Falcon Chambers

Toby Boncey

Called 2013



Practice Summary

Toby specialises in all areas of property law, including all aspects of real property and both commercial and residential landlord and tenant law. He has extensive experience of litigation in the Court of Appeal, High Court and County Court, the Upper Tribunal and the First-tier Tribunal. Toby also accepts instructions to act in relation to arbitrations, expert determinations and mediations.

Toby accepts instructions in all areas of Chambers work, including:

- Commercial landlord and tenant, including renewals under the Landlord and Tenant Act 1954, dilapidations, breaches of covenant, consents for alienation, rent review, forfeiture and the Pubs Code;
- Residential landlord and tenant, including enfranchisement, service charges, right to manage, rights of first refusal, forfeiture, alterations and nuisance and possession claims;
- Easements (including rights to light), public and private rights of way, restrictive covenants and boundary disputes;
- Land registration;
- Mortgages and receivership;
- Trusts of land (including TLATA disputes);
- Injunctions;
- Proprietary estoppel;
- Electronic Communications Code disputes;
- Development and overage agreements;
- Options and rights of pre-emption;
- Expert determination and arbitration; and
- Other real property and landlord and tenant issues.

Toby has appeared in a number of significant cases including Great Dunmow Estates Ltd v Crest Nicholson [2019] EWCA Civ 1683 (jurisdiction of expert pursuant to expert determination provision in development agreement and whether parties bound by surveyors' statement of agreed facts) and Burton v Bowdery [2017] EWHC 208 (Ch) (limitation). Toby has experience of judicial review of HM Land Registry decisions, and has particular interests in obtaining vesting orders following land passing to the Crown by bona vacantia or escheat, and the development of the law relating to commonhold.

Toby acted as arbitrator in Commercial Rent (Coronavirus) Act 2022 Arbitrations. Published awards

in Hanbury Print.com Ltd v Primack and Restaurant WC1 Ltd and Hogarth Properties S.A.R.L. can be found here.

Toby regularly delivers lectures on property-related issues, including most recently on the Building Safety Act and on valuation. He is a contributing author to *The Electronic Communications Code and Property Law: Practice and Procedure* (1st edition, September 2018); *Land Injunctions* (1st edition, June 2026); and *Bona Vacantia and Escheat: Law and Practice* (forthcoming).

Education

- BPTC, Kaplan Law School, London
- BCL, Merton College, Oxford- Distinction
- MA Jurisprudence (Law and German Law), Worcester College, Oxford and Regensburg University- 1st class (1st in year)
- Merton College BCL Prize
- Merton Lawyers' BCL Scholarship
- Barton Prize: Merton College
- Martin Wronker Prize: Oxford University
- Martin Wronker Tort Prize: Oxford University
- Gibbs Prize: Oxford University
- Henriques Prize: Worcester College
- Worcester College Prizes, Scholarship and Exhibition.

Professional

- Called 2013: Gray's Inn
- The Reid Senior Scholarship: Gray's Inn
- Bedingfield Scholarship: Gray's Inn
- From 2012-2014, Toby was a lecturer and tutor in Land and Trusts Law at St Catherine's College, Oxford. Between 2012 and 2013 he was also a lecturer and tutor in Land Law at Trinity College, Oxford and St Hugh's College, Oxford. He has also taught Contract Law at Worcester College, Oxford.
- Recognised as a rising star in the Legal 500 UK 2021 Guide
- Enfranchisement and Right to Manage Awards: Young Professional of the Year (Highly Commended 2018)
- Member of the Property Bar Association
- Member of the Chancery Bar Association
- Member of the Compulsory Purchase Association
- Member of the London Common Law and Commercial Bar Association (LCLCBA).

Recent Cases

- **Punch Pubs & Co Ltd v Trafalgar Leisure Ltd** (H00MK668)- Toby appeared in the County Court at Oxford instructed by Freeths for the successful appellant in this appeal from the County Court at Milton

Keynes. The appellant tenant had applied for a declaration that consent to assign had been unreasonably withheld by the respondent landlord. The respondent raised a jurisdictional objection, substantially delaying proceedings, but withdrew its opposition a long time after issue and the tenant sought entry of judgment at a CMC. The respondent sought to counterclaim for a declaration that an AGA must be supplied, in accordance with the terms of the lease (which the tenant contended was pointless), but failed to file and serve its counterclaim in accordance with conditions imposed. In an ex-tempore judgment, HHJ Melissa Clarke held that the District Judge below was wrong to enter judgment on the counterclaim at the CMC. Neither the conditions nor the test for relief from sanctions were satisfied. The judge below had found there was a serious breach because of the extent of the respondent's delay, for which there was no good explanation, but had made an error of principle in failing to take into account the effect of the delay in applying for relief at the third stage, wrongly characterizing the effect of the breach as causing limited prejudice. The respondent was refused relief, judgment on the counterclaim was set aside and the appellant was awarded costs.

- **33 Clifton Gardens Ltd v Lamberti** (LON/00BK/LBC/2022/0020) - The FTT determined under s.168 of the Commonhold and Leasehold Reform Act 2002 that the tenants had breached a flooring covenant, having failed to prove that consent had been given for the existing flooring. Toby appeared for the successful landlord. Judgment can be viewed here.
- **Monk v Gillespie** (REF/2020/0287) - Toby appeared unled for the successful Applicants in a two-day trial in the FTT (Land Registration Division), in which Oliver Radley-Gardner Q.C. acted for the Respondents. The Applicants successfully established that they had been in adverse possession of part of a field and that they had reasonably believed that it belonged to them for at least 10 years of the period of adverse possession ending on the date of the application. The Respondent's argument that the nature and relative quantity of the disputed land was such that the mistake could not be regarded as a mistake as to the boundary was rejected.
- **Eventuate Capital Ltd v Grosvenor Estate Belgravia** (E02CL652) - Toby acted for the successful Defendant landlord in the County Court at Central London sitting at 10 Alfred Place under one of the first unopposed business lease renewal claims to proceed to trial under the County Court and First-tier Tribunal Unopposed Business Lease Renewal Pilot Scheme (cf White Book 56.LT).
- **Great Dunmow Estates Ltd v Crest Nicholson** [2019] EWCA Civ 1683. (jurisdiction of expert pursuant to expert determination provision in development agreement and whether parties bound by surveyors' statement of agreed facts).
- **VEEE Ltd v Barnard** [2018] UKUT 379 (LC). Toby Boncey appeared on behalf of the successful applicant property developer, which applied to the Upper Tribunal under s.84 of the Law of Property Act 1925 to discharge/modify restrictive covenants which would have prevented its proposed development of an end terrace corner plot. The first covenant required the approval of plans by the original developer of the estate. That covenant was discharged under ground (a), the Tribunal finding that it was obsolete since the original developer had been dissolved. The second covenant, a covenant permitting use of the plot as a dwelling house in the occupation of one family only, was modified under ground (aa) to permit the construction and use of an additional dwelling house, the Tribunal rejecting the objectors' case that the covenant secured practical benefits to them of substantial value or advantage.
- **Chehab v Cadogan Estates Ltd** [2018] UKUT 0282 (LC). Toby appeared for the respondent in this appeal concerning the appropriate treatment of comparables in a rent determination under s.14 of the Housing Act 1988.
- **Marquis Court (Kingston) Ltd v Gehring & Geake** (Kingston County Court 21 August 2018). Toby acted for the successful landlord, arguing that the tenants' notices under s.42 LRHUDA 1993 were invalid, having specified a premium of "nil" (which was not the premium which the tenants proposed to pay under Chapter 2) and a term of 999 years. The tenants unsuccessfully argued that "nil" was a premium that they proposed to pay, the tenants in the block having previously been offered 999 year leases at no premium.
- **Parkes v Wilkes** [2017] EWHC 1556 (Ch); [2017] 4 W.L.R. 123: Toby appeared for the appellant in this TOLATA appeal concerning whether the appellant co-freeholder should be granted an extended lease at a nil premium following a collective enfranchisement. Birss J accepted that under s.14(2) of TLATA 1996, the court can make any order it thinks fit that relates to the exercise by the trustees of any of their powers, which could include requiring the grant of a new lease to one co-owner at a nil premium. The

trial judge's refusal to order the same was not overturned on the facts.

- **Chote & Kaur v Clarise Properties Ltd, Re 240 Calshot Road** (BIR/00CN/OAF/2016/0013): Toby appeared for the Applicant tenants in the FTT in Birmingham in this case which concerned how the guidance in Clarise Properties Ltd v Rees [2017] EWCA Civ 1135 should be applied when determining the price payable under s.9(1) of the Leasehold Reform Act 1967.
- **Burton & Anor v Bowdery & Ors** [2017] EWHC 208 (Ch). The Claimants amended their claim against the First and Second Defendants to include an alternative claim for breach of warranty of authority against the Third Defendant conveyancing solicitor, after the expiry of the primary limitation period. Toby appeared for the successful Claimants, successfully opposing the Third Defendant's application to set aside the Order joining him, on the basis that the claim against the him was a "claim made by way of third party proceedings" within the meaning of s35(1)(a) and (2) of the Limitation Act 1980 and accordingly his limitation defence would not be prejudiced by joinder.
- **Hewitt & Gould v Barakat** (Brighton County Court): Toby acted in a 4-day trial for the successful claimants who were awarded injunctive relief and damages (including negotiation based, aggravated and exemplary damages) for nuisance and trespass in respect of development work which had blocked their right of way.
- **Aroma Entertainment Limited v Peer Securities Limited** (Croydon County Court 30 November 2016). The parties had entered into a consent order providing for the tenant to be relieved from forfeiture on compliance with certain conditions by March 2016. Toby appeared for the successful tenant in its application of November 2016 to extend time for compliance with the order, the tenant having failed to remedy two of the items in the schedule to the order to the Court's satisfaction by the deadline.
- **Honeywell Control Systems Ltd v The Attorney General of the Duchy of Lancaster:** Toby acted for the successful Claimant company in the Chancery Division of the High Court (Manchester District Registry) in this application for a vesting order under s44 Trustee Act 1925 based on a vendor-purchaser constructive trust.
- **BCH v Beyene:** Toby represented the successful Claimant in a trial at Willesden County Court involving rent arrears, an implied contract of bailment and alleged unlawful eviction.
- **96b High Street, Colliers Wood, London SW19 2BT (LON/00BA/OLR/2015/1162)**: Toby successfully argued on behalf of the Respondent that the First-Tier Tribunal had no jurisdiction under s48(1) of the 1993 Act to determine the terms of a new lease where none of the "terms of acquisition" remained in dispute. The tenant had agreed the only disputed term of acquisition, namely the premium, after making her application, then later sought to amend her application to seek exclusion of a further term from the existing lease following provision of a draft new lease, despite failing to mention her intention to exclude that term in her notice of claim.
- **Eastern Quay Apartments, 25 Rayleigh Road (LON/00BB/LVT/2015/0007):** Toby successfully argued that leases which did not provide for full recovery of service charge across a block of flats should be varied by grossing up the existing service charge percentages, not by recalculating the service charge proportions based on square footage.
- **10 Georgian Court (LON/00AM/OLR/2015/0712):** Toby successfully resisted an attempt by a tenant in the First-tier Tribunal (Property Chamber) to use s57 of the Leasehold Reform, Housing and Urban Development Act 1993 to replace a management company which was party to a lease but which had been dissolved with a new management company.
- **GRIP NOMCOs 1 and 2 Ltd v McCullagh:** Toby represented the successful Claimants in a trial in Brentford County Court concerning arrears of rent, successfully defeating a counterclaim arising as a result of periodic renewal works on a block of flats.
- **Uruakpa v Wright:** Toby represented the Defendant in a 2-day trial about the Defendant's occupation status in the County Court sitting at Barnet and Uxbridge. Toby successfully established that the Claimant's agent had misrepresented the effect of the tenancy documentation signed by the Defendant.

Publications

- *Bona Vacantia and Escheat: Law and Practice (forthcoming)*
- *Land Injunctions* (1st edition, June 2026)
- Pandemic-related rent arrears: liability, costs and arbitration, L. & T. Review 2022, 26(3), 85-92
- View from the bar: Protesting too much? Article with Guy Fetherstonhaugh QC (first published in Estates Gazette 3 May 2022)
- Schrödinger's Notice: Serving the Dead, L. & T. Review 2021, 25(1), 30-35
- The Pubs Code in the spotlight - it is High (Court) time! (Part 1) L. & T. Review 2020, 24(5), 197-200 (Part 2) L. & T. Review 2020, 24(6), 228-232 (with Jonathan Karas QC and Adam Rosenthal QC)
- *The Electronic Communications Code and Property Law: Practice and Procedure* (1st edition, September 2018) - contributing author
- "A New Line of Attack?". A Masterclass in litigation under the new Electronic Communications Code. Article with Stephanie Tozer (first published in NLJ July 2018)
- "Lease or licence in the commercial context" L. & T. Review 2018, 22(4), 147-152
- "Common intention" constructive trusts arising from informal agreements to dispose of land.Toby Boncey and Francis Ng. Conv. 2017, 2, 146-157
- "Sign of Protest" - article with Anthony Tanney for Solicitors Journal, considering how landowners can prevent the creation of easements of parking over their property in light of Winterburn. September 2016
- "Who let the dog bark? When is an absentee owner and "occupier" in nuisance? (2016) 20(3) L&TR 92
- "Homeward Bound" (2016) 166 NLJ 12 (27 May 2016 edition)
- Implied terms: from "characteristically inspired discussion" to authoritative guidance (Case comment) L. & T. Review 2016, 20(1), 4-12 (with James Tipler)
- Deregulating deposits: further regulation of the protection of tenancy deposits and section 21 notices in the Deregulation Act 2015 L. & T. Review 2015, 19(3), 90-96
- The valuation exercise under section 28 of the Housing Act 1988 (Case Comment) Citation: L. & T. Review 2015, 19(1), 24-27
- Article 8 defences to possession claims - Citation: I.H.L. 2014/15, 226(Dec/Jan), 34-36 (with Tricia Hemans)
- Case Comment: Re St Andrew's (Cheam) Lawn Tennis Club Trust, Trusts & Trustees (2014) 20 (3): 287-294 (with Francis Ng). A pdf of the article is available here
- A flexible approach to s.25(1) of the Landlord and Tenant (Covenants) Act 1995, L. & T. Review (2014) Vol.18 No.6 Pages 232-236
- Toby has also worked as a research assistant for Professor Ben McFarlane, working on the books The Law of Proprietary Estoppel, The Restatement Third: Restitution and Unjust Enrichment and Snell's Equity.

Published Comments

"Toby's advocacy was polite and concise, and he managed to present things in a way that made the outcome clear." *Chambers and Partners UK Bar Guide 2027 (Real Estate Litigation)*

"Toby is incredibly thorough; he investigated every point down to the last detail and was very helpful and insightful. He went above and beyond what I would have expected." *Chambers and Partners UK Bar Guide 2027 (Real Estate Litigation)*

"Toby is very practical and gets stuck in. He drafted pleadings and was great to work with..." *Legal 500 UK Bar*

Guide 2027 (Property Litigation)

"Toby is exceptionally bright. He has incredibly good legal knowledge and is an extremely good advocate." *Chambers and Partners UK Bar Guide 2026 (Real Estate Litigation)*

"Toby has excellent attention to detail." *Chambers and Partners UK Bar Guide 2026 (Real Estate Litigation)*

"He is a very good advocate." *Chambers and Partners UK Bar Guide 2026 (Real Estate Litigation)*

"Toby's significant strength is his absolute meticulous attention to detail. Nothing gets past Toby." *Legal 500 UK Bar Guide 2026*

"Toby Boncey is forging a reputation as an expert property junior with authority beyond his year of call. His practice covers both commercial and residential property disputes, including enfranchisement, restrictive covenants and valuation matters." *Chambers and Partners UK Bar Guide 2025 (Real Estate Litigation)*

"Toby has a excellent grasp of the detail in cases, which makes him a very incisive advocate." *Chambers and Partners UK Bar Guide 2025 (Real Estate Litigation)*

"He leaves no stone unturned and manages to distill technical points into easily understandable terms." *Legal 500 UK Bar Guide 2025*

"Toby is a tenacious advocate, offering a very careful analysis of every detail of the case."

"Toby has a keen intellect and is incredibly thorough." *Chambers and Partners UK Guide 2024 (Real Estate Litigation)*

'Toby clearly has a very sharp intellect. He researches thoroughly and comes across cogently and very well prepared.' *Legal 500 UK Bar Guide 2024*

'Not only does he possess an extensive and detailed knowledge of the law, but Toby's defining skill is to then step back and consider matters commercially. ' *Legal 500 UK Bar Guide 2023*

Toby Boncey is forging a reputation as an expert property junior with authority beyond his year of call. His practice covers both commercial and residential property disputes, including enfranchisement, possession and valuation matters. "He is a very good advocate." "He is very thorough, excellent with clients and good on his feet in cross-examinations." "He is very detailed and diligent." *Chambers and Partners UK Guide 2022 (Real Estate Litigation)*

' An excellent advocate who is calm when under pressure and when things do not go to plan. He shows a calm approach above his call which clients have greatly appreciated. ' *Legal 500 UK Bar Guide 2022*

Forging a reputation as an intelligent and thorough junior with authority beyond his year of call. His practice covers numerous issues including enfranchisement and possession claims. Strengths: "Very thorough, excellent with clients, good on his feet in both cross-examination and legal argument." "Very responsive and on top of the detail." *Chambers and Partners UK Guide 2021 (Real Estate Litigation)*

"Toby is very focussed on detail. He really knows the law inside out and you have complete confidence in his advice. He is a gentle and steady advocate, not brash or loud, comes across confidently in the court room. He is very good with clients." *Legal 500 UK Bar Guide 2021*

Forging a reputation as an intelligent and thorough junior with authority beyond his year of call. His practice covers numerous issues including enfranchisement and possession claims. Strengths: "He leaves no stone left unturned – the attention to detail is phenomenal." "Provides fantastic results." Recent work: Acted in an appeal concerning the appropriate treatment of comparables in a rent determination under Section 14 of the Housing

Act 1988. *Chambers and Partners UK Guide 2020 (Real Estate Litigation)*

"Forging a reputation as an intelligent and thorough junior with authority beyond his year of call. His practice covers numerous issues including enfranchisement and possession claims. Strengths: 'Incredibly switched-on and has an impressive CV.' 'Quick to grasp the facts and good attention to detail. A cool head in the face of last-minute changes'." *Chambers UK Guide 2019 (Real Estate Litigation)*