

Neil Fawcett

Year of Call: 2006



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Neil Fawcett practices primarily in the fields of Property, Banking and Financial Services and General Commercial Litigation. He is experienced in representing companies and individuals most often in the High Court and county courts, having appeared and advised in multi-day trials in the High Court and in complex multi-million pound property and commercial litigation and has wide experience of appellate advice and advocacy.

Neil has an excellent grasp of the complexities of property and mortgage/guarantee law in particular, as well as substantial knowledge of civil procedure and is known for thorough preparation, hard work and robust advocacy in the cases he is involved with.

Neil has worked closely with numerous solicitors acting on behalf of SME's seeking claims for Business Interruption Insurance following COVID-19 and has written ["A practical guide to Business Interruption Insurance – Published by Law Brief Publishing"](#).

He has written for LexisNexis, publishes legal articles at commercial-bar.co.uk and gives seminars/lectures regularly.

Property and Estates

Neil acts for individuals, private companies and public bodies in relation to commercial property disputes, including multi-day High Court and County Court trials and experience of trials in the property tribunal.

He handles litigation relating to securities over real property, in particular, the law relating to mortgages and charges over registered land especially in connection with banking and finance work.

Reported case:

G & A Properties (UK) Ltd v Rolland [2015] EWHC 939 (Ch) (23 January 2015)

Practice areas:

- Mortgages and Charges over Land (including charging orders and tracing sale proceeds).
- Possession claims.
- Landlord and Tenant (including business tenancies).
- Land Registration (including litigation relating to notices, restrictions and priorities).
- Contracts for sale of land.
- Adverse Possession.
- Easements and Restrictive Covenants.
- Trusts of Land (including claims for beneficial interests, actions by beneficiaries to remove/replace trustees).

- Insolvency issues in the real property context.
- Commercial developments and building disputes.
- Agricultural holdings.
- Leasehold enfranchisement.
- Fraudulent property schemes and “sale-and-rent-back” litigation.
- Advice in multi-million pound overage litigation for property developers.
- Defending claims against pub landlords under leases with breweries.
- Construction contracts (e.g. advice for developers of residential blocks in Birmingham City Centre regarding flood damage).

Commercial

Neil is an experienced commercial litigator, specialising in disputes involving high value contracts, as well as company, partnership and LLP law and claims against professionals.

- **Freezing Injunctions** in the Commercial Court to secure compliance with contractual obligations.
- **Partnership litigation**, including disputes within the financial, legal and construction sector. He has advised on the full panoply of disputes that can arise including dissolution, partitions, buy-outs. Claims under the Partnership Act 1890 and detailed accounts and inquiries.
- **Agency of all types**, but particularly in relation to banking and financial services, the parties Debtor-creditor-supplier Consumer Credit Act agreements and professional agency.
- **Commercial and business contracts**, especially where contentious issues have arisen to do with construction of terms, formation, breach and termination, the adequacy of consideration, the law of compromise, penalty and exclusion clauses, misrepresentation, mistake, fraud, forgery, estoppel arguments, assignment and the imposition of trusts and fiduciary duties.
- **Contracts for the sale of goods and services**, and construction specific contracts with specific experience with in the engineering and technology sectors.
- **General credit and security matters** including commercial asset-finance agreements, consumer-credit agreements, hire-purchase agreements, conditional-sale and credit-sale agreements involving complicated litigation over the construction of such agreements and claims for delivery-up, following and tracing.
- **Bills of exchange and banking contracts**, dealing especially with the relationship between banker and customer, the duties of bankers, bank-mandates and breach-of-mandate claims, overdrafts, interest and charges, the payment of cheques, direct-debits and principles governing countermand, joint accounts and the effect of partnerships and their dissolution on contracts of banking.
- **Enforcement** or challenging contracts of suretyship (guarantee and indemnity clauses), dealing with defences thereto, discharge of sureties and construction of clauses as either guarantees, indemnities or letters of comfort.

Business

Neil has acted on a wide range of litigation for banks/financial institutions as well as for companies and sometimes individuals defending banking and possession claims against them.

His experience covers all aspects of banking litigation in addition to drafting pleadings and attending directions hearings, application hearings, including for summary judgment and strike-out and attending trials and appeals, often where there are complex or highly technical issues of law to be resolved on the multi-track in the High Court or County Court.

Practice areas:

- Mortgages and Charges over Land.
- Possession claims.
- Claims based on undue influence, duress and fraud (especially involving problems with possession orders arising under *Albany Homes v Massey*).
- Land Registration (including detailed advice regarding notices, restrictions and priorities).
- Consumer Credit Act claims.
- Mis-selling claims and other breaches of MCOBS by mortgage lenders.
- Claims under indemnity and guarantee agreements.
- Breach of mandate claims.
- Defending negligence claims against banks.
- Recovery of overdrafts and loans.
- Professional negligence actions against conveyancing solicitors in mortgage cases.
- Hire-purchase, leasing and conditional-sale agreements.

Neil Fawcett is qualified to accept instructions directly from members of the public and professional clients under the Direct Access (or Public Access) scheme.

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Education

BSc (Hons) in Chemistry, University of Birmingham
Graduate Diploma in Law, University of Birmingham
Bar Vocational Course, Inns of Court School of Law, London

Professional Memberships

Deputy District Judge, 2015
Called to the Bar, Lincoln's Inn, 2006

Property Bar Association

Notable Cases

Recent cases and advice

G & A Properties (UK) Ltd v Rolland [2015] EWHC 939 (Ch) (23 January 2015)– A

substantial breach of contract and fraud claim regarding a fraudulent property investment scheme, successfully defended, with findings of fraud after cross-examination of the claimant.

Pycom Ltd. v Campora, Embedded Consulting B.V and Remote Tech Ltd. [2020] EWHC 677 (Ch)– An ongoing claim for copyright infringement, breach of contract, theft of confidential information and trade secrets regarding Internet of Things development circuit boards.

Rockliffe Hall Ltd v Travelers Insurance Co Ltd. [2021] EWHC 412 (Comm); [2021] 2 WLUK 390– “the leading authority on “closed list” disease clauses in business interruption insurance.”

Advice for the Central Office for Public Interest on air-pollution and the residential property market with Jessica Simor QC

Anthony v Meacher-Jones & Co Ltd. A3/2021/0929– Successfully defending a High Court claim under s.263 of the Companies Act 2006, and the subsequent appeal.

P v B and Ors– A complex ongoing High Court partnership dispute, acting for three defendants in a multi-million pound partnership dispute by a former partner against the remaining partners in a property development business, involving a fourth party without mental capacity.

Broderick v Broderick– An high-value partnership claim in the High Court, acting for a famous sculptor and his wife via her litigation friend against their son in a dispute relating to ownership of works of art.

Nuneaton & North Warwickshire Riding for the Disabled Association v Nuneaton & Bedworth Borough Council (2014), 3BM30531– Representing the local authority in a case receiving substantial local publicity in a claim brought by a charity in the High Court seeking a new business tenancy, rectification of a deed of trust entered into by the charity trustees and involving complex legal argument on amendment of a statement of case under CPR 19.5 outside a statutory limitation period under the Landlord and Tenant Act 1954.

Maddox Club v AXA Insurance Plc– A Claim in the High Court in a £6,000,000 business interruption insurance claim.

Advising in a business interruption insurance claim in 2021 relating to over £650 million of insured revenue for a major national chain.

Advising in a multi-million pound business interruption insurance claim on behalf of a football club in 2021

Advising a property developer and lender on the validity and content of secured loan agreements and its duties under FSMA 2000 to enable the company to enter into and fund joint venture agreements worth between £1 million and £2 million.

T v S and D (2016)– High value partnership dispute in the High Court between family members involving fraudulent transfer of properties and forged documents.

(2020)– Ongoing advice for an equity release company on its duties under FSMA 2000, the Mobile Homes Act and Bills of Sale Acts including drafting of loan agreements and agency agreements relating to its new business in raising capital from mobile homes agreements.

Bellrock Property & Facilities Management Ltd. (2014)– High Court claim, including drafting advice and pleadings regarding a several hundred thousand pound commercial contract for the supply of management services in a dispute about overcharging and record-keeping.

Kaushal v The Northwest Fund for Business Loans LLP (Acting by NW Loans Ltd. as General Partner) HC-2016-001194 (2016)– A successful application for summary judgment/strike-out of a misrepresentation claim arising from a multi-million pound commercial settlement agreement between a loan company and a bankrupt based on a dispute about insolvency jurisdiction/COMI, heard before Master Clarke.

Advising a well-known property developer on his liability to pay under an overage agreement in building a housing estate on land outside Derby, worth roughly £15 million, involving interpretation of the agreement, and advice as to the validity of the title of the potential claimant.