

# TANFIELD

PROPERTY & REAL ESTATE BARRISTERS



## Carl Fain

Year of call

2001

Carl Fain has a specialist property and chancery practice, with a focus on landlord and tenant. His work includes all aspects of commercial and residential landlord and tenant including dilapidations claims, business tenancy renewals, enfranchisement, rights of first refusal, RTM, appointment of managers and service charge disputes.

Carl has been ranked as a leading Junior in Property Litigation / Real Estate Litigation in the legal directories for a number of years and has recently been described by the directories as "a fantastic advocate", "pragmatic, incredibly user-friendly and has an excellent manner" and as a "bright, proactive and an extremely tenacious and effective advocate."

As well as appearing frequently in the County Court and the High Court, Carl has represented clients in the First-Tier Tribunal (Property Chamber), the Upper Tribunal (Lands Chamber) and the Court of Appeal.

Carl regularly presents seminars on property related matters. He has been a speaker at a SJ Live event, and has presented Webinars for LexisNexis and seminars for the Council of Mortgage Lenders. Carl is also an author of LexisNexis Question and Answer series.

As a former Management Consultant, solicitors and clients appreciate the commercial eye that he brings to his legal practice.

In 2023 Carl was appointed as a Recorder to sit on the South Eastern Circuit (Crime).

## Real Property

Disputes including mortgage related claims and in particular LPA receivers, property related professional negligence, co-ownership, easements, nuisance, restrictive covenants, boundary disputes and Party Wall Act matters.

Cases include: *Yeung v Potel* [2014] 2 EGLR 125, *Power v Shah* [2022] EWHC 209 (QB), *Cheung v Mackenzie* [2024] EWCA Civ 13.

## Landlord & Tenant

Work includes all aspects of commercial and residential landlord and tenant including dilapidations claims, business tenancy renewals, rights of first refusal, RTM, appointment of managers and service charge disputes.

Cases include: *Various Lessees of Battersea Reach and St George Wharf v St George South London Ltd & Oths* [2023], *Walcott v Jones* [2018] L&TR 11, *Admiralty Park Management Company Ltd v Ojo* [2016] UKUT 0421 (LC), *Lee v Sommer* [2015] EWHC 3889 (Ch), *Christoforou v Standard Apartments Ltd* [2014] L&TR 12, *Idealview Ltd v Bello* [2010] 1 EGLR 39, *Kyriacou v Linden* [2021] UKUT 288 (LC), *Dorrington Residential ltd v 56 Clifton Gardens Ltd* [2022] UKUT 266 (LC).

## Leasehold Enfranchisement & Lease Extensions

Acts for landlords and tenants in claims under the 1967 and 1993 Acts and Part I of the 1987 Act. Carl appears regularly in court and the tribunals.

Cases include *LM Homes Ltd & Others v Queen Court Freehold Company Ltd* [2020] 2 WLR 1135, *Colegate & Oths v GJB Estates Ltd*, 10.12.18, *HHJ Berkley Unreported*, *Cadogan Holdings Ltd v Orphic M Ltd* LON/00AW/OLR/2016/0503, *Queensbridge Investment Ltd v 61 Queens Gate Freehold Ltd* [2015] ELGR 5, *Achieving Perfection Ltd v Gray*, 18.5.15, *HHJ Coltart, Unreported*, *Brickfield Properties Ltd v Ullah* [2022]

UKUT 25 (LC).

## Banking & Mortgages

Acts for and against Banks and institutional lenders in mortgage claims. Carl frequently acts for LPA Receivers.

## Professional Negligence

Acts in property related professional negligence and in particular negligence in enfranchisement.

## Contracts for the Sale of Land

From single contracts for the purchase of a flat to large developments, Carl acts for vendors and purchasers and his cases include *Rabiu & Oths v Marbray Ltd [2013] EWHC 3272 (Ch)*, *Barnard v Zarbarfi [2010] EWHC 3256 (Ch)*.

## Notable Cases

*Cheung v Mackenzie*: [2024] EWCA Civ 13; [2023] EWHC 220 (Ch)

Restrictive Covenants. Important case in which the Court of Appeal upheld the High Court judgment that a provision in a conveyance gave the Whitgift Foundation the power to release or modify a restrictive covenant and thus permit the proposed development by the Respondents. Carl Fain was successful in the High Court and the Court of Appeal where he led Richard Miller.

*Various Lessees of Battersea Reach and St George Wharf v St George South London Ltd & Oths* LON/00AY/LSC/2019/0338 & LON/00BJ/LSC/2019/0330

Service Charges / VAT. The FTT held that VAT of circa £500,000 per year on the costs of staff employed by the managing agents rather than by the landlords was reasonably incurred. Instructed on behalf of the successful First to Seventh Respondent landlords and led by Philip Rainey KC in a counsel team of Nicola Shaw KC, Sam Brodsky (tax counsel) and Michael Lee (employment counsel).

### Armsby & Oth v Pointalls Allotments Ltd [2022] EWHC 2803 (Ch)

Allotment tenancies. High Court on appeal construed s.1(1)(a) of the Allotments Act 1922 so that there was no implied proviso or qualification to the effect that the landlord may not give the NTQ capriciously or otherwise in good faith and that s.146 of the Law of Property Act 1925 applied where the landlord was re-entering for a breach of covenant pursuant to s.1(1)(e) of the Allotments Act 1922. Instructed on behalf of the tenants for the appeal.

### Dorrington Residential Ltd v 56 Clifton Gardens Ltd [2022] UKUT 266 (LC)

Breach of Covenant. Upper Tribunal upheld that the failure by the tenant (where there was a sub-tenant) to permit the landlord access during the Covid 19 pandemic was a breach of covenant. Instructed on behalf of the successful Respondent leading Katie Gray.

### Shah v Power [2022] 1 WLR 3015

Party Wall, Surveyors' jurisdiction. High Court on appeal held that the surveyors had no jurisdiction to make an award where no Party Wall Notice had been served by the Building Owner. Instructed on behalf of the Appellant and led by Nicholas Isaac KC.

### Brickfield Properties Ltd v Ullah [2022] UKUT 25 (LC)

Enfranchisement, New Lease Claim. Short lease value where the subject property had been sold twice within the space of two weeks at radically different prices. Instructed on behalf of the successful Appellant.

### Kyriacou v Linden [2022] L&TR 19

Breach of Covenant and Rule 13 costs. Upper Tribunal held that there had been a breach of the insurance covenant and reduced the Rule 13 costs order by 70% of that which had been ordered by the FTT. Instructed on behalf of the successful Appellant.

### LM Homes Ltd & Others v Queen Court Freehold Company Ltd [2020] 2 WLR 1135

Collective Enfranchisement, entitlement to acquire common part leases. Court of Appeal held that a lease of a boiler room, a lease of airspace and a lease of subsoil were all leases of common parts and were reasonably necessary to acquire for management and maintenance of those common parts pursuant to s.2(3) of the 1993 Act. Instructed on behalf of the successful Respondent and led by Philip Rainey QC.

Colegate & Oths v GJB Estates Ltd & Oths 10 December 2018 CC, HHJ Berkley, Unreported  
S.12B Landlord and Tenant Act 1987: The First Defendant (freeholder) granted a lease of a flat to the connected Second and Third Defendants after the Claimants had served a purchase notice pursuant to s.12B of the Landlord and Tenant Act 1987. In a novel case, the judge held that the Claimant would not be entitled

to acquire the freehold free of the lease of this flat and that pursuant to s.12B(5), the Claimants would be entitled to acquire the freehold subject to the lease of the flat for a price to be determined by the FTT. Instructed on behalf of the successful Defendants.

#### Walcott v Jones [2018] L&TR 11

S.21 Housing Act 1988, s. 41 Deregulation Act 2015, periodic tenancies: On appeal, it was held that a periodic tenancy which ran beyond its original term was "granted" when it was initially entered into and was not granted at the end of each period of the tenancy. Hence the landlord in 2017 had not been required to comply with statutory requirements introduced in 2015 before serving a s.21 notice in respect of a monthly periodic tenancy which had begun in 2007. Instructed on behalf of the successful Appellant.

#### Admiralty Park Management Company Ltd v Ojo [2016] UKUT 0421 (LC)

Service Charges, procedural unfairness estoppel by convention: UT held that there had been procedural unfairness in the FTT raising a new point and not granting an adjournment and found that there was an estoppel by convention that precluded the tenant from challenging the failure to comply with the provisions in the lease. Instructed on behalf of the successful Appellant.

#### Cadogan Holdings Ltd v Orphic M Ltd LON/00AW/OLR/2016/0503

Enfranchisement, New Lease Claim: FTT applied a single rate (as opposed to a dual rate) to the capitalisation rate in establishing the existing lease value for a lease with 2.95 years unexpired. Instructed on behalf of the tenant.

#### Lee v Sommer [2015] EWHC 3889 (Ch)

Commercial Landlord and Tenant, L&T(C) 1995, Consent Orders: Although no s.17 notices had been served, the court did have jurisdiction to approve a Consent Order which made the former tenant liable and the Consent Order was not a void agreement pursuant to s.25 L&T(C) 1995: Instructed on behalf of the Appellant.

#### Achieving Perfection Ltd v Gray 18 May 2015 CC, HHJ Coltart, Unreported

Collective Enfranchisement and the service of Initial Notice by email. This is the first case where a court has held that an Initial Notice could be validly served by email: Instructed on behalf of the successful Nominee Purchaser.

#### Queensbridge Investment Ltd v 61 Queens Gate Freehold Ltd [2015] EGLR 5

Collective Enfranchisement and effect of grant of new leases after determination of disputed terms of leasebacks by LVT: Instructed on behalf of the Respondent in the appeal and also at first instance.

### Yeung v Potel [2014] 2 EGLR 125

Easements and implied reservations: Instructed on behalf of the successful Respondents in the Court of Appeal and also at first instance.

### Christoforou & Diogenous v Standard Apartments Ltd [2014] L&TR 12

Administration Charges and para 10(4) of Sch 12 to CLRA. Instructed on behalf of the successful Respondent in the appeal and also at first instance.

### Rabiu & Oths v Marlbray Ltd [2013] EWHC 3272 (Ch)

Sale deposits in respect of Hotel Units. Instructed on behalf of the Defendant and led by Philip Rainey QC for the trial of a preliminary issue.

### Barrie House Freehold Ltd v Merie Bin Mahfouz Company (UK) Ltd [2012] EWHC 353 (Ch)

Collective Enfranchisement and easements. Instructed on behalf of the Claimants at the interlocutory stage.

### Tunstill v Primrose Mansions Ltd [2011] UKUT 268 (LC)

Service charges. Instructed on behalf of the Landlord in the Appeal and at first instance.

### Barnard v Zarbarfi [2010] EWHC 3256 (Ch)

Sale Deposits and penalties. Instructed on behalf of the purchaser.

### The New Northumbria Hotel Ltd v Maymask (148) LLP [2010] 2 P&CR DG21

Forfeiture of Hotel and return of Chattels: Instructed on behalf of the Claimant and led by Philip Rainey QC on a claim for an injunction.

### Idealview Ltd v Bello [2010] 1 EGLR 39

Delayed rent review: Instructed on behalf of the successful Landlord on the appeal and at first instance. It is the longest reported delay of a rent review (13 years).

## Recommendations

"Carl has always been excellent in terms of clients service. His opinions are clear and concise."

*Chambers UK 2024*

"Carl is excellent with clients, responsive and is very good at offering solutions and breaking down complicated subjects for clients."

*Chambers UK 2024*

"Carl is a very capable and efficient advocate. He gets to the heart of the matter quickly and provides savvy commercial advice."

*Chambers UK 2024*

'Highly effective and very user-friendly.'

*Legal 500 2024*

"Carl is very good in his technical approach and is able to apply his considerable intellect to client objectives." "He is very knowledgeable, and clients get a lot of confidence from his persuasive and effective manner." "Carl Fain stands out for his technical brilliance and speed of work."

*Chambers UK 2023*

"Carl is an excellent all round barrister. He is highly knowledgeable, very articulate, commercial and able to provide clients with clear advice in conference. He is also an excellent advocate."

*Legal 500 2023*

"Carl Fain ranks highly among sources thanks to his first-rate work on a range of real estate issues, including dilapidations claims, business tenancy renewals and enfranchisement."

*Who's Who Legal UK Bar 2022 Real Estate*

"He provides clear and concise opinions and is also a tenacious advocate." "He has a flexible approach and grasps the commercial drivers of any particular matter."

*Chambers UK 2022*

"Carl is an exceptional barrister who is able to very quickly grasp the key elements of a dispute



and provide clear and succinct advice. He is also very commercial and particularly persuasive on his feet."

*Legal 500 2022*

"Carl is pragmatic, incredibly user-friendly and has an excellent manner. He's very down to earth and everyone understands where he's coming from. Bright, hard-working and reliable."

*Chambers UK 2021*

"He combines first rate technical know how with sound commercial judgment and superb client management skills."

*Legal 500 2021*

"He brings a good sense of commerciality to a transaction and also expresses himself both pre-trial and during the hearing with concision and insight." "He is easy to work with and very keen to help you out." "A fantastic advocate."

*Chambers UK 2020*

"Bright, thinks on his feet and is a team player."

*Legal 500 2020 (Property Litigation)*

"A talented property barrister with expertise in business tenancy renewals, service charge disputes and dilapidation claims. His practice also takes in landlord and tenant matters, mortgage-related claims and property-related professional negligence cases. He is a noted expert on party wall issues." "Carl is pragmatic, incredibly user-friendly and has an excellent manner." "A tenacious advocate who gives practical advice."

*Chambers UK 2019*

## Awards

- Sir Issac Wolfson Scholarship, Lincoln's Inn
- Thomas More Bursary, Lincoln's Inn
- Hardwicke Entrance Scholarship, Lincoln's Inn

## Appointments

Recorder (Crime).

## Publications

- Contributor to all five editions of Service Charges & Management, Sweet & Maxwell.

## Qualifications

- BVC (Very Competent)
- MA (Oxon), The Queen's College, Oxford

## Memberships

- Bar Pro Bono Unit
- Chancery Bar Association
- Property Bar Association