



Dr Nathan Smith

Year of call 2007

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Nathan has practised at Kings Chambers for around 15 years. Nathan's practice deals exclusively with business and property disputes and includes the following areas:

- Commercial litigation
- Company and partnership
- Real estate litigation
- Banking and finance
- Insolvency
- Professional negligence

Nathan regularly appears in the Business and Property Courts and the County Court for banks, institutional clients, companies of all sizes and individuals. Nathan has also appeared in the First Tier Tribunal, Property Chamber.

Nathan approaches every instruction with the of the aims and objectives of his clients in mind and understands the need to provide clear and comprehensive advice to enable his clients to focus on what matters to them.

Nathan has been described in the Legal 500 as "a quality advocate" whose paperwork is "excellent".

In his free time, Nathan enjoys watching football, playing the piano and, weather permitting, barbecuing.

Expertise

Banking and Finance

Nathan has practised at Kings Chambers since 2008. Throughout that time Nathan has acted for banks, building societies and other financial institutions, and their customers, in many different types of banking and finance litigation.

Recent examples include:

- (2023 – 2020) Acting for a number of banks in more than 150 claims brought by borrowers alleging that their relationship with the bank was unfair under sections 140A to C to the Consumer Credit Act 1974 due to the non-disclosure of commission associated with payment protection insurance products.
- (2023) Preparing opinions on the extent of the obligations owed by a bank to third parties under English law as a result of anti-money laundering legislation, including the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017/692 and the

Proceeds of Crime Act 2002, for use in 3 separate cases in Courts in France.

- (2023) Acting for a creditor by assignment of the balances of various store cards in claims in which it was alleged that the creditor was responsible for the sale of payment protection policies when the cards were originally sold.

Further examples are:

- Acting for a customer of a foreign bank to obtain a *Bankers Trust v Shapira* [1980] 1 WLR 1274 order to trace the proceeds of monies that were fraudulently taken from its account.
- Acting for a customer of a UK bank whose account was wrongfully debited with payments that resulted in the customer being unable to pay the premium on an insurance policy.
- Advising customers of banks who have been the victims of fraud (including push-payment fraud).
- Acting for banks and borrowers in respect of the enforcement of guarantees and mortgages, including higher value claims or mortgages where £1m+ is outstanding.
- Acting for banks in cases where unauthorised transactions have arisen on debit cards and it is alleged that customers have failed to protect their security information.

Nathan also deals with professional negligence claims that arise out of banking transactions. In a recent example Nathan was instructed by a bank in a professional negligence claim against a firm of valuers in respect of the valuation of a portfolio of properties that was relied upon to advance significant funds to an insolvent company.

Commercial Litigation

Nathan has extensive experience of commercial litigation, acting for individuals and companies of all sizes.

Recent examples include:

- (2023) Acting for a specialist welding fabrication company in a 4-day trial about the quality of welding in the construction of an aluminium smelting system for one of the largest aluminium producers in the world. There was extensive, highly technical expert evidence on both sides.

The claimant had carried out over £400,000 worth of work for a large aluminium smelter of which over half had not been paid for. The case involved allegations of delay, defective welding in breach of the Sale of Goods Act 1979 and a dispute over the contractual specification and terms.

Nathan is often instructed in technical disputes where his scientific background gives him an edge when dealing with expert evidence or claims with a scientific element.

- (2023) Acting for an importer of medical supplies from China in a dispute with a re-seller / distributor who had failed to pay more than £1.4m for goods that were delivered. The claim was initially in the Commercial Court and then transferred to the Circuit Commercial Court and involved whether the goods complied with the Medical Devices Regulations 2002/618 and/or the Sale of Goods Act 1979.
- (2023) Acting for a staffing agency in a claim for the recovery of more than £300,000 in outstanding fees from nursing homes regulated under the Health and Social Care Act 2008.
- (2023) Advising a business in a dispute with an energy broker. The business disputed its alleged liability for high charges that were claimed.
- (2023) Advising a businessman in a dispute about the terms of a lease of equipment under which £60,000+ was claimed. The case involved the extent to which the lease was a regulated agreement under the Consumer Credit Act 1974.
- (2022) Acting for a scientific laboratory in a claim for £1m+ against a sub-contractor that had negligently carried out a significant number of tests for clients in breach of the Supply of Goods and Services Act 1982 and/or the Sale of Goods Act 1979 and express contractual terms. The claim involved a considerable amount of technical detail as well as a dispute about the effect of exclusion and limitation clauses as a result of the Unfair Contract Terms Act 1977.
- (2022) Advising a company in respect of the coverage of an insurance policy when £100,000+ of camera equipment was stolen. Involved consideration of the Unfair Contract Terms Act 1977 and the Insurance Act 2015.
- (2022/1) Acting for a supplier of medical equipment in various cross-border disputes involving the enforcement and/or termination of distribution agreements. One claim was for more than CAD\$200,000 in Canada. Another claim involved the Rome I Regulation (593/2008) to determine the applicable law.
- (2001) Acting for a national leasing company in respect of a dispute with a customer in proceedings that required the imposition of a confidentiality ring.

Further examples are:

- Acting for a footballer in a dispute with an agent about the ownership of properties and the unauthorised use of monies.
- Acting for a supplier of SAP software in a dispute with a client.

- Appearing for the claimants in a commercial arbitration under the Arbitration Act 1966 following the termination of an agency agreement.
- Applying for injunctive relief including freezing (Mareva) injunctions.
- Applying for a variation to a freezing injunction to increase the amount the applicants could use to fund their legal expenses.
- Acting on behalf of a Cypriot development company in the Commercial Court in London, in a dispute over alleged representations under the Misrepresentation Act 1967 made prior to the sale of more than 30 properties. Led by David Casement KC.
- Acting as junior counsel in a £7m professional negligence claim arising out of the drafting and negotiation of a shareholder agreement.

Company

Nathan has acted and advised in a wide range of litigation involving companies, including disputes between shareholders, claims against directors and other company related applications.

Shareholder disputes

Recent examples include:

- (2023) Acting for a petitioner seeking to enforce a settlement agreement that resolved an unfair prejudice petition under 994 of the Companies Act 2006. Led by Andrew Grantham KC.
- (2023) Acting on behalf of a founder of a nursing agency in a dispute with a family member over the ownership of the company.

Other examples include acting for parties involved in unfair prejudice petitions under the Companies Act 1996 and disputes over the interpretation / enforcement of shareholder and share purchase agreements.

Claims against directors

Recent examples include:

- (2023) Advising on a number of claims against the directors of a large group of companies for breach of their duties contained in sections 170 to 177 of the Companies Act 2006.
- (2023) Advising on a claim against director arising out of the management of a family business.
- (2022) Acting for a company that was alleged to have been unjustly enriched by payments misappropriated by a director.

Further examples are:

- Acting for a liquidator in a 4-day trial of an application under the Insolvency Act 1986 in the High Court (Insolvency and Companies Court) in London to recover £200,000+ in funds misappropriated by a director.
- Acting for a director in the Companies Court in London who successfully resisted a claim by a liquidator to recover over £200,000 following the liquidation of a company: *Re Bridgegate Communications Limited* [2016] EWHC 2085 (Ch).

Other company matters

Recent examples include:

- (2023) Acting on behalf of a company to rectify the register of members under section 125 of the Companies Act 2006.
- (2023) Advising a lender in respect of the defective registration of a legal charge at Companies House and an application to extend time under section 859F of the Companies Act 2006.
- Acting as junior counsel in a £7m professional negligence claim arising out of the drafting and negotiation of a shareholder agreement.

Nathan also acted for a creditor in a High Court case that decided whether, when a company is restored to the register of companies after dissolution and disclaimer of a lease, the lease automatically revests in the company: *Mistral Asset Finance Ltd v Registrar of Companies* [2020] EWHC 3027

Insolvency

Nathan has undertaken a wide range of insolvency litigation for office holders, creditors and parties defending insolvency proceedings for many years.

Recent examples include:

- (2023) Acting on behalf of a director at a 1-day hearing to resist a bankruptcy order in the context of a much larger dispute about the ownership of a number of companies. The petitioner sought more than £350,000 from the director.
- (2023) Advising a client on the recovery of tax arrears through insolvency proceedings.
- (2023) Acting on behalf of a director who was alleged to have traded using a company with a similar name to a previous company that became insolvent contrary to section 216 of the Insolvency Act 1986. A creditor sought to recover £30,000+ from the director under section 217 of the 1986 Act.
- (2023) Applying for an administration order under Schedule B1 of the Insolvency Act 1986 in respect of a group company that was involved in an unauthorised collective investment.
- (2022) Representing a petitioning creditor in a contested application for an administration order over a hotel operating company under paragraph 12(1)(c) of Schedule B1 of the 1986 Act. The application was listed for a day before a Judge of the High Court.
- (2022) Acting for a trustee in bankruptcy to obtain an order for sale of a property under section 335A of the Insolvency Act 1986 where there was a significant dispute as to how the property was beneficially owned.
- (2022) Acting for the landlord of a city centre nightclub premises to seek permission to forfeit the lease after the tenant had been placed into administration under paragraph 43 of Schedule B1 of the 1986 Act.
- (2021) Advising on the administration of a publicly listed company involved in running sports centres and claims arising out of the administration.
- (2021) Acting for a director in proceedings in which the director was being pursued by liquidators for authorising a company to use a tax avoidance scheme, which was alleged to be contrary to the director's duties set out in sections 170 to 177 of the Companies Act 2006.

Further examples are:

- Acting for a creditor in a High Court case that decided whether, when a company is restored to the register of companies after dissolution and disclaimer of a lease, the lease automatically reverts in the company: *Mistral Asset Finance Ltd v Registrar of Companies* [2020] EWHC 3027.
- Acting for a liquidator in a 4-day trial in the High Court (Insolvency and Companies Court) in London to recover £200,000+ in funds misappropriated by a director.
- Acting for a director in the Companies Court in London who successfully resisted a claim by a liquidator to recover over £200,000 following the liquidation of a company under section 212 of the Insolvency Act 1986: *Re Bridgegate Communications Limited* [2016] EWHC 2085 (Ch).
- Acting for a creditor to set aside a property transaction under section 423 of the Insolvency Act 1986 that was entered into to avoid the enforcement of a significant costs order.
- Acting on behalf of a client to set aside a statutory demand for £200,000.
- Acting for a trustee in bankruptcy in a 2-day trial to recover possession of a property transferred to the bankrupt's father several years beforehand. The respondents claimed the property was held on trust from the outset.
- Acting for a trustee in bankruptcy in a 3-day hearing in a dispute over the ownership of a property said to be held on trust.
- Advising in respect of the construction of retention of title clauses relied upon by a company in liquidation.
- Advising on the effect of discharge from bankruptcy on various types of debt and the exception in the event of fraud.
- Dealing with private examinations to obtain further information and documents from company officers and individuals and to obtain summary relief. Nathan has also obtained warrants of arrest to secure compliance.
- Claims involving preferences, transactions at an undervalue and other recovery proceedings under sections 238, 239, 339 and 340 of the Insolvency Act 1986.
- Representing insolvency practitioners in claims brought to challenge the validity of proofs and their decisions on them under the Insolvency Rules 2016.

Partnership

In addition to undertaking a wide variety of company related work, Nathan also has significant experience of advising and acting for clients involved in partnership disputes.

Recent examples include:

- (2023) Acting for one of the partners of a property development limited liability partnership in a dispute about the distribution of the profits of the partnership.
- (2023) Acting for a partner in a dispute about the ownership of various commercial properties.
- (2023) Acting for a business partner in a dispute over the ownership and development of a series of residential properties.

Private Clients, Trusts and Probate

For a number of years Nathan has been a member of the private client team at Kings Chambers. Nathan has experience of a wide variety of probate litigation and other claims related to the administration of estates.

Recent examples include:

- (2023) Acting on behalf of a family who alleged that their son's will had been forged.
- (2023/22) Advising on the construction of a will and the procedure for dealing with an ambiguous will with numerous potential beneficiaries.
- (2022) Advising on a claim under the Inheritance (Provision for Family and Dependants) Act 1975 brought by a long-standing cohabitee.

Further examples are:

- Acting for a beneficiary in a dispute about whether a will was revoked by destruction under section 20 of the Wills Act 1837.
- Advising on the distribution of an estate where a beneficiary was potentially insolvent.
- Obtaining an insolvency administration order in respect of the estate of a deceased person, where there were significant claims that an insolvency practitioner wanted to investigate.
- Drafting a claim for an order under Non-Contentious Probate Rules 1987 (SI 1987/2024) to remove a caveat without consent.
- Acting for a trustee / executor in a property dispute where two sets of beneficiaries sought different relief.
- Advising on the rectification of a will under section 20 of the Administration of Justice Act 1982.
- Applying for and obtaining an order that a will was valid following a trial on written evidence under paragraph 6.1 of the Practice Direction to Part 57 of the Civil Procedure Rules.
- Representing one of several adult children in a multi-party dispute over the construction of a will and a claim for maintenance under the Inheritance (Provision for Family and Dependants) Act 1975.
- Advising and acting for clients on various claims under the 1975 Act.

Nathan has also presented several seminars on topics arising in the administration of estates, including claims for the removal personal representatives, the interpretation of wills and how to deal with potential insolvency.

Professional Negligence

Nathan has significant experience of bringing claims for professional negligence and acting for professionals who are defending these types of claim.

Examples include:

- Acting for a bank which is pursuing a professional negligence claim against a firm of valuers in respect of the negligent valuation of a portfolio of several properties that was relied upon to advance significant funds to an insolvent company.
- Acting as junior counsel in a £7m professional negligence claim arising out of the drafting and negotiation of a shareholder agreement.
- Representing a solicitor for alleged negligence in a claim arising out of a multi-million-pound property development.
- Representing a firm of architects in their defence of a claim in negligence relating to their management of the build of a property.
- Advising and acting for a major high street bank in a claim for the negligent valuation of 3 properties at around £1.05m.

Real Estate Litigation

Nathan has extensive experience of real estate litigation and has acted for property developers, land owners, landlords and tenants in a wide variety of disputes, including property development disputes; commercial lease renewals and rent reviews; claims involving disputed boundaries, rights of way and other issues with neighbours; adverse possession claims; land registration and issues arising from the purchase of properties; trust disputes; mortgage and possession claims; and other leasehold litigation, including for groups of litigants. Further details are set out below.

Property development

Recent examples include:

- (2023) Acting for a developer in a 5-day trial concerning the construction of a car park and whether it exacerbated the flow of water onto a neighbouring

property. The claim also involved an allegation of nuisance and water damage from tree roots.

- (2023) Acting for a developer of a scheme of 25+ homes to consider the extent of a pre-existing right of way and its potential effect on a section 38 Highways Act 1980 agreement to be entered into with a local authority.
- (2023/2) Acting for a sports club in a dispute about its occupation of a stadium with the land owner.
- (2023) Acting for a developer to enforce a restrictive covenant at a residential development by way of injunctive proceedings.
- (2023) Advising a local authority on the enforcement of a bond securing obligations under section 38 of the Highways Act 1980 for the construction and adoption of a road.
- (2022) Advising on the interpretation and enforcement of a conditional sale and purchase agreement that was conditional on planning permission being obtained by a long-stop date.

Further examples are:

- Acting for the grantee of an option in a trial before the First Tier Tribunal that concerned the validity of an option agreement over 2 properties valued at £2.4m. Reported as *Trivelles Grand Limited v Gill* (REF: 2017/1076).
- Acting for a national developer in a dispute over the interpretation of the terms of a shared equity scheme.

Commercial lease renewals and rent reviews

Recent examples include:

- (2023/22) Acting for a landlord in a dispute with an electricity company over the renewal of a lease under the Landlord and Tenant Act 1954 for an electricity sub-station in the city centre.
- (2023) Advising a landlord on the terms that should be taken into account for the purpose of a rent review.
- (2022) Advising for a tenant of a large factory premises on negotiations for the renewal of a business lease under the 1954 Act.

Further examples are:

- Representing a landlord in a 2-day trial over the rent payable on a lease renewal.
- Acting for a commercial tenant in a dispute with its landlord over repairing covenants and the terms of a lease and whether or not the landlord was able to resist an application for a new lease under the Landlord and Tenant Act 1954
- Acting for many other landlords and tenants in lease renewal proceedings.

Other commercial lease disputes

Recent examples include:

- (2023) Acting for a commercial tenant seeking relief from forfeiture under section 139 of the County Courts Act 1984 in a claim concerning various allegations of breach of covenant.
- (2022) Acting on behalf of an owner of a shopping centre to enforce the exclusion of a person who had been banned for anti-social behaviour.
- (2022) Representing the owner of a shopping centre in a claim brought by a tenant alleging that the communal parts had not been maintained and that the owner was in breach of covenant.
- (2022) Acting for the landlord of a café in a dispute about repairing obligations with a tenant. There was also a dispute about an interim rent under sections 24A to D of the Landlord and Tenant Act 1954.
- (2022) Advising a charity on claims for water ingress in a commercial premises from neighbouring premises.

Further examples include:

- Obtaining injunctive relief for a national chain of public houses to enforce the terms of a lease.
- Representing the owner of a commercial property in a 4-day trial, which resulted in the recovery of the premises from third parties operating a business and who claimed a right to occupy had arisen from an informal lease and/or as a result of proprietary estoppel

Boundaries, rights of way and other issues with neighbours

Recent examples include:

- (2022/23) Acting for homeowner in a 4-day trial concerning the construction of an extension to a neighbouring property. The case involved a dispute over the location of a boundary, the enforceability of restrictive covenants and the use of a right of way.
- (2023) Advised a homeowner on the extent of a boundary of a new build property in a dispute with a developer.
- (2022) Advised a landowner in respect of a claim against a neighbour who had allowed a wall to fall into disrepair.

A further example is representing a neighbour in a 3-day trial concerning the location of a boundary between two properties and the ownership of certain trees.

Adverse possession

Recent cases include:

- (2023) Representing a landowner and his son at a 1-day appeal over whether the landowner had obtained adverse possession to an area of river bank that was important for his business.
- (2023) Acting for the owner of a large chain of public houses in respect of a claim for adverse possession of a beer garden.
- (2023) Acting for a local authority whose land had been encroached upon by a number of homeowners during the COVID-19 pandemic.

Nathan has also presented a seminar on recent developments in adverse possession case law and dealt with cases under the old regime of the Limitation Act 1980, the new regime under Schedule 6 of the Land Registration Act 2002 as well as cases governed by the transitional provisions.

Land registration, purchase and fraud

Recent cases include:

- (2022) Advising a lender on various issues that were delaying registration of a series of new build properties and the associated legal charge that had secured funding.
- (2022) Acting for a developer in the High Court in a claim concerning whether a vendor had properly disclosed an alleged defect in title. The claim was dealt with by a Chancery Master in London.
- (2021) Acting for a developer who was facing claims by over 100 claimants relating to the sale of properties in Cyprus in the High Court in London. Led by David Casement KC in part.

Further examples are:

- Acting for the applicant in a 2-day trial in the First Tier Tribunal (Property Chamber) ('FTT') to alter the register of title for a property. The applicant alleged that her signature had been forged on a deed of transfer for a property in 1996: [2019] UKFTT 372 (PC).
- Acting on behalf of an applicant in 4-day trial before the FTT in which she sought the removal of a mortgage from the register of title for her property on the ground that it had been obtained fraudulently by a third party.
- Representing the applicants at a 2-day hearing in the FTT in which they were seeking an order for the alteration of the register of title of their property to remove a legal charge that had been obtained by fraud: *Abdul Farooq (1) Surya Begum (1) v Kensington Mortgage Company Ltd* [2017] UKFTT 230 (PC)

Nathan has also presented talks on the jurisdiction of and the procedural rules used in the FTT.

Trusts

Recent examples include:

- (2023) Acting for a beneficiary of a written trust in the First-tier Tribunal (Property Chamber) to obtain a restriction reflecting the validity of the trust (FTT Ref No. 2018/0588) and subsequently applying for the enforcement of the trust by way of an order for sale, relying upon an issue estoppel from the earlier FTT proceedings.
- (2023) Acting for a partner in a dispute about the ownership of various commercial properties.

Further examples include acting for the beneficiary of a complex series of family companies and trusts in a dispute about who was entitled to the benefit from the sale of development land.

Mortgages and possession

Nathan recently advised a mortgage lender on its general procedures for dealing with persistent default by borrowers.

Further examples of claims that Nathan has dealt with involving mortgages and possession include:

- Obtaining and resisting orders for possession against borrowers, especially borrowers with significant outstanding mortgages of £1m+ and issues arising under sections 8 and 36 of the Administration of Justice Acts 1970 and 1973.
- Obtaining orders for possession against trespassers and persons unknown under Part 55 of the Civil Procedure Rules.
- Applying on behalf of lenders for legal charges that have been removed by mistake to be reinstated under Schedule 4 of the Land Registration Act 2002.
- Dealing with possession claims involving fraud and forgery or undue influence and consequential claims based on subrogation, equitable charges and/or other relief.

Nathan has also presented an annual seminar for a number of years on developments in mortgage law with other members of Kings Chambers. As part of that Nathan has given talks on the unfair relationship provisions and how they can apply to mortgages, dealing with mortgage fraud and undue influence, and on claims

against valuers arising out of the overvaluation of assets.

Group and other (leasehold) claims

Recent examples include:

- (2023/22) Acting for a group of litigants in London whose properties were damaged and/or affected by the collapse of a large crane.
- (2023) Acting for landowners in a dispute with the environment agency following the collapse of a weir. The case concerned a claim under the Salmon and Freshwater Fisheries Act 1975 and a referral to arbitration. Led by Mark Harper KC.
- (2023) Advising a leaseholder in respect of a service charge dispute, where the returns promised by a vendor of a property had not materialised.

Further examples are:

- Acting for a group of around 20 residents of a housing development who wanted to replace their management company under the Commonhold and Leasehold Reform Act 2002.
- Representing the owners of a penthouse flat in a dispute with their management company over the construction of the repairing obligations in a lease. Reported as *Glengarry Management Company Limited v David Barker (1) Susan Barker (2)* (First Tier Tribunal)

Memberships

- Chancery Bar Association
- Northern Chancery Bar Association
- Northern Circuit Commercial Bar Association
- British and Irish Commercial Bar Association

Qualifications

- 2006/2007 Bar Vocational Course. Graded: Outstanding (ranked 1st in year).
- 2005/2006 Graduate Diploma in Law. Graded: Distinction (ranked 1st in year),
- 2001/2005 Atomic & Laser Physics DPhil, Oxford University
- 1997/2001 Physics MPhys, Oxford University (1st class)

Recommendations

- 'His strengths are his attention to detail and being excellent on paper; he is a quality advocate.' **Legal 500 2021**
- Lincoln's Inn Student of the Year (ranked 1st in year)
- Wales & Chester Circuit Award
- Oxford University Press Award
- Lord Denning Scholarship
- Buchanan Prize & Hardwicke Scholarship#

Publications

- Nathan has published several articles in leading scientific journals, including Physical Review Letters.

Other Career Details

- 2004/2005 Nathan was a lecturer in Physics at St. Peter's College, Oxford.
- Nathan has also published several articles in leading scientific journals, including Physical Review Letters.

Accreditations

