



## Nicholas Davidson QC

### Education

M.A. (Cantab.)

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Year of Call: 1974

Year of Silk: 1993

## Profile



Nicholas is a commercial litigator and arbitrator who has been described in the Legal 500 as "pre-eminent in the field of professional negligence" (2010), and as displaying "mastery of the law and practice of insurance" (2011); and in Chambers and Partners as "a must-have barrister who is mustard when it comes to identifying the salient points" (2010) and a "master cross-examiner" (2011) and "a sensational cross-examiner and advocate" (2013). He is equally at home in trial work and in appellate work at all levels ("listened to" was another). Always aiming to maintain a wide breadth of knowledge of the law and commercial awareness, he is committed both to understanding his clients' angles on their cases and to readiness to search for new angles. Despite having conducted many large cases for the defence, he does much claimant work. He is particularly interested in claims about investment advice and management.

Other directory (and in one case *The Lawyer*) comments in his time in Silk have been:

"Nicholas Davidson QC is "clearly one of the top guys at the Bar" and is held in the highest regard. Junior lawyers often turn to him for advice and he "rather generously and happily imparts his knowledge to them."

"Very approachable"

"Breathtaking intellect"

"Fearsome intellect"

"Sharp intellect and cuts quickly to the issues"

"A good advocate with great court presence"

"Frighteningly intelligent and incisive"

"An excellent advocate on weighty matters"

"Dry but hugely talented"

"Terrifying intellect and precision"

"Top-notch"

"Hot stuff"

"Incredibly bright"

"One of the barristers of choice for the defence of large issues"

"Names such as Nicholas Davidson QC ... have the most impressive professional negligence track records at the Bar"

"Wide-ranging experience"

"Excellent"

"Top professional negligence silk"

*Nicholas is a past chairman of the Professional Negligence Bar Association and is also a member of the British Insurance Law Association, Chancery Bar Association, COMBAR, Bar European Group and Society for Computers and Law.*

*He has given numerous talks to the Professional Negligence Bar Association and Professional Negligence Lawyers' Association, particularly including the topics of professional insurance needs, obligations, and ability to exclude or restrict liability, and spoke on "Claims against Funds and Investment Managers" at the 2011 COMBAR North American meeting.*

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## Commercial Dispute Resolution

As someone interested in and aiming to maintain high awareness of economics and finance Nicholas has a keen interest in commercial matters. He is involved not only in pure financial or interpretation litigation (a case of particular satisfaction to him was *AIB Group (UK) plc v. Martin and Gold* [2001] UKHL 63) but also in very tough business disputes. In *Ross River Ltd v Cambridge City Football Club* [2007] EWHC 2115 Ch he acted for the Club in establishing that a transaction in relation to its ground had been affected by bribery and fraudulent misrepresentation. He acted for Newcastle Airport in a high profile claim (settled the day before trial) against its former Chief Executive and the Estate of its Finance Director seeking to recoup in respect of multi-million bonuses which had become payable on a refinancing.

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## Insurance & Reinsurance

Nicholas regards the interpretation of documents as an exceptionally interesting area, and is intrigued by the challenges, including those of professional indemnity policies with the requirements to conform to Minimum Terms, not to mention the special context of solicitors' policies' with the Assigned Risks Pool policy in the background.

Nicholas has extensive experience, as advocate and arbitrator, of insurance law, especially professional indemnity insurance law, and the practical operation of policies, including dishonesty issues and the potentially vexing subjects of "notification" of circumstances and the composite nature of the insurance. Recent work for Quinn Insurance has seen cases which have interested many - *William McIlroy (Swindon) Ltd v. Quinn Insurance Ltd* [2010] EWHC 2448 (TCC) (arbitration clause; time bar; relevance of ICOP; now on its way to the Court of Appeal); *Quinn Insurance v. The Law Society* [2010] EWCA Civ 805 (on the extent to which insurers can access documents, on which decision he has delivered explanatory talks to the British Insurance Law Association and the Professional Negligence Bar Association); *Kidsons v. Underwriters at Lloyds* [2008] EWCA Civ 1206 (application of minimum terms; notifications of Circumstances and their effect). *Quorum A/S v. Schramm* [2002] 1 Lloyd's Rep. 249 involved unusual interpretation problems and exploration of the London and French markets for a Degas pastel thought to be of unique interest to the Greek shipowning community.

He frequently deals with issues relating to fraud exceptions and reimbursement claims based on dishonesty.

He is experienced in the procedures where dishonesty is under consideration, and has conducted "indemnity cons" and is familiar with issues as to the handling of subsequent arbitrations.

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## Professional Liability

### Accountants, Auditors & Actuaries

Nicholas has frequently worked with accountants on numerous aspects of litigation, often to do with company valuation issues (a notable early case was involved successful defence of a share valuation claim where the claimant's expert was perhaps the then doyen of share valuation, Bruce Sutherland: *Whiteoak v. Walker* (1983) showed that if a company's articles required a valuation to be carried out by a generalist accountant he was not to be judged as if he had held himself out as a share valuation specialist).

### Insurance Brokers & Agents

Nicholas' most recent case in this field involved an 8-figure claim for a broker's client whose insurers were admittedly entitled to avoid for non-disclosure, the issue being how the non-disclosure had come about.

## Financial Services Professionals

Nicholas' considerable experience of, and great interest in, financial services claims has perhaps had an emphasis on investment management or advice, where he has acted for both claimants and defendants (usually in arbitrations). Being himself a trustee of a defined benefit pension scheme, he has to be able to understand the investment challenges for trustees and managers, and to be aware of legislative and administrative background. He has acted for a major financial adviser in defence of a split caps claim, and for various individuals who, having sold successful businesses, made or are making claims against leading investment houses when their investments disappointed by 7-figure sums, and for other individuals whose investments are said not to have been tailored suitably; certain pension issues following the demise of a business, and issues relating to offshore investment funds, have been referred to him.

## Lawyers

Probably the area for which Nicholas is best known. He led the defence of the large grouped litigation brought by the *Bristol and West Building Society* against numerous solicitors in the 1990s, and then the equally large litigation brought by the *Nationwide*; he was closely concerned with the development of understanding of both common law and equitable bases of liabilities and remedies. The wheel of the property cycle has come round, bringing new problems as practice has developed in the light of established law - and as fraud seems to have multiplied. Now he often acts for claimants, and ended 2010 acting for Nationwide subsidiaries UCB and The Mortgage Works in establishing that the possible existence of equitable rights over properties or of claims to be subrogated to rights of third parties provided no defence to solicitors who had parted with completion monies without doing that necessary to obtain the required first legal charges (*UCB v Grace* [2010] EWHC Ch); he acts, too, in disputes where there are issues as to who were the partners and which partners were innocent.

In the meantime he acted successfully in defining lines of liability for the legal profession in the House of Lords cases of *Cave* (the concept for limitation purposes of "deliberate concealment") [2002] UKHL 18 and *Medcalf v Mardell* (wasted costs) [2002] UKHL 27.

The variety and breadth of lawyers' professional liability work is one of its interesting challenges. In 2010 he appeared for D Morgan PLC against Mace & Jones in an 8-figure claim arising from problems over planning permission. In 2011 another 8-figure claim arises from work connected with the former "financial assistance" for share purchase provisions of company law.

He is very experienced in the "indemnity consultation" work arising when insurers challenge individual insureds' entitlement to indemnity.

## Surveyors & Valuers

Nicholas has appeared in various surveying and valuation cases, and finds valuation cases particularly intriguing. He particularly relished the valuation challenge in *Hartle v. Laceys* [1999] Lloyd's Rep. P.N. 315, in which he effectively had to argue both sides' cases in the Court of Appeal as the appellant was unrepresented, in which the evidence was that for a significant period following a residential development market collapse there was no active market. Valuation problems were a frequent factor in the litigation in which we was engaged throughout the 1990s.

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