



Falcon Chambers



## Guy Fetherstonhaugh QC

Called 1983 Silk 2003



Falcon Chambers

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## Practice Summary

While sharing with his colleagues in Chambers a wide practice in commercial property law, Guy Fetherstonhaugh specialises in rent review work (co-authoring the principal text on the subject), development agreements, easements and restrictive covenants, and has recently appeared in the Supreme Court in leading cases on leasehold covenants and prescriptive claims.

### Joint Head of Falcon Chambers

- [Education](#)
  - Bristol University. BSc (1977)
- [Professional](#)
  - Member of the Chancery Bar Association and the London Common Law and Commercial Bar Association
  - Bencher of Inner Temple
  - Honorary Member of the Royal Institution of Chartered Surveyors
  - FCI Arb
  - Hon ARBRIX
- [Recent Cases](#)
  - **Westhill Endowment v Birmingham City Council** [2016] (Chancery Division): Town or Village Greens register rectified to remove registration of land as village green, on the footing that signs erected by the owner had prevented use being as of right.
  - **Schwartz v O'Sullivan** [2016] (Chancery Division): whether restrictive covenant prevents holiday letting; whether servient owner could require diversion of utility conduits; whether

morning rights acquired.

- **Winterburn v Bennett** [2016] 2 P & CR 11 (Court of Appeal): whether prohibitory signs prevented the acquisition of prescriptive rights (of access and to park) over a car park.
- **Vanquish Properties (UK) Ltd Partnership v Brook Street (UK) Ltd** [2016] EWHC 1508 (Ch) (Chancery Division): whether break clause notice served by a limited partnership valid.
- **Loose v Lynn Shellfish Ltd** [2016] UKSC 14 (Supreme Court): considers the doctrines of prescription and accretion in the context of a presumed grant of several shellfishery over foreshore.
- **Marks & Spencer Plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd** [2015] 3 WLR 1843 (Supreme Court): whether it was appropriate to imply a term into a break clause providing for the landlord to repay rent referable to the period after the break date.
- **Evans v Wimbledon and Putney Commons Conservators** [2014] 2 P & CR 17 (Court of Appeal): whether it lay within the Conservators' powers to grant access and construct a road to a private property that would otherwise effectively be landlocked.
- **Martineau Galleries No.1 Ltd v Birmingham City Council** [2014] 1 P & CR 6 (Chancery Division): whether the rent payable for a mixed use property should be valued by reference to rents payable under sub-tenancies, or with vacant possession.
- **Ridgewood Properties Group Ltd and others v Valero Energy Ltd and Pannone & Partners** [2013] Ch 525 (Chancery Division): **a case which considers, among other things, the extent to which a seller of land pursuant to a development agreement had put it out of its power to perform covenants given to the grantee of the development rights.**
- **Canonical UK Ltd v TST Millbank LLC** [2013] 2 EGLR 193 (Chancery Division): discusses the extent to which a tenant exercising the right to break its lease had complied with a condition precedent as to payment of rent and premium.
- **PGF II SA v OMFS Company** [2014] 1 WLR 1386 (Court of Appeal): the decision considers the effect of failure to mediate on costs in dilapidations dispute. **Fitzpatrick v Sarcon** (No 177) Ltd [2012] NICA 58 (Court of Appeal of Northern Ireland): dispute concerning the proper interpretation of a number of agreements for a residential development by Belfast Docks, involving considerations of delay, extensions of time, repudiation, repudiation, rescission, and whether time was of the essence for performance of the agreements.
- **Constance Long Term Holdings Ltd v Duke of Westminster** [2012] EWHC 3434 (TCC): estate management powers in relation to a proposed residential redevelopment.
- **HMV UK Ltd v Propinvest Friar Ltd Partnership** [2012] 1 Lloyd's Rep 416 (Court of Appeal): whether arbitrator's award "obviously wrong".
- **Wheeler v 21 Davies Street Ltd** [2010]: noise nuisance claim.
- **Accord Housing Association Ltd v Concept Development Solutions Ltd** [2010] Ch: construction of overage provision in development agreement .
- **Huntley v Armes** [2010] EWCA Civ 396: significance of reference to plan in parcels clause.
- **Mulford Holdings and Invest Ltd v Greatex Ltd** [2010] Ch (Floyd J); [2010] (Lloyd LJ): certainty of agreement for sale; forfeiture of deposit; security for costs.
- **Isle of Anglesey County Council and the Crown Estate Commissioners v The Welsh Ministers** [2010] QB 163: whether several fishery order overrides rights of owners of foreshore and seabed.
- **Huntley v Armes** [2010] EWCA Civ: significance of reference to plan in parcels clause.
- **Buckingham Estates Ltd v The Crown Estate Commissioners** [2009] Ch (Proudman J): interpretation of user covenant in lease.
- **Mount Anvil Group Ltd v Volans Management Ltd** [2009] Ch: interpretation of development agreement.
- **Vedalease Ltd v Cascabel Investments Ltd** [2009] 2 EGLR 51: extent to which legal costs and receivers' costs can be added to mortgage security.
- **FBO (Antigua) Ltd v Stanford Development Company** [2008] UKPC 51 (Privy Council): certainty of agreement for lease.
- **Metropolitan Property Realizations Ltd v Atmore Investments Ltd** [2008] EWHC 2925

- (Ch) (Sales J): arbitration award set aside for serious irregularity.
- **City Inn (Jersey) Ltd v Ten Trinity Square Ltd** [2008] EWCA Civ 156 (Court of Appeal): whether restrictive covenant subject to approval of original grantor.
  - **Housden v Wimbledon and Putney Commons Conservators** [2008] 3 All ER 1038 (Court of Appeal): whether competent grantor required for prescriptive easement of way.
  - **Vedalease Ltd v Averti Developments Ltd** [2007] 2 EGLR 125 (HHJ Hazel Marshall QC): extent to which legal costs and receivers' costs can be added to mortgage security.
  - **Amberleigh Homes Ltd v Jackson** [2007] (Evans Lombe J): interpretation of restrictive covenant.
  - **Tribeca Developer Portman UK Ltd v Portman Square Properties Ltd** [2007] (Roger Kaye QC): whether crane oversailing derogation from grant in lease.
  - **Legal and General Assurance Society Ltd v Expeditors International (UK) Ltd** [2007] EWCA Civ 7: whether term rightly implied into agreement compromising issues relating to exercise of a break clause in a lease.
  - **Maurice Investments Ltd v Lincoln Insurance Services Ltd** [2006] EWHC 376: whether rent review trigger notice valid.
  - **George Wimpey UK Ltd v V.I. Construction Ltd:** [2005] Court of Appeal: entitlement to unilateral rectification of development agreement.
  - **Caerphilly County Borough Council v P/U:** Blackburne J [2004]: whether entitled to injunction against Persons Unknown.
  - **New Islington & Hackney Housing Association v Perry:** [2004]: interaction between Limitation Act 1980 and Landlord and Tenant Act 1954
  - **Harbour Estates Limited v HSBC Bank Plc:** Lindsay J: [2004] 3 All ER 1057: entitlement to exercise break option in Lease; effect of s.63 Law of Property Act 1925.
  - **Brighton & Hove City Council v Collinson:** [2004] 2 EGLR 65 Court of Appeal: whether agreement to contract tenancy out of security of tenure provisions of Landlord and Tenant Act 1954 effective.
  - **Perry v New Islington and Hackney Housing Association** [2004] (1954 Act-protected oral periodic tenant cannot gain title by adverse possession after 12 years non payment of rent).
  - **Blacker v Wimbledon and Putney Commons Conservators:** [2004] 51 EG 90: Whether powers of enfranchisement in Leasehold Reform Act 1967 prevailing over bar against alienation in 1871 Act.
  - **Habib Bank AB Zurich v Hassan Investments Ltd:** [2003]: whether wife had equity in home capable of binding mortgagee.
  - **Norfolk County Council v Mason:** whether road private or highway, subject to public rights of way.
  - **Butts Park Ventures (Coventry) Ltd v Bryant Homes Central Ltd** [2003] EWHC 2487: whether right of preemption defeated by conditional purchase of land.
  - **Checkpoint Ltd v Strathclyde Pension Fund** (Court of Appeal) [2002]: challenge to rent review arbitrator's award under section 68 Arbitration Act 1996.
  - **Clarke and others v Lloyds Bank plc (High Court)** [2002]: substantial damages for breach of covenant to supply air conditioning.
  - **Biggin Hill Airport Limited v London Borough of Bromley** (Court of Appeal): interpretation of the user covenant for Biggin Hill Airport.
  - **Dinsdale v The Rent Service** (Court of Appeal)
  - **Morrells v Oxford City Council and others** [2001] 2 WLR 128 (restrictive covenant).
  - **National Grid v M25 Group [1999] 1EGLR 65: Court has jurisdiction to determine questions of construction of rent review clause in advance of expert so doing.**
  - **Priddean v Forest Taverns** (1998) 75 P&CR 447, CA: fitting out works by prospective tenant did not create proprietary estoppel.
  - **Romain v Scuba TV** [1996] 1 EGLR 126, CA: limitation period of 6 years for damages payable by surety in respect of tenant's failure to pay rent.
  - **Postel Properties v Boots** [1996] 2 EGLR 60 (costs incurred by landlord on works to shopping

- centre recoverable from tenants through service charge provisions in leases.
- **Daejan Properties v Holmes** [1996] EGCS 185: contractual override of disregard of improvements carried out by tenant at its expense.
- **System Floors v Ruralpride** [1995] 1 EGLR 48 CA: obligations in side letter between original landlord and tenant bind successor in title to reversion.
- [Publications](#)
  - Commonhold (Joint Author) OUP 2004.
  - Handbook of Rent Review (Joint Author)
  - The Litigation Practice (Contributing Editor)
  - Blundell Memorial Lecturer 1998, 2005, 2009.
- [Related News](#)
  - [Decision in Vanquish Properties \(UK\) Limited Partnership v Brook Street \(UK\) Limited \[2016\] EWHC 1508 \(Ch\)](#)
- [Related Practice Areas](#)
  - [Commercial property](#)

## Published Comments

"Acts as the joint head of chambers and is widely respected in the market. His areas of expertise include rent review, easements and restricted covenants. He has had recent cases in both the Supreme Court and the Court of Appeal. Strengths: 'Leading authority on rent review, providing clear, concise and commercial advice.' 'A legend of the real estate Bar.' 'An excellent property litigation specialist at the top of his game.' Recent work: Acted in Westhill Endowment v Birmingham City Council, a case which led to the Town or Village Greens register being rectified to remove the registration of land as village green because signs erected by the owner had prevented use being as of right." *Chambers UK Guide 2019 (Real Estate Litigation)*

"Always excellent and great to work with." *Legal 500 2018 (Property Litigation)*

"Acts as the joint head of chambers and is widely respected in the market. His areas of expertise include rent review, easements and restricted covenants. Strengths: 'A leading silk. Guy is great for seeing the wood for the trees and directing matters and tactics. In court he is thorough and precise and he identifies the key issues to focus on.' 'A leading authority on rent review who provides clear, concise and commercial advice.' Recent work: Acted for the claimant in Marks & Spencer v BNP Paribas Securities Trust in the Supreme Court. The case concerned whether it was appropriate to imply a term into a break clause providing for the landlord to repay rent referable to the period after the break date." *Chambers UK Guide 2018 (Real Estate Litigation)*

"He has incredibly sound judgement, tactical nous and hugely persuasive advocacy skills". *Legal 500, 2017*

"Acts as the joint head of chambers and is widely respected in the market. His areas of expertise include rent review, easements and restricted covenants. Strengths: 'Aside from his outstanding legal abilities, he has fantastic client skills and a great sense of humour which helps.' 'He's the go-to person for rent interpretations.' Recent work: Acted in the high-profile Marks & Spencer v BNP Paribas break clause case." *Chambers UK Guide 2017 (Real Estate Litigation)*

"The 'fantastic' Guy Fetherstonhaugh QC is a reputed name in the market, known for his expertise in easements and restrictive covenants, rent review work and development agreements." *Who's Who Legal 2017*

"At the pinnacle of his area of expertise – a first rate cross examiner and one of the best silks around." *Legal 500, 2016*

"Viewed as a leading practitioner in the area of rent reviews. He is recognised for his extremely high powered advocacy skills. Strengths: 'He is clear and informative in his advice.' 'As a tactical lawyer in court proceedings we find him to be devastatingly good. His written work is succinct and strategic, and he's also very efficient.' Recent work: Acted in an Upper Tribunal case to discern whether the acquisition of prescriptive rights to a car park was blocked by prohibitory signs". *Chambers UK Guide (2016)*.

"He may be the best real estate disputes counsel in the country." *Legal 500, (2015)*.

"A formidable real property practitioner, with his own niche expertise in rent review issues. His exceptional technical knowledge and forceful advocacy are highly valued by his clients. Expertise: 'He writes very clearly and persuasively, and when he makes oral submissions they are direct and persuasive.' 'He is bright, innovative and charming, and inspires confidence in clients.' Recent work: Acting for Marks & Spencer, he demonstrated that in a situation where a tenant successfully exercises a break clause, they are entitled to a repayment of rent paid in advance." *Chambers UK Guide (2015)*

"The James Bond of the Bar." *The Legal 500 (2014)*

"Guy Fetherstonhaugh QC Joint head of the set, he is regarded as a leading light of the property litigation world. He is involved in commercial property law and specialises in rent review work, development agreements, easements and restrictive covenants. Expertise: 'Guy is one of the best QCs about. He is bright, innovative and charming and inspires confidence. All clients love him.' 'Intellectually outstanding – he gives clear commercial advice.' Recent work: Highlights include *Canonical UK v TST Millbank*, determining the sum of rent payable in relation to a break clause." *Chambers UK Guide (2014)*

"The 'genuinely pre eminent' Guy Fetherstonhaugh QC has 'devastating' cross examination skills." *The Legal 500 (2013)*

"Guy Fetherstonhaugh QC operates in the most rarefied spheres of the property world. One recent example of his quality caseload was *State Street v Apcoa Parking Ltd*, a matter concerning questions of waiver of legal professional privilege. Sources note that he is particularly recommended in his specialist areas of rent review and break clause issues, and further comment that he 'is extremely smart and gets good results'." *Chambers UK Guide (2013)*

"Guy Fetherstonhaugh QC is 'at the top of his game' and is noted for his 'clearly written opinions' and 'impressive advocacy'." *The Legal 500 (2012)*

"Guy Fetherstonhaugh QC is a silk who wins clients over as he combines a 'fine brain' with an 'approachable and hands-on' style. Recent work for him includes the *Huntley v Armes* appeal case. He is in demand for all manner of matters and is particularly lauded by solicitors for his rent review and dilapidations expertise. They say he is 'tremendously client facing and commercial, and gives practical, legally sound, easily digestible advice'." *Chambers UK Guide 2011*.

"Guy Fetherstonhaugh QC is 'a strong and committed advocate and the king of rent review work'." *Legal 500 2011*

"Guy Fetherstonhaugh QC's recent caseload includes *Henley v Bloom*, concerning whether a dilapidations claim should be struck out for abuse of process. An excellent landlord and tenant

advocate, Fetherstonhaugh 'excels at very technical, specific cases'. Solicitors praise his speed, saying he is 'amazingly responsive' and 'jaw-droppingly swift' ". *Chambers UK Guide 2011*.

Listed as a Leading Silk *Legal 500 2010*.

"Guy Fetherstonhaugh QC remains at the top of his game and continues to provide 'spot-on commercial advice and excellent tactical thinking' especially in disputes arising from complex transactions. A prolific commentator on the law as well as a fine advocate, he is constantly in demand." *Chambers and Partners 2010*.

"Guy Fetherstonhaugh QC continues to 'grow in authority'" *Legal 500 2009*.

"Guy Fetherstonhaugh was described as "a man who can win the unwinnable". His recent matters have included appearing in the notable case of City Inn Ltd v Ten Trinity Square Ltd, a case concerning the question of whether a restrictive covenant is subject to the approval of the original grantor. Complimented for being "able to pick up detailed instructions and assimilate information rapidly", he is also seen as someone "who will move heaven and earth to get something done for you". *Chambers and Partners 2009*

"Clients appreciate Guy Fetherstonhaugh QC because he keeps things simple." *Legal 500 (2008)*

"Guy Fetherstonhaugh QC is "the finest property litigation silk in the country, he has the capacity to win the unwinnable case and is an awesome cross-examiner". *Legal 500 (2007)*.

"An extremely able leader, Guy Fetherstonhaugh QC has made his mark as a property silk in recent years." *Chambers and Partners Guide 2008*.

Listed as a leading Silk. *Legal 500 (2006)*.

"Guy Fetherstonhaugh's QC superb analytical skills and commercial foresight bring him many victories". *Chambers and Partners Guide 2007*

"Solicitors also rate Guy Fetherstonhaugh QC, who is said to be "fantastic on his feet", "superb technically" and is commended for his judgement and client relationships." *Legal 500 (2006)*.

"Guy Fetherstonhaugh QC's strength lies in his "excellent judgement". Appreciated for his client skills he is both "charming and utterly committed". *Chambers and Partners Guide 2006*.

Leading property solicitors praise Guy Fetherstonhaugh QC who is described as "very good with clients" and "is both approachable and has excellent judgement." *Legal 500 (2005)*

The "measured and careful" Guy Fetherstonhaugh QC has "a particularly good touch with clients" and "a clear analytical approach to complex problems," in addition to being "excellent on his feet." *Chambers and Partners Guide 2005*

"The "technically excellent" Guy Fetherstonhaugh". *Legal 500 (2003)*.

"The "extremely thorough and reliable" Guy Fetherstonhaugh". *Chambers and Partners Guide 2003/2004*.

"Among the juniors, the consistent praise expressed for Guy Fetherstonhaugh finds reflection in our rankings this year" *Legal 500 (2002)*.

"Forceful and charming Guy Fetherstonhaugh is said to have grown in presence and authority and to be particularly adept at cross-examination. Known for "whirlwind stuff", clients also say that he can win the unwinnable". *Chambers and Partners Guide 2002/2003*.

"Excellent Guy Fetherstonhaugh is clearly making a name for himself". *Chambers and Partners Guide 2001/2002*.

Among the set's many excellent juniors Guy Fetherstonhaugh is singled out as effective and commercially aware *Legal 500 (2000)*.

Listed as a leading junior *Legal 500 (1999)*

"Rated" *The Lawyer 1998*

"Underrated" *The Lawyer 1997*