer granting rights to enter adjoining land

Highways and other Transport Infrastructure

David is often asked to advise in relation to highways issues, particularly in the context of the development land. David's recent case of **Heaver v National Highways Limited** (2023) (High Court) concerned a claim to ownership of a small plot of land providing access between a development site and a trunk road.

Land Registration and Adverse Possession

David is regularly instructed on land registration issues, including adverse possession, and has extensive Tribunal experience in this regard:

- **Wells v Ratcliffe** (2021) (First-tier Tribunal & High Court): David acted for the respondents in relation to various applications for registration of land principally comprising a private road, which were put on the basis of adverse possession and or the principle of *ad medium filum*.
- Acting for various parties in connection with claims to register ownership of land based on the principle of *ad medium filum*, including a landowner who applied for registration of a track; local residents who applied for registration of a private cul de sac; and others.

Leasehold Enfranchisement and Right to Manage

David has advised and acted for landlords and tenants in the context of the exercise of the right to a new long lease of residential premises; and the exercise of the right of collective enfranchisement.

Mortgages, Charges, Charging Orders and Securitisation

David has over 20 years' experience dealing with mortgages and securities. He has over 7 years' experience acting for NatWest and RBS in relation to commercial mortgage, guarantees and security enforcement. By way of example, he successfully represented NatWest in the High Court trial of its claim to recover a commercial debt owed under a guarantee (**National Westminster Bank plc v Binney** [2011] EWHC 694 (QB)).

Amongst recent cases, David has advised a borrower about a potential claim against a bank in relation to the bank's refusal to land owing to the bank's error about the extent of the security.

Reflecting his wide experience in this practice area, David is the consultant editor of **Mortgage** (vol. 77 (2021), Halsbury's Laws).

Park Homes and Mobile Homes Act Disputes

David's experience in this practice area includes acting for the successful claimant in High Court proceedings that concerned a claim to recover sums owed under a contract for the sale of a caravan park: ***Jonathan Lewis v Superior Enterprises Limited*** (2021-2022). In the same case, David successfully opposed the defendant's application to stay proceedings under CPR Part 11 to enable expert determination to proceed.

Professional Negligence Claim Related to Property

David has acted for clients in relation to professional negligence claims concerning property professional for many years. A recent case concerns an instruction to act for a residential leaseholder who acquired her long lease through the exercise of her right to buy, and who has brought a claim against her former solicitors for professional negligence (2022-2023).

Property Development including Overage disputes

David frequently advises and acts in relation to development contracts, overage provisions, and their interpretation.

In the recent case of ***Upton Rocks v Halton Borough Council*** (2022) (High Court), David successfully represented the Claimant during a three-day trial, which concerned a claim in restitution to recover a sum of money paid to the Defendant local authority in the mistaken belief it was payable under an overage clause that had been agreed in order to secure the development of land. [For more information click here.](#)

Public Sector and Local Government Property issues

David regularly advises local authorities and other bodies in relation to property related issues.

Residential Leasehold Management and Disputes

Recent and significant cases in this area include:

- Acting for a residential leaseholder who has applied to the First-tier Tribunal for the appointment of a manager under the Landlord & Tenant Act 1987 (2023).
- Acting for a residential leaseholder whose freeholder is refusing to grant her a new 999 year lease, despite the fact that all the other leaseholders have been granted new long leases (2023) (High Court).
- Acting for a residential leaseholder who has brought a claim for specific performance of the landlord's repairing obligations (2023) (County Court).
- Advising a high net worth individual in relation to service charge demands in a large residential block in London W1 (2022 – 2023).
- Advising residential clients in relation to forfeiture of lease and potential waiver.

- Advising a residential leaseholder in relation to issues relating to disrepair, erroneous service charge demands, parking spaces, and the exercise of competing rights over the common parts.
- Advising on a residential leaseholder's claim for the landlord's breach of the lease in relation to damage caused by a burst sewage pipe.
- **Derwent Lodge Estates Limited v Signature Living Hotel Limited** (2022) (Liverpool County Court) David acted for a mortgagee of a flat in a block in the context of a forfeiture of the head lease by the freeholder.
- **Delf Mews Limited v Boselli** (2022) (First-tier Tribunal): David acted for the successful applicant landlord who sought a determination that there had been a breach of the residential lease for the purposes of forfeiting the lease.
- **Wisestates v Mulji** [2009] 2 WLUK 373 (Lands Tribunal): Having represented the respondent leaseholders in a service charge dispute in the Leasehold Valuation Tribunal that lasted several days, David successfully appealed the decision to the Lands Tribunal in a hearing before His Honour Judge Huskinson.

Residential Tenancies

David has regularly advised and acted for landlords and tenants in relation to all matters arising in connection with residential tenancies.

Restrictive Covenants

David is frequently asked to advise in relation to the meaning and enforceability of restrictive covenants and the interpretation of the contracts in which the covenants are located.

Rights of Light

David has experience advising and acting for clients in relation to rights of light, and is presently acted for a client seeking a declaration as to rights of light in the County Court.

Squatters and other Trespass

David is often instructed in cases of trespass, including on an urgent basis where injunctive or other relief might be required. In **Spicer v Tulli** [2012] EWCA Civ 845 (Court of Appeal), David was instructed to act for the defendants who contested the claimant receivers' ability to commence a second set of possession proceedings on the basis that the issues raised in those proceedings had been comprised in earlier possession proceedings in which the claim had been dismissed by consent. Although unsuccessful, David's argument was praised by Lewison LJ as being "*ably and attractively presented*".

Telecommunications

David has frequently advised in relation to the Telecommunications Code and has recently acted for a homeowner who was sued by his neighbours for a declaration that they benefited from an easement to run telephone lines across his property.

Trusts of Land and other Equitable Claims

David advises on all matters relating to trusts of land, and trusts generally, as well as on equitable claims such as proprietary estoppel.

Recent and significant cases include:

- ***Abudalali v Mills*** (2021) (Southend County Court): David successfully acted for the respondents in relation to a claim by the Trustees in Bankruptcy of the first respondent to take possession of the bankrupt's elderly parents' home. The case raised issues concerning the application of the doctrine of resulting trusts and the deferral of possession orders.
- ***Wescom Group Limited v Saud*** (2021) (High Court): Led by Katharine Holland KC, David acted on behalf of the Claimant in relation to a share ownership dispute based on constructive trust and proprietary estoppel
- David has successfully represented several clients who have claimed a beneficial interest by resulting trust in land owned by a company of which they were the sole shareholder.

Rating and Valuation

David is a specialist in rating and valuation matters and accepts instructions across a wide range of issues.

Planning

David is experienced in a range of planning law matters, including giving general planning advice, advising in relation to the interpretation of section 106 agreements, appearing at planning appeal hearings, and advising and representing clients in relation to planning enforcement.

Development Contracts and Overage

David frequently advises and acts in relation to development contracts, overage provisions, and their interpretation.

In the recent case of ***Upton Rocks v Halton Borough Council*** (2022) (High Court), David successfully represented the Claimant during a three day trial, which concerned a claim in restitution to recover a sum of money paid to the Defendant local authority in the mistaken belief it was payable under an overage clause that had been agreed in order to secure the development of land. [For more information click here.](#)

Planning Appeals, Inquiries and Hearings

David recently appeared for a group of local residents in a planning appeal hearing that was concerned with an overbearing development in south-west London.

Planning Enforcement and Injunctions

David has advised in relation to planning enforcement and he has appeared in the Magistrates' Court to defend a section 179 prosecution for failure to comply with an enforcement notice.

Costs Litigation

David was instructed in the case of *Lampport v Jones* [2023] EWHC 667 (Ch), which involved arguments about the applicability of CPR Part 36.

Telecommunications

David acted for a homeowner who was sued by his neighbours for a declaration that they benefited from an easement to run telephone lines across his property.

Highways and Rights of Access

David has advised in relation to highways for many years.

Qualifications

- MA (Hons) Theology at Keble College, Oxford, 1999
- Diploma in Law at City University (Commendation)
- Bar Vocational Course at City University (Very Competent)

Recommendations

"David's paperwork is clear, understandable and well constructed. He has a good turnaround time and is great with clients in conference."

Legal 500 2024

"David has an impressive ability to grasp the legal issues. He is decisive and adapts his approach to meet the circumstances and needs of his clients."

Property Litigation, Legal 500, 2023

"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

Cases and inquiries

19 08 23 Re IGCSPV 21 Limited (2023) (Grand Court of the Cayman Islands, Financial Services Division)

02 08 23 Rishover v Rishover [2023] EWHC 2019 (Comm)

14 06 23 Heaver v National Highways Limited (2023) (High Court)

24 03 23 Lamport v Jones [2023] EWHC 667 (Ch)

19 09 22 L & C Developments (Southport) Limited v Naidoo (2022) (High Court)

15 02 22 Derwent Lodge Estates Limited v Signature Living Hotel Limited (2022) (Liverpool County Court)

17 07 18 Adams v Mason Bullock [2005] BPIR 241; [2004] EWHC 2910 (Ch)

07 06 18 Re Ujah [2005] BPIR 216; [2004] EWHC 367 (Ch)

05 06 18 Donohue v Ingram [2006] BPIR 417; [2006] EWHC 282 (Ch)

31 05 18 Wisestates Limited v Mulji (2009) WL 392173 (Lands Tribunal)

31 05 18 L Morgan & Co v Jenkins O'Dowd & Barth [2008] EWHC 3411 (Ch)

30 05 18 Freetown Limited v Assethold Limited [2013] 1 WLR 701; [2012] EWCA Civ 1657

30 05 18 Spicer & Shinnars v Tuli [2012] EWCA Civ 845

30 05 18 Freetown Limited v Assethold Limited [2013] 1 WLR 385; [2012] EWHC 1351 (QB)

29 05 18 Oraki v Dean & Dean [2014] BPIR 266; [2013] EWCA Civ 1629

Publications

Currently contributing three chapters for the next edition of *Tolley's Insolvency Law*

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*
