

## David Nicholls

Call: 2002  
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David's practice is focused on two principal areas: property and insolvency. In addition, he has developed broad experience of our core areas of business law and he carries out a wide range of general commercial chancery litigation and advisory work.

David is a member of the Property Bar Association and the Chancery Bar Association. He is an elected member of the Bar Council for 2009 – 2011 and he sits on the Young Barristers' Committee.

### Property & Land:

#### *Landlord & Tenant*

David is experienced in both commercial and residential landlord and tenant matters. His practice includes claims under the Housing Act 1988, the Rent Act 1977 and the Landlord & Tenant Act 1954, as well as disputes over dilapidations and disrepair. He acts for property companies, banks, lenders and private individuals.

David is also regularly instructed in relation to leasehold enfranchisement and valuation matters and he often appears in the Leasehold Valuation Tribunal and the Lands Tribunal.

#### His recent and on-going cases in this area include:

##### *Re: Kings & Carmel Court, Leasehold Valuation Tribunal, April 2009*

David was instructed by the landlord of this property on several applications for the determination of the reasonableness of service charges over a six year period. The matter was listed for hearing over two weeks but settled shortly beforehand. The case raised issues concerning the reasonableness of service charges in circumstances where there was missing documentation, irregularities in accounting practice, alleged breaches of covenant and complaints about the quality of services provided and the standard of maintenance of the property. The conduct of the case was complicated by the fact that there were several lessees responding to the applications and each acting in person.

##### *Wisestates v Mulji Lands Tribunal, February 2009*

David acted for the landlord of a several large blocks of residential flats in North London on this successful appeal from the Leasehold Valuation Tribunal. The issue on appeal was both the lack of reasons and the inadequacy of reasons for the LVT's determination that management charges levied by the landlord should be at a fixed rate over a number of years.

- Advising a local authority on the merits of defending a claim for a new lease under the 1954 Act and, in particular, whether the claim had been made in time.
- A Housing Act possession claim which turned on the meaning of the word 'rent' and whether this could include the rendering of services (it could not) or whether it solely referred to a pecuniary rent (it did).

#### *Real Property*

David is particularly interested in matters concerning rights of way, easements and restrictive covenants. Other areas of practice include mortgages, boundary disputes, adverse possession, options, land registration matters, party wall matters and trusts of land.

He is instructed to appear in the county courts, the High Court and also before the Adjudicator to HM Land Registry.

### His recent and on-going cases in this area include:

#### *Gillis v Cohen, Central London County Court, October – November 2009*

David acts for the Defendant in this five day multi-track trial concerning a claim for unpaid fees to a property finder and interior designer. The claim raises a range of factual and legal issues, including restitution, the effect (if any) of a contractual variation that is unenforceable by reason of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 and the consequences of an agent's breach of fiduciary duty.

#### *Royal Bank of Scotland v Johnson*

This mortgage possession claim has raised interesting questions concerning the borrower's wife's claim to a beneficial interest under the Matrimonial Proceedings and Property Act 1970 and the extent to which the bank complied with the guidelines in *Royal Bank of Scotland v Etridge*.

#### *National Westminster Bank v Pillar*

This mortgage possession claim has raised questions concerning an alleged beneficial interest claimed by the borrower's wife in circumstances where both the borrower and his wife are bankrupt.

#### *L Morgan & Co v Jenkins O'Dowd & Barth [2008] EWHC 3411 (Ch)*

In these proceedings, David represented the claimant firm of solicitors who applied successfully under the inherent jurisdiction of the High Court for the enforcement of solicitors' undertakings given by the defendant firm in the conveyancing of several properties many months previously. The issue which arose in the report referred to was the question of what sum should be paid to the mortgagees by the solicitors who had given the undertakings.

- Acting for a property developer in a six day arbitration concerning the amount of profit made under a joint venture agreement
- Successfully resisting injunctive relief in a boundary dispute
- Advising on and acting in relation to a party wall dispute

### Insolvency:

David's insolvency practice naturally complements his property experience. On the personal insolvency side, David is experienced in all matters relating to statutory demands, disputed bankruptcy petitions, private examinations, the fixing of trustee's remuneration, preferences, transactions at an undervalue, as well as applications for a determination of beneficial interests and consequent orders for possession and sale.

In relation to corporate insolvency, David is instructed in relation to applications to restrain presentation of a winding-up petition or advertisement, matters concerning winding-up petitions, administrations and voluntary arrangements.

### His recent and on-going cases in this area include:

- Representing a trustee in bankruptcy on an application to fix his remuneration
- Acting for a trustee in bankruptcy on a private examination and seeking an arrest warrant following the bankrupt's non-attendance
- Successfully obtaining an injunction to restrain presentation of a winding up petition
- Acting for a liquidator on an application under sections 239 and 240
- Acting for a bankrupt and his family in resisting applications under sections 339 and 340

#### *Donohue v Ingram [2006] BPIR 417*

This was a claim by a trustee in bankruptcy for an order for possession and sale under section 335A of the Insolvency Act 1986. David successfully represented the trustee at first instance and on appeal in defeating contentions by the bankrupt's wife that there were exceptional circumstances (e.g. that the house was occupied by her and her four young children who were recently settled at school) that justified postponing the order for sale for 11 years until the children had grown up. It was also argued that the possession order breached the wife's article 8 rights under the ECHR and that argument was rejected too.

#### *Adams v Mason Bullock [2005] BPIR 241, [2004] EWHC 2910 (Ch)*

David successfully represented Mason Bullock in this insolvency appeal, which was also reported in *The Times* on 6th

January 2005. Mr Bernard Livesey, QC, sitting as a deputy judge of the High Court, dismissed the debtor's appeal against the making of a bankruptcy order and held that where there had been a hearing on the merits of a debtor's application to set aside a statutory demand at which the debtor had raised a particular point in witness statements but not argued it at the hearing, an inference would be drawn that the argument had been abandoned. The discretion in section 271 of the Insolvency Act 1986 would be exercised in such cases to prevent the debtor from arguing the point at the hearing of the petition. The judge said that the essential difference between those cases where the debtor was prevented from raising an issue on the hearing of a petition and those where he was not so prevented was that in the former class of case there had been a hearing on the merits at which the debtor had the opportunity to advance arguments as to whether there was a valid debt and those where there had not been such a hearing.

### *Re Ujah [2005] BPIR 216*

This case concerned a writ of possession obtained by a trustee in bankruptcy, which the bankrupt's wife sought unsuccessfully to have suspended in order that she might purchase the trustee's interest in the property.

### **Commercial:**

David accepts instructions on all general commercial chancery matters, including trust matters, partnership disputes, contractual and commercial disputes, guarantees and indemnities, agency, conflict of laws and professional negligence.

### **Academic Achievements**

Lincoln's Inn Scholarships:

Hardwicke Entrance Scholarship (2000)

Lord Haldane Scholarship (2000)

Tancred Studentship (2001)

Megarry Scholarship (2002)

Lincoln's Inn Prizes:

Winner of the Robert Wright Mooting Competition (2001)