

TANFIELD

PROPERTY & REAL ESTATE BARRISTERS



Kerry Bretherton KC

Year of call Silk
1992 2016

Kerry Bretherton KC practices in the field of Property, Property Development and associated Public Law matters, Commercial Disputes and Professional Negligence.

Chambers and Partners 2022 describe her as *"an accomplished silk with a wealth of expertise in real estate litigation"* with clients reporting: *"She is thorough, incredibly astute, generous with her time and of course her knowledge speaks for itself."* *"She is highly efficient and takes time to talk through her views and ensure that her advice has been understood."* Legal 500 2022 comments include: *"Kerry is incredibly knowledgeable and can put complex law into lay terms for clients to understand. She is calm and confident when advocating. She is realistic in managing the client's expectations and instils confidence."*

With her substantial experience in the Supreme Court, Court of Appeal, and High Court earlier editions of the directories describe Kerry as: *"ferociously tenacious, she has incredible judgement and is willing to take on difficult cases and battle on where others would give up"* with comments which include *"she is excellent on her feet."* and *"her written work is exceptional"* and *"highly rated"* for her work in Agriculture and Property Litigation

Kerry is co-author of 'The New Electronic Communications Code' due to be published in the Spring of 2022. Kerry is also a contributor to Tanfield Chambers 'Service Charges and Management' 5th Edition. She regularly speaks on all aspects of property law, in particular real property, including rights of way and boundary disputes and property disputes concerned with rights of way and easements of parking.

Kerry's clients include developers, property management companies, private clients, charities and local and central government. Kerry accepts direct access work, in appropriate cases, from developers, companies and individuals.

Property Litigation

Property litigation and disputes are at the heart of Kerry's practice. Her work includes the following litigation and advisory work in the field of development, real property and landlord and tenant:

- Development
- Options and overage
- Freehold covenants
- Easements including rights of way, parking easements and right to light
- Boundary disputes
- Mortgage litigation and possession
- Trusts of land and co-ownership
- Proprietary estoppel
- Land registration including alteration and rectification of the Land Register
- Agriculture
- 54 Act disputes
- Residential landlord and tenant
- Electronic Communications Code
- Pubs Code

Matters arising from Development form a key aspect of Kerry's work ranging from disputes about options and overage to the full range of litigation and disputes arising from development including advice about the scope of freehold covenants and linked public law matters (Kerry was on the Attorney General Government A Panel prior to appointment to silk). Recent examples of her work include a case involving a dispute about construction of an agreement in relation to a multi-million pound development. Another example of her work includes a dispute about an agreement relating to a church in central London in which Kerry succeeded for the church in a dispute about an option agreement.

Kerry has been involved in many cases providing advice and involving easements, particularly rights of way, parking easements and rights of light and boundary disputes. She has been involved in lead cases in this area including the widely reported case of *Vance v Collerton* [2019] EWHC 2866 (Ch) in which Kerry succeeded in arguments about a right of way and parking dispute and *Poste Hotels v Cousins* [2020] EWHC 582 (Ch) in which Kerry acted for the hotel and succeeded in preventing an obstruction caused by parking pursuant to an easement of parking.

Kerry has been involved in mortgage and possession and all aspects of residential and commercial landlord and tenant work to the highest level acting in the Supreme Court in two of the leading cases: *McDonald v McDonald* [2016] UKSC 28; [2016] 3 W.L.R. 45 and *Mexfield Housing Co-operative v Berrisford* [2011] UKSC 52; [2012] 1 A.C. 955. Kerry also succeeded in the Court of Appeal in the leading case of tenancies for minors *Alexander David v LB Hammersmith & Fulham LBC* [2009] EWCA Civ 259; [2010] Ch. 252; [2010] 2 W.L.R. 1126

and in the case of *London Borough of Hackney v Findlay* [2011] EWCA Civ 8 Kerry succeeded in the Court of Appeal in the leading land registration case of *MacLeod & Others v Gold Harp Properties Ltd & Others* [2014] EWCA Civ 1084; [2015] 1 W.L.R. 1249.

Kerry deals with commercial disputes many arising from disputes about options and overage and contracts for management of properties. She is involved in all aspects of commercial landlord and tenant. Examples of her reported cases include *London & Quadrant Housing Trust Ltd v Prestige Properties* [2013] EWCA Civ 130 which concerned possession of an alleged ransom strip in which Kerry obtained personal costs orders against the director and shadow director and succeeded in the Court of Appeal. A recent example of her work is *Jatinder Singh v (1) Jasminder Tiwana (2) Global Freight Systems Ltd* CR-2019-004766.

Kerry is co-author of 'The New Electronic Communications Code' which is due to be published in the Spring 2022 and has a particular interest in disputes involving this exciting area of work which has an important impact on land owners rights and obligations, and is an area on which she has given a number of talks. Kerry has extensive knowledge of the Pubs Code and has acted in one of the most significant cases in this area *Star Pubs and Bars v McGrath* [2020] EWHC 1640 (Ch).

Development

Matters arising from Development form a key aspect of Kerry's work ranging from disputes about options and overage to the full range of litigation and disputes arising from development including advice about the scope of freehold covenants and linked public law matters (Kerry was on the Attorney General Government A Panel prior to appointment to silk). Recent examples of her work include a case involving a dispute about construction of an agreement in relation to a multi-million pound development. Another example of her work includes a dispute about an agreement relating to a church in central London in which Kerry succeeded for the church in a dispute about an option agreement.

Real Property

Kerry has been involved in many cases providing advice and involving easements, particularly rights of way, parking easements and rights of light and boundary disputes. She has been involved in lead cases in this area including the widely reported case of *Vance v Collerton* [2019] EWHC 2866 (Ch) in which Kerry succeeded in arguments about a right of way and parking dispute and *Poste Hotels v Cousins* [2020] EWHC 582 (Ch) in which Kerry acted for the hotel and succeeded in preventing an obstruction caused by parking pursuant to an easement of parking, rights of light and party walls.

Kerry acts in all matters relating to land registration including alteration and rectification of the Land Register

A recent example of her work is *MacLeod and others v Gold Harp Properties Ltd and others* [2014] EWCA Civ 1084; [2015] 1 W.L.R. 1249 (in which Kerry succeeded in the Court of Appeal in the leading case on land registration).

Commercial Property

Kerry acts in high value commercial litigation and disputes related to property and in commercial property transactions. In addition to the work described under the headings 'Development' and 'Real Property' described above her work includes disputes about options and overage and the full range of contractual disputes which arise from property litigation. She also deals with 54 Act cases including renewal, possession, rent review and dilapidations. Kerry has chaired the RICS Dilapidations Roadshow.

Examples of her reported cases include *London & Quadrant Housing Trust Ltd v Prestige Properties* [2013] EWCA Civ 130 which concerned possession of an alleged ransom strip in which Kerry obtained personal costs orders against the director and shadow director and succeeded in the Court of Appeal. A recent example of her work is *Jatinder Singh v (1) Jasminder Tiwana (2) Global Freight Systems Ltd* CR-2019-004766.

Residential Property

Kerry acts in residential property cases including RTMs, mixed use developments, service charge disputes, leasehold enfranchisement, rights of first refusal, right to manage, possession and disrepair and housing disputes.

Recent work has included high value disputes issues ranging from VAT chargeable on service charges in high end developments to cases involving right to manage and rights of first refusal. Kerry has been involved in some of the most significant cases in this area including *McDonald v McDonald* [2016] UKSC 28; [2016] 3W.L.R. 45 (which concerns the right to rely upon an Article 8 defence), *Ruza Berrisford v Mexfield Housing Co-operative* [2011] UKSC 52; [2011] 3 W.L.R. 1091 (tenancies for life and possession) *Alexander David v LB Hammersmith & Fulham LBC* [2009] EWCA Civ 259; [2010] Ch. 252; [2010] 2 W.L.R. 1126 (which concerned the grant of a tenancy to a minor and Kerry succeeded in the Court of Appeal); *London Borough of Hackney v Findlay* [2011] EWCA Civ 8 another Court of Appeal success regarding the procedural test which was applicable when a tenant failed to attend a possession hearing and *Sharples v Places for People; Godfrey v A2 Dominion Housing* [2011] EWCA Civ 813; [2011] H.L.R. 45 concerning possession and debt relief orders.

Electronic Communications Code

Kerry is co-author of '*The New Electronic Communications Code*' which is due to be published in the Spring 2022 and has a particular interest in disputes involving this exciting area of work which has an important impact on land owners rights and obligations, and is an area on which she has given a number of talks.

Building Safety

Kerry is an expert in all matters of building safety including the Fire Safety Act 2021, the Building Safety Bill and matters relating to cladding. Kerry has spoken at conferences and given seminars on the topic of building safety.

Pubs Code

Kerry has extensive knowledge of the Pubs Code and has acted in one of the most significant cases in this area *Star Pubs and Bars v McGrath* [2020] EWHC 1640 (Ch).

Public Law / Central & Local Government

Kerry was A panel Government Counsel prior to her appointment to silk and is recognised in the directories for her work in public law. The primary focus of her public law work is on property related public law issues such as planning/compulsory purchase and commercial public law issues such as public procurement and issues affecting local government although she is also known for her work in the Court of Protection.

Her work ranges from cases in the Supreme Court, most recently *MB v Secretary of State for Work and Pensions* [2016] UKSC 53; [2017] 1 All E.R. 338 (referred to the ECJ) and Court of Appeal examples include *R. (on the application of Kent CC) v Secretary of State for Health* [2015] EWCA Civ 81; [2015] 1 W.L.R. 1221 (ordinary residence under the National Assistance Act) *Secretary of State for the Home Department v CT (Vietnam)* [2016] EWCA Civ 488 to tribunal work such as *AN Checker Heating & Services Engineers v Revenue and Customs Commissioners* First-tier Tribunal (Tax Chamber), [2013] UKFTT 506 (TC).

Notable Cases

Kaye v Lees [2023] EWHC 152 (KB)

Acting on successful application to cancel a breathing space moratorium. This is an important case concerning the rights of creditors when a breathing space moratorium is sought.

Star Pubs and Bars v McGrath [2020] EWHC 1640 (Ch)

Poste Hotels v Cousins [2020] EWHC 582 (Ch)

Vance v Collerton [2019] EWHC 2866 (Ch)

Woww Ltd v Gani [2019] EWHC 532 (Ch)

Camelot Guardians v Khoo [2018] EWHC 2296 (QB)

West London Commercial Properties v Trade Sale Ltd [2018] EWHC 1131 (Ch)

MB v Secretary of State for Work and Pensions [2016] UKSC 53; [2017] 1 All E.R. 338

Referred to the ECJ by the Supreme Court.

McDonald v McDonald [2016] UKSC 28; [2016] 3 W.L.R. 45

Possession.

Haile v Waltham Forest LBC [(UKSC) 2015] A.C. 1471

Intentional homelessness.

R (on the application of Kent CC) v Secretary of State for Health [2015] EWCA Civ 81; [2015] 1 W.L.R. 1221

Ordinary residence under the National Assistance Act.

MacLeod & Others v Gold Harp Properties Ltd & Others [2014] EWCA Civ 1084; [2015] 1 W.L.R. 1249

Land registration.

London & Quadrant Housing Trust v Prestige Properties Ltd [2013] EWCA Civ 130

Forfeiture, injunctions and costs.

Places for People Homes Ltd v Sharples [2012] Ch. 382

Debt Relief Orders, bankruptcy and possession.

Mexfield Housing Co-operative v Berrisford [2011] UKSC 52; [2012] 1 A.C. 955

Life tenancies.

Recommendations

"Someone who knows the Pub Code inside out. Kerry is fantastic to work with, nothing is too much trouble and her response times are amazing."

Legal 500 2023

"She is thorough, incredibly astute, generous with her time and of course her knowledge speaks for itself." "She is highly efficient and takes time to talk through her views and ensure that her advice has been understood."

Chambers & Partners 2022

"Kerry is incredibly knowledgeable and can put complex law into lay terms for clients to understand. She is calm and confident when advocating. She is realistic in managing the client's expectations and instills confidence."

Legal 500 2022

"She is very thorough and looks at many different angles, handling difficult clients well."

Legal 500 2021

"She has an incredible ability to be able to review large documents and pick out key information at breakneck speed."

Legal 500 2020

"A new silk with a track record of heavyweight cases".

Legal 500 2016

"Ferociously tenacious, she has incredible judgement and is willing to take on difficult cases and battle on where others would give up."

Chambers UK 2016

"She is methodical, robust and a solid, safe pair of hands."

Chambers UK 2016

"She fights hard for her clients and gives it her all."

Legal 500 2015

"She is extremely hard-working, dedicated and knowledgeable."

Legal 500 2015

Appointments

- Silk (2016)
- Appointed to Attorney General's A Panel (2012)
- Re-elected to Bar Council (2012)
- Appointed Panel Counsel to Equality & Human Rights Commission (2011)
- Elected to Bar Council [3 year term] (2009)

Publications

- Co-author of The New Electronic Communications Code due to be published Spring 2022
- Kerry has contributed to the forthcoming Service Charges & Management Tanfield Chambers 5th

Memberships

- PBA