

Richard Fowler

Call 2003

rfowler@maitlandchambers.com



Richard has a busy commercial chancery practice. Directories describe him as having “great powers of persuasion and enormous intelligence” and “a superb grasp of all things property”. He has extensive experience of large and technically demanding cases, both led and unled. Most of his work falls within the fields of commercial litigation, real estate disputes, civil fraud and company / trust / partnership claims; he also has expertise in insolvency law, wills and probate cases and property-related professional negligence claims.

Recent / current notable cases include:

- Advising a major crypto-currency exchange in relation to claims arising from a substantial alleged fraud by its payment processor
- Successfully defending the UK directors of a boutique international financial consultancy against a fraud claim by a Mauritanian company
- Acting for a financial services company in a claim against a delinquent director for diverting a high-value commercial opportunity arising from a bond issue backed by European real property assets
- Acting for a multinational supermarket chain in a contractual dispute with a property developer over a major proposed development in the Midlands

Important past cases include:

- Acting for the claimants in *Holyoake v Candy*, a high-value and high-profile conspiracy claim arising from the failure of a prestigious property development in central London, described by *The Lawyer* as one of its Top 20 cases of 2017 and by *EGi* as “the property trial of the century (so far)”. The interim stages produced the first reported cases on the “notification injunction”, a variant of the freezing injunction
- *Progress Property Co Ltd v Moorgarth Group Ltd*: represented the (successful) defendant up to the Supreme Court in an important company law case on *ultra vires* and breach of directors’ duties
- Instructed by the claimant in a very high-value solicitors’ negligence claim arising out of the development of The Shard at London Bridge
- *Achom v Lalic*: trial of claims relating to the ownership of a noted Mayfair nightclub
- Acted for the administrators in a series of property / insolvency cases arising from the rescue of the Blacks high-street retail chain

Most of Richard's cases are in London's Business and Property Courts (Chancery Division and Commercial Court), but he also appears regularly in other courts in England and Wales and has experience of work from other jurisdictions as well (notably the Channel Islands and the Middle East).

The clerks are happy to discuss the basis on which Richard will act in any given matter. In the absence of express written agreement otherwise, the terms under which Richard accepts instructions are The Standard Contractual Terms for the Supply of Legal Services By Barristers to Authorised Persons 2012 (as updated from time to time) referred to in the BSB Handbook.

Areas of practice

Commercial Litigation

Richard has acted in a wide range of commercial cases, including heavy and high-value claims. He is particularly valued for his ability to take on cases which cross multiple fields of expertise, and many of his commercial cases involve disputes over property rights, property development or property-backed assets. He also has experience of litigation in the growth areas of fintech and crypto-currencies, in relation to financial products generally, and in the music and entertainment industries. He has broad expertise in seeking (and resisting) interim remedies in these fields (see Civil Fraud for details).

Sample cases:

- Advising and representing a large crypto-currency exchange in claims relating to a substantial alleged fraud by its payment processor.
- Representing a group of pharmaceutical companies in contractual claims arising from the collapse of a joint venture.
- Acted for an asset management company in a claim against a director for allegedly diverting a substantial business opportunity for his own benefit. The opportunity arose from the issue of exchange-traded notes (ETNs) backed by European real property assets.
- *Holyoake v Candy* [2017] EWHC 3397 (Ch): nine-week trial in the Chancery Division concerning an alleged tortious conspiracy in relation to a prestigious central-London property development; damages were pleaded at £132 million. The trial was described by *The Lawyer* as one of its Top 20 cases of 2017. The interim stages yielded significant judgments on freezing and notification injunctions, abuse of process, ATE insurance policies and loss of w.p. privilege (led by Anthony Trace QC and Roger Stewart QC).
- Acted for a Canadian investment company in claims against its lead lender following defaults on syndicated loans made to London property developers.
- *Achom v Lalic* [2014] EWHC 1888 (Ch): eight-day trial in the Chancery Division of claims relating to the ownership of a high-profile Mayfair nightclub, also involving partnership and property law issues.
- *Tilga v Doolan*: acted for an American businesswoman in multi-million pound proceedings against her English financial adviser, involving claims in deceit, alleged misappropriation of assets, constructive trusts, a freezing injunction and jurisdictional issues (led by Richard Morgan QC).
- Advised a Dubai company in a large contractual dispute over the supply of aviation fuel.
- Acted in litigation between a property investor and a large construction company arising from a sale and leaseback agreement involving the builder's show-homes (led by Edwin Johnson QC).
- *Progress Property Co Ltd v Moore et al* [2008] EWHC 2577 (Ch): 14-day trial arising from the restructuring of the property subsidiaries of a substantial retail group, involving allegations of breach of a director's duties, a claim that a sale of a subsidiary was *ultra vires* a company and disputed commercial property valuations, together with contractual claims arising from a share purchase agreement (led by John McGhee QC).
- *KPMG LLP v Network Rail Infrastructure Ltd* [2006] EWHC 67: trial of claims relating to the construction / rectification of the break clause in the lease of a large office building at Puddle Dock, Blackfriars, London (led by Hazel Williamson QC).

Real Estate Litigation

Richard advises and litigates on a wide range of property matters, primarily high-value disputes between developers, commercial landlord and tenant claims, and mortgage actions and other lender claims. He has extensive experience of commercial service charge claims, dilapidations, disputed lease forfeitures, break notice disputes and 1954 Act claims, as well as cases concerning easements and covenants. He has also worked on nuisance and property damage disputes and the associated insurance law issues, and on the Electronic Communications Code and its implications for property litigators.

Sample cases:

- *Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd* [2019] EWHC 3414 (Ch): acting for a property company in litigation over disputed service charges against its tenant, a large sports / outdoor retail chain.
- Representing a multinational supermarket chain in a contractual dispute with a property developer over a major proposed development in the Midlands (led by Timothy Dutton QC).
- *Holyoake v Candy* [2017] EWHC 3397 (Ch): nine-week trial in the Chancery Division concerning an alleged tortious conspiracy in relation to a prestigious central-London property development, described by *EGi* as “the property trial of the century (so far)” (led by Anthony Trace QC and Roger Stewart QC).
- Advised a large national brewing / pub / restaurant chain in a rent review arbitration against its landlord in relation to substantial premises in Leeds, and in a connected professional negligence claim against its former solicitors.
- Instructed in an arbitration over the dissolution of a valuable farming partnership in Yorkshire.
- *Eastbury Developments Ltd v Tudor Property Agents* (2012), (2013): acted for the (successful) defendants / respondents at trial and in the Court of Appeal in a contractual dispute over the redevelopment of a former US Air Force base in Norfolk.
- Acted in litigation between developers relating to a large property development in Guildford, involving breach of contract and rectification claims (led by John McGhee QC).
- *Rigsby Asset Management Ltd v Rigsby (New Homes) Ltd* (2012): instructed by the successful defendant (acting by LPA receivers) in a three-day trial involving claims for damages for wrongful forfeiture and relief from forfeiture of a lease of commercial premises in Windsor.
- *Tradegro (UK) Ltd v Progress Property Company Ltd*: rectification claims in respect of repairing indemnities given in the context of a sale of the freehold reversions to a portfolio of retail properties (led by John McGhee QC).
- *Stanbridge v AITC Ltd* [2012] EWHC 1009 (Ch): acted for the wife in a four-day trial in the Chancery Division against a finance company, in circumstances where her husband had forged her signature on a mortgage deed and other documents. The wife succeeded on an unusual defence to an unjust enrichment claim, where money had been “siphoned” through a joint account by her husband without her knowledge.
- Acted for the defendant tenants in a dilapidations claim involving a prominent office building in the City of London.
- Acted for the landlord in Companies Court proceedings against the administrators of the Oddbins chain of wine merchants to recover premises let to Oddbins.
- Acted for the administrators of the Blacks sports / outdoor retail chain in applications brought by various landlords in the Companies Court to recover premises let to Blacks.

Property Damage

- Acting for the owners of a vehicle breakers' / metal recycling business in Essex in a claim alleging nuisance arising from the conduct of their business.
- Acted for trustees in an action against insurers following the subsidence of a row of houses in Norwich into old chalk workings.

Civil Fraud and Asset Recovery (including Interim Remedies)

Richard has acted in a wide variety of civil fraud cases, both led and unled, including actions for deceit, conspiracy claims and claims involving other economic torts. His experience of interim remedies includes: the first reported cases on “notification

injunctions”, a variant of the freezing injunction; “ordinary” freezing and proprietary freezing injunctions; *Norwich Pharmacal* and *Bankers’ Trust* orders; and injunctions restraining presentation of winding up petitions.

Sample cases:

- Successfully defended the UK directors of a boutique international financial consultancy against a fraudulent misrepresentation claim by a Mauritanian company, which arose from the rejection of a claim under a standby letter of credit.
- *Holyoake v Candy* [2017] EWHC 3397 (Ch): nine-week trial in the Chancery Division concerning an alleged tortious conspiracy in relation to a prestigious central-London property development (see also Commercial Litigation, above) (led by Roger Stewart QC).
- *Holyoake v Candy* [2018] Ch 297: Court of Appeal guidance as to the circumstances in which the court will grant a “notification injunction”, a variant of the freezing injunction. See also *Holyoake v Candy* [2016] 3 WLR 357, the first reported case on notification injunctions. (led by Anthony Trace QC and Roger Stewart QC).
- *Holyoake v Candy* [2016] EWHC 2119 (Ch): court guidance on the circumstances where a threat made in without prejudice communications will result in a loss of privilege (led by Roger Stewart QC).
- Proprietary freezing injunction on behalf of an asset management company in a claim against its director for allegedly diverting a substantial business opportunity arising out of a property-backed ETN issue (see also Commercial Litigation).
- Obtained *Norwich Pharmacal* and *Bankers’ Trust* relief on behalf of a major international fintech company.
- *Re Fella, Gallone v Piggford*: freezing injunction against fraudulent financial adviser who had misappropriated the savings of a wealthy lady prior to her death and dishonestly procured a substantial gift to himself in her will.
- Injunction restraining presentation of a winding-up petition against a well-known boutique firm of solicitors on a disputed trade debt.
- Successfully resisted the making of a final charging order sought by a firm of solicitors in the Queen’s Bench Division on the ground that its effect would be to stultify a freezing injunction granted in the Chancery Division.

Company (including unfair prejudice petitions and other shareholder disputes)

Richard is experienced in a range of company litigation, including s. 994 petitions and claims against defaulting directors (see also Civil Fraud, above).

Sample cases:

- Advising the co-founder and minority shareholder in a successful software start-up on s. 994 and contractual claims against subsequent investors who were excluding him from the business
- Acted for the claimant in a complex dispute over ownership of a property company, where executors of a major shareholder’s estate had appropriated shares into a will trust, but the date when they had done so, the value of the shares, and the rights of other shareholders as beneficiaries of the trust were all hotly contested (led by Tom Croxford QC) (see also Trust litigation)
- Acted for the respondents in a s. 994 petition relating to a haulage company in the Midlands.
- Advised the proposed respondents in relation to an attempt by a shareholder to wind up a property investment company in the Midlands on the just and equitable ground.
- *Progress Property Co Ltd v Moorgarth Group Ltd* [2011] 1 WLR 1 (Supreme Court); [2009] EWCA Civ 629 (Court of Appeal): appeared for the successful respondent in the Supreme Court and the Court of Appeal on the question of whether the sale of a subsidiary was *ultra vires* a company as an unlawful distribution (led by John McGhee QC).
- *Chilukuri and others v Kansagra and others*: claims and cross-claims brought in Jersey by groups of directors alleging breaches of fiduciary duties in relation to a company involved with the development of a luxury hotel in Morocco.

- Acted for former directors and auditors of a company, facing claims brought by liquidators, in a three-day strike-out application which relied on *Nomura International v Granada*, contending that the liquidators had lacked knowledge of any basis for their claim when they issued proceedings (led by Anthony Trace QC).
- Instructed by third-party individuals and companies in a dispute between a husband and wife over the ownership of business and property assets. The dispute formed a preliminary issue to ancillary relief proceedings in the Family Division.

Partnerships and LLPs

Richard is frequently instructed in partnership disputes arising in highly diverse business and professional fields. Examples include:

- Acting for the continuing members of a well-known British rock band in partnership litigation between them and the other band members, in the context of the break-up of the original band.
- Representing an (innocent) GP defendant in a claim for catastrophic clinical negligence against the principal of a medical practice, into which the innocent GP had been joined as an alleged partner of the principal because the claim (if successful) was expected to overtop the principal's professional indemnity insurance (led by Caroline Harrison QC).
- Instructed in an arbitration over the dissolution of a valuable farming partnership in Yorkshire (see also Real Estate Litigation).
- *Achom v Lalic* [2014] EWHC 1888 (Ch): eight-day trial in the Chancery Division of claims relating to the ownership of a high-profile Mayfair nightclub (see also Commercial Litigation).
- *Ahmed & Ahmed v Islam* (2009): six-day trial of claims relating to Tyneside restaurant and property businesses, raising issues of partnership law and trusts of land.

Media and entertainment, art and culture

Richard is building a practice in the music, publishing, culture and entertainment fields. Cases include:

- Acting for the continuing members of a well-known British rock band in partnership litigation between them and the other band members, in the context of the break-up of the original band (see also Partnerships and LLPs).
- Representing a prominent writer in a property / family dispute.
- Advising a famous dancer on a property dispute.
- Advising a well-known fashion designer following the insolvency of a joint venture in which he was involved.
- Advising a prominent American singer on a contractual dispute with an English production company.

Insolvency and restructuring

Richard is well versed in disputes arising in insolvency, including claims by and against liquidators, administrators and trustees in bankruptcy, as well as disputed winding up and bankruptcy petitions. He has acted both for landlords in cases involving insolvent tenants, and for the administrators of insolvent tenants in claims brought by their landlords.

Sample cases:

- *Popely v Mysave Residential Property Ltd* (2019): highly contentious bankruptcy proceedings set against the background of a s. 994 petition and other litigation involving a group of family businesses.
- Injunction restraining presentation of a winding-up petition against a well-known boutique firm of solicitors on a disputed trade debt.
- Acted for the landlord in Companies Court proceedings against the administrators of the Oddbins chain of wine merchants to recover premises let to Oddbins.

- Acted for the administrators of the Blacks sports / outdoor retail chain in applications brought by various landlords in the Companies Court to recover premises let to Blacks.
- *Tradegro (UK) Ltd v Wigmore Street Investments Ltd* [2011] EWCA Civ 268 and [2010] EWHC 1693 (Ch): applications in the administration of a Bermuda company, involving the construction of a solicitors' undertaking and of an indemnity given in the context of a corporate restructuring (led by John McGhee QC).

Trust litigation / wills, estates and family provision

Richard maintains a busy practice on the litigation side of traditional chancery work. He has acted in claims against trustees, will and probate actions, and other disputes involving executors and attorneys. Some of his most interesting and challenging work in this area relates to Inheritance Act / family provision applications.

Sample cases (general):

- Acted for beneficiaries in a claim to obtain control from delinquent trustees of the will trusts of a deceased person who had been given inappropriate (and allegedly fraudulent) financial and estate planning advice.
- Instructed by the claimant in a dispute over ownership of a property company where executors of a major shareholder's estate had appropriated shares into a will trust, but the date when they had done so, the value of the shares, and the rights of other shareholders as beneficiaries of the trust were all hotly contested (led by Tom Croxford QC) (see also Company)
- *Re Fella, Gallone v Piggford*: the financial adviser of an elderly lady had procured a substantial gift in her will by fraud, in circumstances where he was also stealing money from her; Richard acted for relatives of the deceased in a claim against the adviser (see also Civil Fraud).
- Acted for an English executor in proceedings against attorneys under an EPA. The deceased had retired to Thailand and remarried in Laos, and the case raised potentially difficult jurisdictional issues.
- Acted for the claimant in a complex probate case where the validity of two wills was challenged and an alleged third will had been lost.
- Acted for the claimant in a case which raised overlapping issues in the law of probate and of proprietary estoppel / constructive trusts. An elderly couple had left him a life interest in a house, from which the executors subsequently sought to evict him.

Sample Inheritance Act claims:

- Advising the second wife of a wealthy businessman in a claim against a high-value estate, where the wife was also a beneficiary of a discretionary trust set up by her husband.
- Acting for the wife and child of a British resident born in Ghana in a claim against the father's estate; the case raised a number of technical issues, including whether the English court would recognise the validity of the parents' marriage ceremony in Ghana, and how it would take account of the wife's real property assets in Ghana.
- Acting in a case involving the estate of a British academic, where the claimant, the academic's partner, was simultaneously seeking asylum in the UK as he feared persecution in his country of origin on account of his sexuality.

Professional negligence

Richard has an extensive practice in the field of professional negligence, representing both claimants and defendants. He has acted in claims against lawyers, surveyors and valuers, accountants and financial advisers, and receivers. He has also advised on professional indemnity insurance matters. He has particular expertise in lender claims, including the issues that can arise from the securitisation or syndication of loans.

Sample cases:

- Acted for solicitors and insurers in a complex case resulting from a failed attempt to purchase a gambling business, involving allegations of breaches of duty and breaches of solicitors' undertakings, and issues of partnership law (led by Andrew Walker QC).
- *International Leisure Ltd v First National Trustee* [2013] Ch 346: acted for the successful appellant in a ground-breaking appeal which established that the rule against reflective loss (in *Johnson v Gore Wood*) will not prevent a secured creditor from bringing breach of duty claims against a receiver it had itself appointed.
- Acted for the claimant in a very high-value solicitors' negligence claim in the Commercial Court relating to the development of The Shard (led by John McGhee QC).
- Acted for the claimants in a solicitors' negligence claim relating to the drafting of a sale and purchase agreement following a dispute between developers over a large mixed-use development in Guildford (led by John McGhee QC).
- Acted for a large brewery chain in a claim against its former solicitors alleging negligent drafting of rent review provisions in a restaurant lease.
- Instructed (by both claimants and defendants) in numerous negligence and/or fraud claims brought by lenders against their solicitors and/or valuers in relation to losses suffered on mortgage transactions.

Seminars and articles

Seminars

Richard regularly gives seminars on topical subjects, both alone and with other members of Maitland Chambers. Recent seminars include:

- *Holyoake v Candy: notification injunctions and other lessons to be learned from the interim stages*
- *Trusts and cyber-currencies (with A.O. Hall (Guernsey); now part of Walkers)*
- *A property litigator's guide to insolvency*
- *Breaches of covenant and injunctions after Coventry v Lawrence*
- *Professional negligence claims: topical considerations*
- *An update on Beddoe applications*

Article

Roger Stewart QC, Richard Fowler and John Beresford (2017), "Collateral waiver of privilege: notes on *Holyoake v Candy* [2017] EWHC 378 (Ch)", *LexisNexis PSL*

Education and personal

Richard went to King Edward's School, Birmingham, and then read Classics ("Greats") at Oxford University, where he secured a Double First and won the Craven Scholarship and the Arnold Ancient Historical Essay Prize. He was also a Casberd Scholar of St John's College.

Richard remained at Oxford to complete his doctoral thesis in Ancient History, and having been awarded the Craven Fellowship was able to carry out research and travel extensively in Syria, Jordan and Turkey; he also took classes in Aramaic and classical Hebrew. He was British Academy Postdoctoral Fellow at Oriel College, Oxford, and Stipendiary Lecturer in Ancient History at Oriel and Jesus Colleges for a number of years. He has subsequently taken classes in Modern Standard Arabic at the SOAS Language Centre.

He completed the CPE (Diploma in Law) at City University and the BVC at the Inns of Court School of Law, before undertaking pupillage at Maitland. His pupil supervisors were Jonathan Russen (now His Honour Judge Russen QC), Amanda Tipples (now Mrs Justice Tipples DBE), and Michael Gibbon, Nicholas Peacock and James Aldridge (all now QC).

Richard has co-edited a volume of essays on ancient kingship and published a number of academic articles on Classical / Ancient Historical topics.

He also enjoys rowing and cricket (mainly now as a spectator), music, and natural history.

He has reasonably good French and some reading competence in Italian, German, Russian and Arabic.

Memberships

COMBAR

Chancery Bar Association

Professional Negligence Bar Association

Qualifications

MA (Hons) First Class (Oxon), DPhil (Oxon)



Recommendations

Property Litigation

"He has the ability to pull the strands of a case together." (2021)

"A superb grasp of all things property." (Legal 500 2020)

"Technically very bright, good on the detail and adaptable" (Legal 500 2018/19)

"He has great powers of persuasion and enormous intelligence." (Legal 500 2017)

"He is extremely affable and user-friendly, while being very incisive and alert to the technicalities." (Legal 500 2016)