

Andrew Francis

Door Tenant | Call 1977

"Has a fine reputation at the Bar for his dedicated property litigation practice. He is acknowledged for his work in restrictive covenants and rights to light."
Chambers & Partners

EXPERTISE

Andrew's practice has an emphasis on real property law. He is recognised as a leading authority on the law of restrictive covenants affecting freehold land, and on the law of rights of light. He has been instructed in many of the major cases in these areas of law in the last two decades. He is the author, and also the co-author of text books on covenants, rights of light and private rights of way.

Professional Negligence

Andrew's experience in his fields of chancery work allows him to examine, advise upon and conduct claims where professional negligence issues arise. The particular areas of his expertise in easements and covenant law lead him to being called in where there may have been negligence by professional advisers such as counsel, solicitors, surveyors and valuers.

Property - generally

The main areas of Andrew's expertise in the law of real property are restrictive covenants affecting freehold land, rights of light, private rights of way and other easements and boundaries and party walls. His publications (see below) on the first three topics demonstrate his very high degree of knowledge and experience in these three fields in particular. These are very much "niche" areas of work in which he pre-eminent as a barrister. He was a member of the Law Commission's Advisory Board on the reform of the law of easements and covenants which led to the Report and draft Bill published in June 2011. He was also a member of the Law Commission's Advisory Board which examined the reform of rights of light and remedies for their breach, which led to the Report and draft Bill published in December 2014.

Specific Property Expertise

Within the area of restrictive covenants affecting freehold land he has specific expertise in applications to discharge, or modify such covenants in the Upper Tribunal (Lands Chamber) under s. 84(1) Law of Property Act 1925.

He advises on the validity and enforceability of trading covenants within Chapters I and II of the Competition Act 1998 and under the principles relating to unlawful restraint of trade; see below.

Within the field of restrictive covenants and other property rights and obligations such as rights of light, he works closely with the specialist Indemnity Insurance market, where he is asked to advise, and in contested claims, represent, the insured. In many other cases he will advise insurers and brokers on the risk of claims before indemnity policies are issued.



Expertise

Business & Commercial
Litigation

Property

Consumer Law & Professional
Negligence

Clerking team



Paul McNab
Civil & Criminal Silks'
Clerk
0113 3235 955



Steve Walker
Lead Civil Clerk
0191 245 9589



Josh Stewart-Tilling
Lead Employment Clerk
& Civil Clerk
0191 300 9359



Aimee Bloxham
Civil Clerk
0191 245 9556

His work also includes advice and advocacy in registered land disputes, in the First-tier Tribunal, Property Chamber and in the County Court and High Court on matters such as boundaries, easements, adverse possession and other title issues.

As much of his work is either non-contentious, or if contentious, the dispute settles, his expertise is often not in the public domain. Because of this long experience in covenant and rights of light cases he has a comprehensive knowledge of City Centres (London, Leeds, Manchester etc.) and other locations such as residential estates, both as to the present and also their history in terms of development. This means that he can recognise locations where either he has worked before (often spotting potential conflicts of interest) or where Courts and Tribunals have decided cases affecting those locations.

Competition & State Aid

The interface between restrictive covenants over land in England and Wales which restrict competition and the Competition Act 2008 and Articles 101 and 102 of the Treaty on the Functioning of the European Union, requires Andrew's advice to be sought on such covenants. These covenants may be void under the relevant law in force since 6th April 2011. His consideration of the ECJ decision in *Groupement des cartes bancaires* (September 2014) as applicable to land agreements potentially within Chapter I Competition Act 1998 has been published in the European Law Reporter (2014 no. 12). Competition law and the effect of that law on land covenants in England and Wales will not be changed to any real extent post BREXIT. The new Chapter 21 in the new edition of Andrew's book on restrictive covenants (see below under publications) deals with this important aspect of land law which is often either overlooked, or misunderstood. This aspect of the law is now being brought into sharp focus by the effect of the Covid pandemic on retail businesses and the consideration of changes of use where trading covenant issues arise, and also in the light of the decision of the Supreme Court in *Peninsular Securities Ltd. v Dunnes Stores (Bangor) Ltd.* on 19th August 2020 which changes the law of restraint of trade where applicable to trading and other such covenants.

WHAT OTHERS SAY

Andrew is recommended in:

- Real Estate (Who's Who Legal, 2020)
- Private Client: Trusts and Probate (The Legal 500)
- Property Litigation (The Legal 500)
- Real Estate Litigation (Chambers & Partners)
- Real Estate (Who's Who Legal: UK Bar)

MEMBERSHIPS

- Chancery Bar Association
- Property Bar Association
- Pyramus & Thisbe Club (Party Wall Surveyors Society)
- Former member of Ministry of Defence Research Ethics Committee
- Appointed to the Independent Scientific and Technical Advice Register (ISTA) (Ministry of Defence)
- Former member of Law Commission's Advisory Board on Rights of Light Remedies Reform
- A Master of the Bench of Lincoln's Inn

LECTURES & SEMINARS

Andrew is a regular contributor to conferences, seminars and webinars.

PUBLICATIONS

Articles

"Compare & contrast: three lessons from the courts on covenants" – (New Law Journal) (19 June 2020)

"Trouble with rights of light" – (New Law Journal) (24 April 2020)

"Seeing the light through the trees" – (New Law Journal) (31 May 2019)

"The impact of the Morris-Garner v One Step' (Support)" – (Estates Gazette) (May 2019), a joint article with Emma Humphreys from Charles Russell Speechlys Law

'What is it worth?' – (Property Law Journal) (July/August Edition 2018)

'How builders can banish the covenant problem' – (New Law Journal) (1 June 2018)

'Modifying Restrictive Covenants Leads to Unlocking Value' (Property Investor News) (March Edition 2018)

Books

'Restrictive Covenants and Freehold Land - a Practitioner's Guide' (LexisNexis) (5th Edn., 2020).

'Rights of Light - The Modern Law' (Lexis Nexis) (3rd Edn., January 2015) (with Stephen Bickford-Smith and Tom Weekes). New 4th Edn., due December 2020

'Private Rights of Way' (Jordans) (1st Edn., 2012) (Andrew Francis and three Co-Authors).

'Inheritance Act Claims' (LexisNexis) (Looseleaf: updated twice-yearly). Andrew Francis, Miranda Allardice, Keith Gordon and Eleni Dinenis.

EDUCATION

Oxford University (Keble College) 1973-1976. First Class Honours in Jurisprudence (BA) 1976. M.A. (1998).

Called to the Bar (Lincoln's Inn) November 1977.

ADDITIONAL INFORMATION

Authorised by the Bar Standards Board to accept instructions under the Public Access rules.

What Others Say

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"Has a fine reputation at the Bar for his dedicated property litigation practice. He is acknowledged for his work in restrictive covenants and rights to light, and is also recognised for his knowledge of party wall law. He has authored a number of significant texts on property law." "Very helpful, good with clients and very easy to pick up the phone and have a chat to." "As well as being hugely knowledgeable, he was responsive and delivered commercial advice."

Chambers & Partners 2021

"one of the leading experts on restrictive covenants; serving as the author of the leading text on the subject"

Legal 500 2021

"A highly regarded junior"

Legal 500, 2021

"He has a real grasp of property law and the technical aspects of real property disputes." "His strengths are his depth of knowledge coupled with his ability to get points across very well." "He is very precise and measured."

Chambers & Partners 2020

"Highly recommended, particularly in the fields of restrictive covenants, rights of light and land ownership disputes"

Chambers & Partners 2019

"He has expertise in covenants and rights of light"

Legal 500 2019

"Very knowledgeable, approachable, helpful and always willing to go out of his way to assist"

Chambers & Partners 2018

"The go-to man for right to light cases." "He's the first port of call on restrictive covenant disputes"

Chambers & Partners 2017

"Highly recommended for rights of light issues"

Legal 500 2017

"His advice is concise and helpful." "He's incredibly knowledgeable and very able"

Chambers & Partners 2016

"He is erudite, detailed and logical"

Chambers & Partners 2015

Notable Cases

Briant v Baldacchino [2020] Upper Tribunal (Lands Chamber)

Application to modify restrictive covenant over land where the importance of the effect of different planning consents on the application land and their impact on the objector's property was stressed.

Heaney v Kirkby [2018] [2019] (Leeds Business and Property Court. D.J. Claire Jackson and Barling J.)

Court striking out the Claimant's claim based on tortious conspiracy and other allegations as an abuse of the process of the Court. This claim is related to the decision in *Kirkby v Heaney* (below).

Hancock v Scott & Ors. [2019] UKUT (LC)

Application under s. 84(1) Law of Property Act 1925 in Upper Tribunal (Lands Chamber) to modify covenants over land near Caversham to allow new houses to be built, with an important discussion in the Tribunal's decision on certain aspects of the grounds for applications under s. 84(1) and on costs.

Thomas Pocklington Trust v Aikman & Ors. [2018] UKUT 256 (LC)

Successful application under s. 84(1) Law of Property Act 1925 in Upper Tribunal (Lands Chamber) to modify covenants over land at Northwood to enable development for flats on cleared site.

Lamble v Butacci. [2018] UKUT 175 (LC)

Successful application under s. 84(1) Law of Property Act 1925 in Upper Tribunal (Lands Chamber) to modify covenants over land near Woking to enable development for new replacement house and garage within curtilage of private land in Surrey Green Belt.

Re Theodossiades' Application [2017] UKUT 461 (LC).

Successful application under s. 84(1) Law of Property Act 1925 in Upper Tribunal (Lands Chamber) to modify covenants over land at Elstree to enable development for flats after demolition of the existing house.

Re Waggott's Application [2017] UKUT 0108 (LC).

Successful application to discharge restrictive covenant to allow change of use of building in Wantage from offices to residential, despite opposition from adjoining Chinese Take-Away Restaurant owner concerned over complaints about smells and noise from his restaurant from the future residential occupiers.

Kirkby v Heaney [2016] Court of Appeal.

Upholding decision of Upper Tribunal [2015] UKUT 178 (TCC) on principles applicable to claims to adverse possession of land and s. 9(5) Land Registration Act 2002 and on certain aspect of appeals from the First Tier Tribunal to Upper Tribunal in Land Registration cases.

Scott v Winter [2015] (Newcastle Upon Tyne County Court Business List)

Decision applying the principles set out by the Supreme Court in *Lawrence v Fen Tigers* (2014) in claim seeking a mandatory injunction to pull down property built in breach of a restrictive covenant.

Kirkby v Heaney [2013] (Chancery Division, Leeds)

Decision refusing permission to appeal from Adjudicator to Her Majesty's Land Registry considering jurisdiction as between resolution of disputes by the Adjudicator (now the First Tier Tribunal) under Land Registration Act 2002 and proceedings for the same relief in the High Court.

Re George Wimpey Bristol Limited's Application [2011] UKUT 91 (LC)

Application to modify covenants under S. 84(1) Law of Property Act 1925. The importance of the Applicant's conduct and the discretion of the Tribunal.

HXRUK II (CHC) Ltd v Heaney (Re Cloth Hall Court) [2010] (High Court, Leeds)

Injunction and damages for interference with rights of light.