

TANFIELD

PROPERTY & REAL ESTATE BARRISTERS



Mark Loveday

Year of call

1986

Mark Loveday is a senior member of Tanfield's property team. His work includes residential service charges and management, the Right to Manage, leasehold enfranchisement, commercial landlord and tenant and real estate.

In early 2024, he appeared in the Supreme Court case of *A1 Properties (Sunderland) v Tudor Studios RTM* and before that in *FirstPort v Settlers Court RTM* [2022] 1 UKSC 1. He also appeared in the Court of Appeal in *Avon v Canary Gateway RTM* [2023] EWCA Civ 616 and *Dell v 89 Holland Park (Management)* [2023] EWCA Civ 1460. Mark represents clients in contested hearings at every other level, including the First-tier Tribunal (Property Chamber), County Court, High Court and the Upper Tribunal (Lands Chamber), as well as advising in a wide range of property disputes.

In the residential field, Mark's work largely relates to long leasehold service charge / management disputes and leasehold enfranchisement. He is General Editor of *Service Charges & Management* (Sweet & Maxwell, 5th Ed). Mark is regularly instructed by the major London estates and leaseholders in high-value contested management and enfranchisement cases. Mark's weekly column on residential property matters appears in the *Times* newspaper every Friday.

Mark is a judge of the First-Tier Tribunal (Property Chamber) and a member of the rule-setting Tribunal Procedure Committee. He is a member of the Advisory Committee of the Association of Leasehold Enfranchisement Practitioners. Mark was legal advisor to the joint working group that drafted the ICAEW Technical Release on Residential Service Charge Accounts ("TECH/03/11"), the leading professional guidance for service charge accounting in England. He is one of a handful of barrister Fellows of the Institute of Residential Property Management.

He has received numerous awards, including:

- “Barrister of the Year” at the Enfranchisement & Right to Manage Awards (2022)
- “Barrister of the Year” at the Property Management Awards (2011)



Mark has over 25 years' experience of commercial property and commercial development issues, particularly contested business lease renewals, rent reviews and dilapidations. Mark is general editor of *Rent Review: A Surveyor's Handbook* (RICS, 2008) and co-editor of *The Electronic Communications Code* – a practical guide (2nd edition 2023) (Legal Brief Publishing).

Mark has extensive experience in arbitration and expert determination. He accepts appointments as a mediator and as an arbitrator in property disputes.

For a list of reported cases in the Upper Tribunal, High Court, Court of Appeal and Supreme Court, please see the section below.

Residential Landlord & Tenant

The bulk of Mark's work is in the residential field.

He is regularly instructed in complex enfranchisement and service charge claims by leaseholders, management companies, developers and landlords.

Amongst numerous leasehold enfranchisement cases in the past year, he has appeared in the First-tier Tribunal for major London Estates in high-value lease extension for flats in Marylebone and Marble Arch. He appeared for the leaseholders in one of only three enfranchisement appeals to the Upper Tribunal (Lands Chamber) in 2023.

Examples of recent leasehold management work include:

- Appearing in the Court of Appeal for the tenants of a flat in London's Holland Park in what is believed to be the largest individual service charge dispute to come before the tribunals.
- Appearing in the Court of Appeal for a right to manage company which upheld important rights

enjoyed by shared ownership leaseholders.

- Appearing in the Upper Tribunal for the landlord in a complex service charge re-apportionment involving mixed-use premises in St Albans.
- Advising a developer about applications to the First-tier Tribunal for dispensation under s.20ZA Landlord and Tenant Act 1985 in relation to energy infrastructure.
- Representing lessees in Liverpool seeking to acquire the Right to Manage.
- Advising on certificates, cladding and service charge issues arising from the Building Safety Act 2022.
- Drafting applications for acquisition orders under the Landlord and Tenant Act 1987.
- Successfully appearing for the lessee-owned freeholders of an estate in East London in a lengthy tribunal application for the appointment of a manager.
- Advising clients about the Leasehold and Freehold Reform Bill currently before parliament. Mark edits the Tanfield Leasehold and Freehold Reform Bill hub.

Mark is a member of the Advisory Committee of the Association of Leasehold Enfranchisement Practitioners. He is editor of *Service Charges & Management* (5th Ed) and was the legal advisor to the Institute of Chartered Accountants working party that produced "TECH 03/11", the leading professional guidance on service charge accounting. He received the Barrister of the Year accolade at the Property Management Awards 2012.

Mark is accredited for direct access work for members of the public under the Bar Council's direct access scheme.

Commercial Landlord & Tenant

On the commercial side, Mark has particular experience of the legal and valuation aspects of 'opposing' and 'non-opposing' lease renewals under the Landlord & Tenant Act 1954, as well as advising and representing clients in forfeiture and dilapidations claims.

In addition to this Mark has advised and represented parties to rent review litigation and third party determinations, as well as advising arbitrators under Section 37 of the Arbitration Act 1996. He is general editor of the RICS publication "Rent Review: a Surveyor's Handbook".

Examples of recent commercial work include:

- Representing a commercial landlord in a contested application for relief against forfeiture of a pub lease.
- Advising the owners of shopping centres in Bristol about lease termination and terminal dilapidation.
- Advising on title for a portfolio of over 590 properties in the north of England.
- Appearing for the landlord in a contested s.30(1)(f) lease renewal for premises in Central London.

- Advising in relation to possession of a pub in Manchester.
- Advising lessees about a rent review for a site in Norwich.

Notable Cases

Daejan Investments Ltd v Collins [2024] UKUT 26 (LC)

Leasehold enfranchisement – premium – improvements – value of precarious rights – comparables – post-valuation date evidence – relativity – value of Act rights

A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd, Association of Leasehold Enfranchisement Practitioners intervening UKSC 2023/0047 (judgment awaited)

Does a failure to serve a claim notice on an intermediate landlord with no management responsibilities invalidate a right to manage claim under the Commonhold and Leasehold Reform Act 2002?

Daejan Investments Ltd v Collins LC-2023-0554

Leasehold enfranchisement of flat (decision awaited).

89 Holland Park Management Ltd v Dell [2023] EWCA Civ 1460

Service charges – interpretation – recovery of litigation costs relating to adjoining land – recovery of planning costs.

Hawk Investment Properties Limited v Eames and others [2023] UKUT 168 (LC); [2023] PLSCS 129

Apportionment – effect of section 27A(6) of the Landlord and Tenant Act 1985 – standard of review to be applied to a determination by a Landlord's surveyor of a new method of apportionment pursuant to the lease.

Avon Ground Rents v Canary Gateway (Block A) RTM Management Company [2023] EWCA Civ 616

Right to Manage – shared ownership leases.

Assethold Ltd v The lessees of Flats 1-14 Corben Mews [2023] UKUT 71 (LC)

Landlord And Tenant – Service Charges – estimated service charges – insurance valuation costs – fire safety works.

Assethold Ltd v Adam and others [2022] UKUT 282 (LC)

Service Charges – whether reasonably incurred – costs of a waking watch – landlord following professional advice – rationality and reasonableness – section 19(1) of the Landlord and Tenant Act 1985.

FirstPort Property Services v Settlers Court RTM Co [2022] UKSC 1

Right to Manage – whether RTM company acquires rights to manage communal areas of an estate.

Dell v 89 Holland Park Management Ltd [2022] UKUT 169 (LC)

Service charges – interpretation – recovery of litigation costs relating to adjoining land – recovery of planning costs.

Avon Ground Rents v Canary Gateway (Block A) RTM Management Company [2020] UKUT 0358 (LC)

Right to Manage – shared ownership leases – service of Notice of Invitation to Participate"

Trimnell-Richard v Tuffley [2018] UKUT 150 (LC)

Breach of covenant – Damage to property – Party walls – Reasons.

Clarise v Rees [2017] EWCA Civ 1135

Landlord and Tenant – Enfranchisement – Ground Rent – Interpretation – Long Leases – Rent Reviews – Valuation – Leasehold Reform Act 1967 ss.9(1) and s.15.

Avon Ground Rents v 51 Earls Court Square RTM Company [2016] UKUT 1221 (LC)

Right to Manage – description of premises in company's articles of association – whether a self-contained building – whether an RTM company – interpretation of articles – Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002.

Greenpine Investment Holding Ltd v Howard de Walden [2016] EWHC 1923 (Ch)

Collective enfranchisement – Commonhold and Leasehold Reform Act 2002 s.48(1) – "term of acquisition" – solicitor's undertakings to complete.

Clarise v Rees [2014] UKUT 394 (LC)

Leasehold enfranchisement – construction of lease – rent review to 'modern ground rent'.

London Sephardi Trust v John Lyons Estate [2015] UKUT 619 (LC)

Leasehold enfranchisement – house – Leasehold Reform Act 1967 s.9(1AA) – valuation of leases which have previously been extended under the Act – Housing and Planning Act 1986 s.23(1).

Fairfield Rents v Nemcova (LON/00AK/LBC/2015/0027)

Breach of covenant – use “as a private residence” – short term lettings – Air BnB.

Alamouti v John Lyons Estate [2014] UKUT 0087 (LC)

Leasehold enfranchisement – collective enfranchisement – development – valuation.

Jackson v John Lyons Estate [2013] UKUT 052 (LC)

Leasehold enfranchisement – development – price comparisons – valuation.

Kutchukian v John Lyons Estate [2013] EWCA Civ 90

Leasehold enfranchisement – development value – statutory break clause under LRHUD 1993 s.61 and Sch 14.

Recommendations

“Mark is very strong counsel.”

Chambers UK 2024

“His written opinions are excellent and he is practical and commercial.”

Chambers UK 2024

“What Mark doesn't know about service charges is not worth knowing; he is the oracle. He is incredibly hardworking, responsive and is considered and commercial in his approach. He is a tenacious advocate and a pleasure to work with.”

Legal 500 2024

"Mark has the commerciality to see the way through matters. He is able to look at the impact for the clients in the commercial arena."

Chambers UK 2023

"The go-to barrister for service charge disputes, Mark's knowledge of this area is second to none. As well as being exceptionally bright, he is commercial and practical. Extremely thorough in both his advice and preparation for trial, his advocacy is tenacious and whilst steely in cross-examination, he always remains courteous."

Legal 500 2023

"He gives clear and pragmatic advice and is an excellent tribunal advocate."

Chambers UK 2022

"Mark is an approachable, user friendly barrister who is able to work at a number of different levels. His range of knowledge and experience in relation to enfranchisement and also service charge matters is impressive. He comes over very well with clients and is also highly responsive and sharp."

Legal 500 2022

"A recognised specialist in leasehold enfranchisement matters. A pleasure to work with."

Chambers UK 2021

"He is technically very strong and experienced, enhanced by his role as a Tribunal Judge on the Southern Panel."

Legal 500 2021

"Thorough and approachable in all residential landlord and tenant matters." "Very experienced and able to give a well thought out and reasoned opinion on complex matters of property law."

Chambers UK 2020

"He is a very reliable junior."

Legal 500 2020 (Property Litigation)

"Exceptionally helpful and knowledgeable, providing quality written advice and strong advocacy skills."

Legal 500 2016

"He is very technically able in a complicated area of law."

Chambers UK 2016

Awards

- Shortlisted, Property & Housing Junior of the Year, Legal 500 Bar Awards (2023)
- Barrister of the Year, Enfranchisement & Right to Manage Awards (2022)
- Barrister of the Year, Property Management Awards (2012)
- Barrister of the Year, at the Property Management Awards (2011)

Appointments

- Member, Tribunal Procedure Committee
- Judge of the First-tier Tribunal (Property Chamber)

Publications

Books

- General Editor, Service Charges & Management (5th Edition, 2022), Sweet & Maxwell
- Editor, Rent Review: A Surveyor's Handbook (RICS) (2008)
- Co- editor: The Electronic Communications Code – a practical guide (2nd edition 2023) (Legal Brief Publishing)

Articles

- "A Shift in Approach in Rent Repayment Orders" (L&T Review – Vol.25 No.5 (2021)
- "Building safety charges: The new law" News on the Block , September 2020
- "Double hatting in the First-tier Tribunal (Property Chamber)", News on the Block , April 2020

- "Transparency Is Key When Incurring Costs", Estates Gazette, 25 November 2017
- "Damages for landlord default in long residential leases" (L. & T. Review – Vol.20 No.3 (2016))

Journalism

- Newspaper column: "Ask the Expert" in the Times newspaper (2007-to date)
- Monthly Legal Update for members of Institute of Residential Property Managers

Qualifications

- FCI Arb
- FIRPM
- BA (Hons)

Memberships

- Association of Leasehold Enfranchisement Practitioners (Advisory Committee)
- Chancery Bar Association
- Property Bar Association
- Chartered Institute of Arbitrators (Fellow)
- Institute of Residential Property Management (Fellow)

Languages

- English
- Italian