



Falcon Chambers



Jonathan Small QC

Called 1990 Silk 2006



Falcon Chambers

- Tel +44 (0)20 7353 2484
- clerks@falcon-chambers.com
- falcon-chambers.co.uk

Practice Summary

Jonathan Small QC is widely recognised for his advocacy skills: he accepts instructions to appear in a large range of commercial property disputes, both in the UK and abroad. Additionally a large part of his practice comprises advisory work.

- [Recent Cases](#)

House of Lords and Privy Council

- **Lancashire v MS Frontier** [2012] UKPC 42 (privy council: validity of recession of an agreement for lease)
- **Gopaul v Vitra Imam Baksh** [2012] UKPC 1 (chattel houses in Trinidad & Tobago)
- **Higgs v Leshel** [2009] UKPC 47 (adverse possession)
- **Ghaidan v Mendoza** [2004] UKHL 30 (human rights: discrimination & s3)
- **J. A. Pye (Oxford) Limited v Graham** [2003] 1 AC 347 HL (adverse possession).

Court of Appeal

- **Jones v First Greater Western** [2014] EWCA Civ 301 (rights over the taxi-rank at Bristol Temple Meads station).
- **Cook v Mortgage Business** [2012] EWCA Civ 17 (priorities of equity release leaseback)

schemes)

- **Samarenko v Dawn Hill House** [2011] EWCA Civ 1445 (vendor & purchaser: deposits)
- **Rees v Peters** [2011] EWCA Civ 836 (restrictive covenants)
- **The Bridgewater Canal Co v Geo Networks** [2011] 1 WLR 1487 (telecoms)
- **Patel v K & J Restaurants** [2010] EWCA Civ 1211 (relief from forfeiture for immoral user)
- **Adealon v London Borough of Merton** [2007] 1 WLR 1898 (easements of necessity)
- **Joint London v Mount Cook Land**, The Times 11.10.05 (whether Pret-a-Manger a "victualler" or a "coffee house")
- **Patel v London Borough of Brent (No.2)** [2005] 31 EG 82 (section 106 agreements)
- **Bridehall Estates v St George**, The Times, 4.3.04 (overage provisions)
- **Bluestorm v Portvale** [2004] 22 EG 142 (damages from tenant for non-payment of service charges)
- **Cinnamon v Morgan** [2002] 2 P&CR 10, CA (service charges and management costs)
- **Grossman v Hooper** [2001] 2 EGLR 82 CA (conveyancing: section 2 of the 1989 Act)

High Court

- **Harris v Berkeley Strategic Land** [2014] EWHC 3355 (Ch) (overage).
 - **Cooper v Albion** [2013] EWHC 2993 (Ch) (adverse possession of river, riparian rights, mooring rights, conspiracy and misfeasance in public office)
 - **Re89 Holland Park** [2013] EWHC 391 (Ch) (restrictive covenant to control development)
 - **St Anselm v Slaughter & May** [2013] EWHC 125 (Ch) (professional negligence; limitation)
 - **Canonical v TLT Millbank** [2012] EWHC 3710 (Ch) (construction of tenant's break clause; appropriation of rent)
 - **Aviva v Kestrel** (LTL: 11.11.2011) (jurisdiction of expert to decide questions of law)
 - **Miscela v Coffee Republic** [2011] EWHC 1637 (QB) (franchising agreements)
 - **Extra MSA v Accor** [2011] EWHC 775 (Ch) (challenging the rescission of an agreement for sale of land)
 - **PGF v Royal & Sun Alliance** [2010] EWHC 1459 (dilapidations claim re building next to Lloyds of London)
 - **Roadside Group v Zara** [2010] 33 EG 70 (Restrictive covenants in commercial leases)
 - **William Page v BNP Paribas** [2009] L&TR 8 (construction of option to renew lease)
 - **EDF Energy v BOH** [2009] EWHC 3193 (split reversions and surrender/merger of part)
 - **Cameron v Rolls-Royce** (2008) L & TR 22 (lease or licence in commercial context)
 - **London Borough of Bexley v Manson Maurice** [2007] 10 EG 184 (estoppel and highways).
 - **Patel v London Borough of Brent (No.1)** [2003] All ER (D) 67 (purpose trusts & secret profits)
 - **Commission for the New Towns v Cooper** [1995] Ch 259 (rectification; section 2 of the 1989 Act).
- [Areas Recently Instructed](#)

Jonathan has recently been instructed in the following areas:

Restrictive covenants, rights of way and rights of light

Jonathan advises many developers and owners on both easements and the true ambit of restrictive covenants. He appeared for the Defendant recently in *89 Holland Park v Hicks* (2013) where the court held that the neighbouring owners could not unreasonably withhold consent to development plans. In the recent *Couper* litigation (2013) he acted for the Port of London Authority which successfully resisted all the Claimants' many claims against it, including mooring rights.

Development, financing and overage agreements

Much of Jonathan's work consists of advising on the true construction of development, financing and overage provisions. He appeared for the Claimant in the High Court in *Dorchester v Frogmore* (2013), which concerned the limits of a lender's powers under a complex suite of interlocking finance and overage agreements.

Vendor and Purchaser disputes

During the recession Jonathan acted for many parties to development agreements (typically in the context of purchasers attempting to extricate themselves). He appeared in the Privy Council in such a case in *Lancashire v MS Frontier* (2012) and also in the High Court in *Accor v MS Extra* (2011). Both cases concerned the true construction of termination provisions. *Samarenko v Dawn Hill* in the Court of Appeal (2011) concerned the effect of the late payment of a deposit.

Adverse possession

Having been instructed in the leading case of *Pye v Graham*, Jonathan is frequently instructed in adverse possession litigation. He appeared for the successful appellant in the Privy Council in *Higgs v Lechal* (2009) and also for Port of London Authority in the recent *Couper* litigation (2013) which established, among other things, that it was not possible adversely to possess the River Thames.

Telecoms

Jonathan frequently advises both land owners and operators in the knotty problems which can arise under the Electronic Communications Code, particularly where development of the site is in the offing. He appeared for the landowner in the most recent case on the Electronic Communications Code: *Bridgewater v Geo Networks* (2011).

Professional negligence

Jonathan has been instructed in a number of claims against solicitors including the following. He recently appeared for claimant who successfully resisted an attempt to strike out the negligence claim on the grounds that the limitation period had expired: *St Anselm v Slaughter & May* (2013). He is currently retained in an action concerning the drafting of a lease for a newly-developed hotel. He is also retained in a claim against both solicitors and counsel for the negligent conduct of a trial.

Landlord and tenant disputes

Naturally Jonathan appears and advises in a variety of landlord and tenant work. For example he appeared in one of the recent tenant break clause cases (*Canonical v Millbank* (2012)); he was recently retained by Associated Newspapers in their case concerning the unreasonable withholding of consent to assign their Docklands' print works; he acted for the successful landlord in the court of appeal case of *Patel v K & J Restaurants* (2011), concerning forfeiture.

Dilapidations

Jonathan appeared for the successful claimant in the well known case of *PGF v Royal Sun Alliance* (2010), one of the largest dilapidation claims in recent years.

Valuation disputes

Jonathan often appears in rent review cases. Valuation principals also arise in overage disputes and, in

one such case, he successfully challenged the finality of an expert's decision: *Aviva v Kestrel* (2012).

Hong Kong and Commonwealth

Jonathan has also advised on various property-related matters in Hong Kong (for the Government and for private companies) and various islands in the Caribbean including the Bahamas, Bermuda, St Vincent and Trinidad & Tobago. He has appeared on several occasions in the privy Council and was also recently called to the Bar in Bermuda where he conducted a ratings case, in both their Supreme Court and Court of Appeal.

Published Comments

"He has expertise in restrictive covenants and rights of way." *Legal 500 2018 (Property Litigation)*

"Focuses on a variety of legal matters linked to development, and regularly handles overage, rights of way and purchase disputes. Strengths: 'Approachable and provides advice in an easily digestible format'." *Chambers UK Guide 2018 (Real Estate Litigation)*

"A highly rated advocate" *Legal 500, 2017*

"Focuses on a variety of legal matters linked to development, and regularly handles overage, rights of way and purchase disputes. Strengths: 'Excellent commercial understanding.' 'Fantastic at contractual disputes relating to property'." *Chambers UK Guide 2017 (Real Estate Litigation)*

"Extremely well prepared." *Legal 500, 2016*

"Focuses his practice in matters that impact upon the developer including overage and restrictive covenants. His varied caseload also reflects his specialisms in disputes relating to telecommunications and professional negligence. Strengths: 'He's fiercely intelligent. When you go to him you're confident you're getting the right answer.' 'He's approachable and provides advice in an easily digestible format.' Recent work: Represented the Port of London Authority in complex claims brought by several owners of boats moored in the River Thames, with issues including adverse possession and easements. *Chambers UK Guide 2016*.

"Combines intellectual rigour with a very client friendly commerciality". *Legal 500 2015*.

"His courtroom advocacy and incisive mind make him a popular choice.... 'He is bright, brave, willing to think outside the box, and someone who understands the client's commercial as well as legal needs.' 'Jonathan's cut and thrust in the courtroom is a joy to behold'." *Chambers UK (2015)*

"Combines formidable intellectual ability with commercial pragmatism; a perfect mix. " *The Legal 500 (2014)*

"Jonathan Small QC is a prominent property silk, he is routinely instructed on a range of commercial property disputes. A first choice silk, excellent for complex advisory work". "His turnaround on papers is fantastic. He's extremely bright and quick on his feet in court." *Chambers UK Guide (2014)*

Listed as a Leading Silk. *The Legal 500 (2013)*

"Jonathan Small QC, is noted for his broad commercial property expertise and is particular

knowledge of cases with a telecommunications aspect. Sources describe him as 'a very reliable source of focused advice' and someone who is 'very responsive and user friendly'. *Chambers UK Guide (2013)*

Listed as a Leading Silk. *The Legal 500 (2012)*

"Jonathan Small QC has had a successful year in court achieving victory in *Roadside v Zara* and in the *K&J Restaurants v Patelis* forfeiture appeal. A personal favourite of many solicitors, he provides 'likeable, amusing company' and as well as fine advocacy. Sources are uniformly effusive in their affection for this 'fantastic advocate'. *Chambers UK Guide 2011.*

Listed as a Leading Silk. *Legal 500 2011.*

"Displaying command in court Jonathan Small QC is a 'robust, entertaining advocate', who recently appeared for the successful respondent in *Higgs v Leshel*. 'He is very good at getting things up and running quickly', according to commentators". *Chambers UK Guide 2011.*

"Jonathan Small QC acted for the successful landowner in *Higgs v Leshel* an important case heard before the Privy Council which considered the parameters of adverse possession". *Legal 500 2010.*

"Jonathan Small QC possesses a high-level intellect and an ability to get up to speed quickly". *Chambers and Partners 2010.*

"Jonathan Small QC's forte is robust advocacy". *Legal 500 2009.*

"Outstanding, with a great combination of sharp intellect and advocacy skills" *The Lawyer*

"Jonathan Small QC is regarded as "extremely amenable". Solicitors praise him for his "ability to get up to speed tremendously quickly". *Chambers & Partners 2009*

"Jonathan Small QC is "shaping up to be a real star", according to sources. "A tough fighter" he has amazed instructing solicitors with his "quick grasp of the issues and excellent performances in conference". *Chambers and Partners Guide 2008.*

"Jonathan Small QC is representative of a new generation of QC's with excellent legal brains, good client manner, highly responsive to work with, a quick grasp both of detail and the big picture of a case and in every respect, a team player". *Legal 500 2007.*

"When cases proceed to court, Jonathan Small QC is "nothing short of incredible", displaying an "aggressive and all guns blazing approach" for his clients". *Chambers and Partners Guide 2007.*

"The excellent Jonathan Small QC" *Legal 500 2006.*

"Jonathan Small is very comfortable with complex cases". He is "a great character with stage presence". *Chambers and Partners 2006.*

"Jonathan Small, combines superb intellect with outstanding advocacy skills". *Legal 500 2005.*

Jonathan Small has "got academic ability and sound commercial judgement," in addition to being "client focussed, lively, unequivocal and very good on his feet." *Chambers and Partners Guide 2005*

"Extremely tenacious and dedicated, applauded for picking up anything in no time". *Chambers and Partners Guide 2003/2004.*

"Bright spark" *Chambers and Partners Guide 1999/2000*