



Oliver Radley-Gardner
KC
Called 2003 Silk 2021

Practice Summary

Oliver is recommended in Chambers and Partners, Legal 500 and Who's Who Legal for real estate, telecommunications and agriculture & rural affairs.

He was the Chambers and Partners Real Estate Junior of the Year in 2020.

His most recent real estate cases have included three Privy Council appeals, two on adverse possession (Bannerman; Gourmandy) and one on undue influence (Enal). He also recently appeared in the Court of Appeal in a case concerned with the validity of notices to quit under the Agricultural Holdings Act 1986 (Turner).

Oliver has appeared in many of the early cases under the Electronic Communications Code, which established the right to survey and the availability of short-term "interim" rights (University of London; Court of Appeal); upgrading and sharing rights (Green; Court of Appeal); the scope of the Tribunal's power to impose terms (Keast; Upper Tribunal); the level of code consideration (Green; London & Quadrant; Stephenson; Upper Tribunal); the interaction between the Code and the 1954 Act (Hanover Capital; County Court), and who is the occupier under the Code (the conjoined Supreme Court appeals in Compton Beauchamp).

Oliver was a Blundell Memorial lecturer in 2019 on easements, excessive use and the rule in *Harris v Flower*. He has written or contributed to several books (below), regularly writes for various periodicals, and lectures to professional organisations and individual firms of solicitors.

- Education

- Keble College, Oxford University BA (1999) (Law with German Law; 1st Class)
- Second, Winter Williams Prize 1997
- University of Regensburg, 1997 - 1998
- Visiting Researcher, Max-Planck-Institute for Foreign and Comparative Law, Hamburg.

- Professional

- Called 2003, Grays Inn (Bedingfield Scholarship)
- 2002 - 2003 BPP Law School: Very Competent (5th in year)
- 2001 - 2011 College Teaching Fellow, Pembroke College, Oxford
- 2000 - 2001 Joint Stipendiary College Lecturer, Pembroke and Somerville Colleges, Oxford
- 1999 - 2000 Research Assistant to the Property and Trusts Team, Law Commission, working on the Land Registration Act 2002, Trustee Act 2000 and Property Rights of Homesharers projects
- Fluent German, basic French
- 2009 - Appointed to Attorney General's C Panel
- 2015 - Appointed Junior Counsel to the Crown - B Panel
- 2020 - Chambers and Partners Real Estate Junior of the Year.

- Recent Cases

- **Gormandy & Ors v Trinidad and Tobago Housing Development Corporation (Trinidad and Tobago) [2022] UKPC 55**: adverse possession; concurrent use by third parties; need to identify land



- claimed, the rule in *Devi v Roy*; role of appellate courts.
- **O G Thomas Amaethyddiaeth CYF & Anor v Turner & Ors [2022] EWCA Civ 1446:** Notices to quit; agricultural holdings, applicability of *Mannai*.
 - **EE Ltd & Anor v Stephenson & Anor [2022] UKUT 180 (LC):** Electronic Communications Code; Consideration under paragraph 24; Relevance of interposed intermediate leasehold interests.
 - **Cornerstone Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd [2022]**
UKSC 18: Electronic Communications Code, jurisdiction, meaning of occupier, interrelationship between Part 4 of the Code and the 1954 Act
 - **Crawley Borough Council v EE Ltd & Anor [2022] UKUT 158 (LC) :** Electronic Communications Code, Part 6 removal application
 - **Enal v Singh & Ors (Trinidad and Tobago) [2022] UKPC 13:** Resulting Trusts; Presumption of Advancement; Undue Influence; Scope and Function of Appellate Courts
 - **On Tower UK Ltd v JH & FW Green [2021] EWCA Civ 1858:** Electronic Communications Code; upgrading and sharing rights; correct approach to Part 5 renewals; relevance of terms of prior agreement
 - **Wynne-Finch v Natural Resources Body for Wales [2021] EWCA Civ 1473:** Mines & minerals, adverse possession of the mineral stratum.
 - **EE Limited and Hutchison 3G UK Limited -vs- Aviva Investors Ground Rent Holdco Limited and Aviva Investors Ground Rent GP Limited [2021] UKUT 0057 (LC):** Electronic Communications Code, When Para 26 interim rights appropriate, costs discretion.
 - **CTIL v Ashloch Ltd and APW Ltd [2021] EWCA Civ 90:** Jurisdiction to grant code rights; interaction between Code and 1954 Act; meaning of "occupier".
 - **On Tower UK Ltd v J H & F W Green Ltd [2020] UKUT 348 (LC):** Code rights, sharing and upgrading rights in code agreements, consideration for a rural greenfield site, compensation.
 - **Cornerstone Telecommunications Infrastructure Ltd v London & Quadrant Housing Trust [2020] UKUT 282 (LC):** equipment rights, upgrading, sharing rights for wholesale infrastructure providers under the Code and valuation of rooftop sites under the Code.
 - **Vodafone Ltd v Hanover Capital Ltd [2020] EW Misc 18 (CC):** with Stephen Jourdan QC, how to value Code transitional agreements under s34 of the 1954 Act; how to reflect paragraph 24 of the Code in s34; effect of willing parties hypothesis; use of a "competitive bidding" model in appropriate cases.
 - **Cornerstone Telecommunications Infrastructure Ltd v Central Saint Giles General Partner Ltd & Anor [2019] UKUT 183 (LC):** inspection rights under the Electronic Communications Code.
 - **The University of London v Cornerstone Telecommunications Infrastructure Limited [2019] EWCA Civ 2075:** right to a multi-skilled visit, paragraph 26 interim rights under the Electronic Communications Code, relationship with final rights.
 - **Cornerstone Telecommunications Infrastructure Ltd v Keast [2019] UKUT 116 (LC):** land/apparatus distinction, jurisdiction in relation to terms that can be imposed, validity of notices, definition of operator.
 - **Cornerstone Telecommunications Infrastructure Ltd v The University Of London Re: Lillian Penson Hal I [2018] UKUT 356 (LC):** Electronic communications code; Whether a right to survey forms part of paragraph 3 code rights, whether a paragraph 26 interim rights application can be made on a free-standing basis, application of the "good arguable" test to paragraph 21.
 - **Bannerman Town, Millars and John Millars Eleuthera Association v Eleuthera Properties Ltd (Bahamas) [2018] UKPC 27:** Adverse possession by groups of individuals, collective possession, what amounts to acts of possession, quieting of title actions and what constitutes good paper title.
 - **Sinclair Gardens Investments (Kensington) Ltd, Re George Court [2017] UKUT 494 (LC):** Lease extensions under the 1993 Act, adjustments to be made to comparables, stripping out 1993 Act rights, the correct approach to relativity
 - **Burrows Investments Limited v Ward Homes Limited [2017] EWCA Civ 1577 (overage, breach of contract, negotiating damages, Wrotham Park damages, interpretation of contract).**
 - **Downs v Kingsbridge [2017] UKUT 0237 (LC):** agricultural tenancies, Agricultural Holdings Act 1986, retirement and succession, period for establishing principal source of livelihood.
 - **Balogun v Boyes Sutton and Perry [2017] EWCA Civ 75:** Professional negligence; Conveyancing negligence allegation against solicitor in relation to restaurant underlease; rights of ventilation; ancillary rights to carry out fit-out works; solicitor's duty to warn where wording of a lease causes difficulty; effect of risk arising out of difficulty not materialising; causation.
 - **Marshall v Scaman and others [2017] (High Court, Bristol):** s 68 challenge to an arbitrator's award; use of legal assistance by the arbitrator; whether agreed procedures had been departed from; whether a procedural irregularity causing substantial injustice; s24 applications for removal of arbitrator.



- **The Crown Estate v Wakley** [2016] (High Court, Bristol): misrepresentation, breach of covenant and unfair contract terms (UCTA) issues in relation to a Farm Business Tenancy of a dairy farm. Damages for s2 misrepresentations and causation and quantification of loss in a complex causation case involving expert veterinary and herd production evidence.
- **Re Rae's Application** [2016] UKUT 0552 (LC): Restrictive covenants; discharge and modification; density covenants; scheme of development; modification to allow additional dwelling house.
- **?Heathcliffe Properties Ltd v Dodhia & Anor** [2016] EWHC 2628 (Ch): contempt of court, partnership dissolution, sentencing.
- **Sinclair Gardens Investments (Kensington) Ltd v Avon Estates (London) Ltd** [2016] UKUT 317 (LC): residential leases, service charges, costs recovery, right to manage.
- **Sinclair Gardens Investments (Kensington) Ltd v Wisbey** [2016] UKUT 0203 (LC): Individual lease extensions, costs under section 60, what costs are recoverable by a landlord.
- **Sinclair Gardens Investments (Kensington) Limited v Ray** [2015] EWCA Civ 1231: Enfranchisement, Sportelli deferment rates, Non-PCL rates, status of non-guidance Upper Tribunal decisions.
- **Burrows v Ward** [2015] EWHC 2287 (Ch): breach of contract, Wrotham Park damages, overage, negotiating damages, development agreements.
- **West is West Distribution Limited v Icon Film Distribution Limited** [2015] EWHC 838 (Comm): breach of accounting provisions; material breach; contractual termination; breach of obligations taking effect upon termination; damages.
- **Balogun v Boyes Sutton & Perry** [2015] EWHC 275 (QB): conveyancing negligence claim in relation to the grant of underlease of restaurant premises; rights of ventilation; whether a solicitor was bound to go behind his client's instructions on matters of fact and expertise known to the client; scope of rights conferred by the grant of an easement.
- **Elim Court RTM Co Ltd v Avon Freeholds Ltd** [2014] U.K.U.T. 0397 (LC): Right to manage under Part 2 of the Commonhold and Leasehold Reform Act 2002; validity of notices inviting participation; whether statutory requirements were mandatory or directory; whether a defect could be overlooked on the basis of the substantial compliance test identified in Jeyeanthan, R (on the application of) v Secretary of State for the Home Department respondent [1999] EWCA Civ 3010.
- **TFL v Al-Amini (FTT(PC)) REF/2013/0655** (24th July 2014): adverse possession of highways maintainable at public expense, extent of highways and section 263 of the Highways Act 1980, concurrent Crown and non-Crown limitation periods, alteration of the register.
- **Sinclair Gardens Investments (Kensington) Limited v Rae** [2014] UKUT 0079 (LT): Enfranchisement; Consideration of the generic Sportelli deferment rate outside PCL, and when adjustments to the rate are appropriate.
- **Spencer v Taylor** [2013] E.W.C.A. Civ 1600: Notices under section 21 of the Housing Act 1988. The case decided (a) that a section 21(1) notice can validly be given after the expiry of the fixed term of an assured shorthold tenancy, and (b) that the notice in the instant appeal was a valid section 21(4)(a) notice as its saving provision took effect.
- **Ninety Broomfield Road RTM Company Ltd v Triplerose Limited** [2013] UKUT 0606 (LC): Consolidated appeal relating to the exercise of the right to manage in relation to multiple-block estates.
- **Pineview Limited v 83 Crampton Street RTM Company Limited** [2013] UKUT 0598(LC): Right to manage claim notices under Commonhold and Leasehold Reform Act 2002; identity of signatory and whether appurtenant property must be specified; precedent value of earlier Upper Tribunal decisions.
- **Miller v Gallo** (High Court, ChD, Mann J), LTL 17/6/2013: Insolvency and constructive trusts, assignments and transfers of subsisting beneficial interests.
- **Avon Estates (London) Ltd v Sinclair Gardens Investments (Kensington) Limited** [2013] UKUT 264 LC: residential service charges (test for assessing reasonableness of insurance; payments to agency for claims handling services); function of the Upper Tribunal on appeal by way of review.
- **Sinclair Gardens Investments (Kensington) Ltd v 31 Croydon Road Ltd** [2012] UKUT 310 (Collective enfranchisement; rent review cap by reference to domestic rateable values of no further effect).
- **HMRC v Thoos and Lissenburg (Bankruptcy, 5770 and 5771 of 2011)**: whether offers made to secure petitioning creditor's debt under section 271(3) of the Insolvency Act 1986 were sufficient; whether the debtors had a human rights defence to a bankruptcy order, or could invoke such a defence by proxy.
- **Khans Solicitors v Chifuntwe and the Secretary of State for the Home Department** [2012] EWHC 2108 (QB) (Costs, solicitor's equitable "lien" over costs, validity of compromise agreements).
- **Sinclair Gardens (Kensington) Investments Ltd v 2 Medina Villas** [2012] PLSCS 132: Collective enfranchisement, valuation of car parking spaces.



- **Scottish Widows Fund & Life Assurance Society v BGC International (Formerly Cantor Fitzgerald International)** [2011] EWHC 729 (Ch): Construction and rectification of rent review provisions under the terms of a lease.
 - **Magrath v Parkside Hotels Ltd [2011] EWHC 143 (Ch)**
: Easements of fire escape, the common law rule against perpetuities, the rules relating to the variation of routes of rights of way.
 - **Extra MSA Services Cobham & Anor v ACCOR UK [2010] EWHC 775 (Ch)**: Application of the principle of construction that a contracting party cannot rely on his own breach of duty to determine a site development agreement.
 - **Solomon (R on the application of) v Secretary of State for the Home Department (2010)** (Administrative Court) on the meaning and effect of the Dublin II Regulations, and whether the applicant for judicial review had established that his deportation to Malta would violate Articles 3 and 5 ECHR.
 - **Patel v K & J Restaurants Ltd [2010] EWCA Civ 1211:**
Forfeiture for breaches of covenants against immoral user (by the activities of a sub-tenant; whether such breach was irremediable) and alienation (whether occupation by a third party under a “management agreement” was an “agency” relationship; whether breach remedied by trial). Also considers relief, and specifically whether costs on relief should be payable by the tenant on an indemnity basis.
 - **The Bridgewater Canal Company Limited v GEO Networks Limited [2010] EWHC 548 (Ch); [2010] 1 W.L.R. 2576 (High Court, Lewison J)**: A decision on the operation of the Electronic Communications Code, specifically considering the rights of operators under the Code to cross linear obstacles (such as canals), and their obligations to pay consideration for such rights. The case also considered the aspect of the Code's compatibility with the ECHR; [2010] EWCA Civ 1348 (Court of Appeal).
 - **Consolidated Finance v Cook, Court of Appeal,**
[2010] EWCA Civ 369, [2010] B.P.I.R. 1331 on the recoverability of fees and costs under a mortgage to secure sums advanced by a third party lender to secure the annulment of a bankruptcy.
 - **Bradley v Adams [2009] EWLandRA 2008_1260** (Express and implied trusts of land; formalities for the release of beneficial interests under trusts, section 52(1)(c) of the Law of Property Act 1925).
 - **Schilling & Anor v Canary Riverside Estate Management Ltd [2008] EWlands LRX412007** (Appointment of a manager under the Landlord and Tenant Act 1987)
 - **Kshatriya v Choithram International SA [2008] EWLandRA 2006_0170** (Limitation of actions, mortgages)
 - **Sancheti v The Mayor & Commonality & Citizens of the City of London [2008] EWCA Civ 1283,** (2008) 2 CLC 730 : (2009) 1 Lloyd's Rep 117 : Whether a bilateral investment treaty, granting inward investors of a foreign state a right to international arbitration against the United Kingdom, entitled such an investor to a stay under section 9 of the Arbitration Act 1996 or under the inherent jurisdiction in proceedings for rent arrears brought by a local authority.
 - **Leriche v Cherry [2008] U.K.P.C. 35** (Resulting and constructive trusts).
 - **Totton & Eling Town Council v Caunter [2008] All E.R. (D) 133:** Whether negotiations between the paper owner and the squatter for the sale of the land being adversely possessed gave rise to an implied licence which stopped time running in favour of the squatter, and whether and how such a licence could be brought to an end.
- Publications

Books

- Adverse Possession (2nd ed., with Stephen Jourdan QC)
- Residential and Commercial Service Charges (with Adam Rosenthal, Elizabeth Fitzgerald, Nathaniel Duckworth and Philip Sissons)
- Fisher and Lightwood's Law of Mortgages (14th ed., Wayne Clark co-ordinating editor)
- Fundamental Texts on European Private Law (with Professor Hugh Beale, Professor Reinhard Zimmermann, Professor Rainer Schulze)

Articles (Selection)

- "Foisted Permission & Adverse Possession" [2017] 133 Law Quarterly Review 214
- Contributing Editor to Woodfall's Landlord and Tenant Bulletin
- Contributor to The In House Lawyer



- "Right to Manage: Ironing Out the Kinks" (2014) L&TR 133 (with Adam Rosenthal)
- "Look Behind the Mast" (2007) EG 179 (Telecoms; with Jonathan Small QC)
- "Pye v UK – The View From England" (2007) European Review of Private Law 289 (Adverse Possession, Human Rights)
- "Tenants and Insolvency" (2007) 1 Woodfall Landlord and Tenant Bulletin
- "Civilized Squatting" (2005) OJLS 727 (Adverse Possession)
- "Section 15 of TLATA, or, The Importance of Being Earners" [2003] 5 Web JCLI (Trusts of Land, Co-Owners)

Published Comments

"Oliver is simply one of the brightest lights on the horizon. He is right up there with the cleverest of the clever, but he also has great people skills, a good sense of humour and is an excellent advocate." *Chambers and Partners UK Guide 2023*

'Having lived and breathed property litigation for so long, Oliver is a silk who knows the relevant legislation better than anyone else. He is a particularly strong cross-examiner, often knowing the evidence better than the witnesses before him.' *Legal 500 2023*

Oliver Radley-Gardner QC is acknowledged for his growing expertise in telecoms-related cases. His diverse property practice that incorporates landlord and tenant litigation, as well agricultural land disputes. Strengths: "He is first-class." "The go-to barrister for telecoms operators on the Electronic Communications Code." "An absolutely phenomenal barrister." *Chambers and Partners Guide 2022 (Real Estate)*

Oliver Radley-Gardner QC is highlighted as an excellent choice for real estate-linked telecoms cases. His proven sector knowledge also earns him roles on the operator side of advisory mandates relating to the implementation of the new Electronic Communications Code. Radley-Gardner earns praise for his knowledge of the Code and for his advocacy skills. Strengths: "He is extremely knowledgeable in the telecommunications sector and is very client-friendly; he always makes clients feel comfortable when advising in conferences." "He is really strong in his advocacy." "He has a very deep understanding of the Code and really thinks through the best way to approach the point." *Chambers and Partners UK Guide 2022 (Telecommunications)*

Oliver Radley-Gardner QC is a specialist rural property barrister with a strong practice in boundaries and rights of way disputes. He also handles farming and agricultural tenancy succession claims. His experience extends to rent review and valuation matters in the context of agricultural leases. Strengths: "His dedication to the client's cause is unlike anything else. He's very affable and pleasant, but ferocious in the courtroom." *Chambers and Partners UK Guide 2022 (Agriculture and Rural Affairs)*

Acknowledged for his diverse property practice that incorporates proprietary estoppel, negligence issues, and landlord and tenant litigation. He also has a burgeoning reputation in telecoms-related cases and is well versed in agricultural holdings litigation. Strengths: "His knowledge and ability to retain facts are phenomenal." "He is able to translate legal complexities into analogies." "Extremely bright, able and hard-working. A delight to work with." *Chambers and Partners UK Guide 2021 (Real Estate Litigation)*

Highlighted as an excellent choice for real estate-linked telecoms cases. His proven sector knowledge also earns him roles on the operator side of advisory mandates relating to the implementation of the new Electronic Communications Code. Radley-Gardner earns praise for his knowledge of the code and his written work on the subject. Strengths: "He is very user-friendly, extremely knowledgeable, highly capable, and someone with outstanding advocacy skills." "He has an excellent ability to think on his feet and you always feel in safe hands when he is on board. Oliver is happy to pick up the phone when you need something, and his advocacy and linguistic skills are up there with the best." *Chambers and Partners UK Guide 2021 (Telecommunications)*

A specialist rural property barrister with a strong practice in boundaries and rights of way disputes. He also handles farming and agricultural tenancy succession claims. His experience extends to rent review and valuation matters in the context of agricultural leases. Strengths: "He is hard-working and has an eye for agricultural law." "His knowledge and ability to retain facts is phenomenal." *Chambers and Partners Guide 2021 (Agriculture & Rural Affairs)*



"One of the market's best for agricultural matters." *Legal 500 2021 (Agriculture)*

'He really is brilliant, resourceful and grounded; is a real whizz at telecoms.' *Legal 500 2021*

One of the market's best for agricultural matters.' *Legal 500 2021 (Agriculture)*

Acknowledged for his diverse property practice that incorporates proprietary estoppel, negligence issues, and landlord and tenant litigation. He also has a burgeoning reputation in telecoms-related cases and is well versed in agricultural holdings litigation. Strengths: "Balances excellent technical knowledge with a user-friendly approach." "Very bright and very able." "An excellent and compelling advocate." *Chambers and Partners UK Guide 2020 (Real Estate Litigation)*

"He is clearly incredibly bright, impresses clients and is also liked by them." *Legal 500 2020*

"Acknowledged for his diverse property practice that incorporates proprietary estoppel, negligence issues, and landlord and tenant litigation. He also has a burgeoning reputation in telecoms-related cases. Strengths: 'Exceptionally good at advising on telecoms matters.' 'Gets to grips with the most complex disputes and explains them in a client-friendly way.' Recent work: Acted before the Court of Appeal in *Burrows v Ward*, a case concerning overage, breach of contract, negotiating damages, *Wrotham Park* damages and interpretation of contract." *Chambers UK Guide 2019 (Real Estate Litigation)*

Oliver is an expert in real estate matters such as easements, enfranchisement and breach of covenant. Peers "rate him very highly" and praise him for being "extremely commercially minded". *Who's Who Legal UK Bar 2019 Guide*

"A specialist rural property barrister with a strong practice in boundaries and rights of way disputes. He also handles farming and agricultural tenancy succession claims. His experience extends to rent review and valuation matters in the context of agricultural leases. Strengths: 'He is very, very thorough, very bright, and has broad knowledge across rural affairs matters. His property knowledge is very in-depth too - he can really dig down into the roots of the law to find solutions.' 'He's very creative and you want him on your side, especially when you need some imagination in your case.' Recent work: Acted in *Crown Estate v Wakley*, a case concerning a breach of a lease of a farm." *Chambers UK Guide 2019 (Agriculture & Rural Affairs)*

"Highlighted as an excellent choice for real estate-linked telecoms cases. He attracts considerable praise for his work on behalf of landowners seeking to remove telecoms equipment from their land. His proven sector knowledge also earns him roles on the operator side of advisory mandates relating to the implementation of the new Electronic Communications Code. "Practical, pragmatic and someone who responds very quickly." "He has a nice understated manner; he isn't aggressive but gets what he needs to get out of negotiations.' 'His knowledge and experience of the sector are second to none and he is very user-friendly'." *Chambers UK Guide 2019 (Telecommunications)*

"Impressive in court with the ability to identify the key issues." *Legal 500 2018 (Property Litigation)*

"A very robust barrister, keeps the client focused on the key issues." *Legal 500 2018 (Agriculture)*