



Nicole Sandells

Education

B.A. (Oxon) (First Class)

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Languages

French and Spanish

Profile

Nicole joined Chambers in 2002 having developed a successful practice at the Chancery commercial bar. The majority of her work falls within the general categories of Chancery, commercial dispute resolution and related professional liability, with a special emphasis on civil fraud and recoveries (both on and offshore), banking, trusts, property, and mortgage litigation.

In recent years Nicole has been involved in a number of high profile civil fraud and mortgage fraud related cases, including the *North East Property Buyers* litigation in the Court of Appeal and the Supreme Court (as *Scott v Southern Pacific*), where Nicole represented the successful lenders in a case with significant ramifications for the law of equitable and proprietary interests in land. Nicole's success for the Bank in the Court of Appeal in *Lloyds Bank v Markandan & Uddin* sparked a succession of cases pushing the boundaries of equity and trust law as a means of asserting beneficial ownership and recovering assets. Most recently she has appeared in the Supreme Court representing the defendant solicitor in the follow up case *AIB v Redler & Co*, where a decision is currently awaited on issues of trust law and beneficial ownership which may change the shape not only of English law, but of common law in many jurisdictions. Nicole was also involved in the *Innovator (Brown v InnovatorOne)* and *Gaydamak v Leviev* appeals in the Court of Appeal, having been brought in to both cases for her equity and trusts expertise. Her subrogation expertise means she has recently been instructed in a high value Court of Appeal matter to deal with a discrete point of law.

As can be seen from her list of cases, Nicole is never happier than when tackling complex and difficult points of law, and relishes appellate advocacy. She enjoys finding novel ways to trace or defend assets and assert beneficial ownership, adapting traditional trust and equity principles to commercial situations. She has been involved in litigation, in England and internationally, seeking variously to recover and to defend assets for the liquidators of various failed Caribbean banks (including assisting with a Privy Council appeal which settled just before hearing). Nicole is currently instructed to appear as lead counsel in asset tracing litigation in Antigua dealing with breach of trust, breach of fiduciary duty and breach of the International Business Corporations Act, together with principles of accessory liability.

Nicole's innovation, expertise and reputation is such that her cases often settle to her clients' satisfaction, even on complex and novel points of law, long before trial. Notable examples in the recent past include two multi-million pound fraud cases involving allegations of professional involvement by way of breach of fiduciary duty and trust, and professional accessory liability for knowing assistance. In both cases Nicole's clients obtained 6 figure settlements beyond expectations.

Nicole is a member of the Chancery Bar Association, the Professional Negligence Bar Association, COMBAR and the London Common Law & Commercial Bar Association.

Chancery

Nicole has a broad Chancery practice, developed at the Chancery commercial bar before she joined Chambers in 2002. Her practice encompasses all areas of property and private client litigation, including Court of Protection related work (see for example *Re J*). In particular, Nicole has a recognised and successful mortgage litigation and civil fraud practice, having made a number of successful appearances on behalf of lenders in the Court of Appeal or the House of Lords in recent years, and in 2014 in the Supreme Court. As can be seen from her list of cases, Nicole relishes appellate advocacy and complex and difficult points of law.

Nicole is a member of the Chancery Bar Association, the Professional Negligence Bar Association, COMBAR and the London Common Law & Commercial Bar Association.

Mortgages

Nicole:

- is recognised by a significant number of lenders and their in-house and panel solicitors as a leading junior in the field of mortgage-related litigation.
- regularly acts on behalf of clients ranging from high street banks and building societies to foreign banks and sub-prime lenders at all levels from the County Court to the Supreme Court. Recently she has represented two of the successful banks in the Supreme Court in the *North East Property Buyers* litigation, *Scott v Southern Pacific* (managed litigation concerning overriding interests, equities and priority in sale and rent back transactions, re-visiting *Abbey National v Cann*). She has also been successful in the Court of Appeal in *Bank of Scotland v Joseph, Lloyds TSB Bank plc v Markandan & Uddin*, and in the High Court in *Garwood v Bank of Scotland*. Judgment is awaited in the Supreme Court in *AIB v Redler* (concerning breach of trust by solicitors in mortgage transactions and the appropriate equitable remedies to be applied, re-visiting *Target Holdings v Redfern*) where Nicole represented the Respondent solicitor.
- has an appellate practice stretching back to appearances in the House of Lords for the successful lender in *Bradford & Bingley v Rashid* and in the Court of Appeal in cases such as *National Westminster Bank v Ashe* and *Halifax v Taffs*.
- has particular experience litigating cases raising fraud, priorities, equities and equitable remedies issues, including subrogation, on behalf of lenders. In addition to the cases set out above, she represented the successful lenders in *Cheval Bridging Finance v Hastings*, in *Mortgage Express v. Filby* and in *Mortgage Agency Services (No 2) Ltd v. Chater*, all in the Court of Appeal.

Banking

Nicole's mortgage practice is supported by other work in the banking field, particularly in relation to the interpretation and enforcement of standard terms and conditions in mortgages, guarantees and other financial arrangements, and claims under the Unfair Terms in Consumer Contracts Regulations, the Mortgage Conduct of Business Rules, the Insurance Conduct of Business Rules and the unfair relationships provisions of the Consumer Credit Act 1974. For example, Nicole has argued successfully on a number of occasions that early redemption charges are not unfair terms and can be enforced by lenders.

Fraud

Nicole has wide experience of all aspects of civil fraud. Her practice covers everything from equitable proprietary remedies and title rectification, through claims against the defaulting borrower, to claims against the professionals involved in the transaction, whether innocently or not, and claims in mistake, unjust enrichment and restitution.

She has a special expertise in claims raising subrogation issues, vendor's liens, equitable charges, overriding interests, breach of trust and breach of undertaking, and accessory liability for knowing assistance or knowing receipt.

Her practice also incorporates the professional indemnity issues arising out of fraud claims and claims against the Law Society Compensation Fund.

Real Property

Nicole's practice covers all aspects of real property work including:

- overriding interests
- co-ownership of land
- equitable interests in property (e.g. setting aside transactions for undue influence and other equitable wrongs, proprietary estoppel, equitable mortgages, subrogation)
- adverse possession
- rights in and over land including restrictive covenants, easements and licences
- land registration and conveyancing
- priority
- trusts of land and applications under the Trusts of Land and Appointment of Trustees Act 1996
- boundary disputes
- subsidence and nuisance claims
- options over land
- Law of Property Act receiverships
- landlord and tenant – see for example *PW & Co v. Milton Gate Investments Ltd*.

Nicole acted for the successful party in the adverse possession case *Lambeth Council v. Blackburn*, including a

successful application in the House of Lords. Nicole also advised the successful party on the land law aspects of *The Queen (Lord Chancellor) v. Chief Land Registrar*. More recently she has appeared in the *North East Property Buyers* litigation in the Court of Appeal and the Supreme Court (concerning overriding interests, the proprietary consequences of exchange of contracts, beneficial interests in land and priority), in *Bank of Scotland v Joseph* in the Court of Appeal (concerning the use and interpretation of unilateral notices), in *Barons Finance v Kensington* in the Court of Appeal (concerning priority and mistake) and in *Garwood v Bank of Scotland* in the High Court (concerning re-registration of mortgages removed from the Register by mistake).

Trusts, Wills, Probate and the Administration of Estates

Nicole's practice is concentrated on private client litigation rather than non-contentious advisory work. She has broad experience in:

- contentious probate.
- the administration of trusts and estates.
- removal or replacement of trustees, executors or administrators.
- the construction and rectification of wills and trust deeds.
- claims under the Inheritance (Provisions for Family and Dependents) Act 1975.
- trust litigation generally, including constructive and resulting trusts and tracing claims.
- lifetime gifts and assignments.
- breach of trust, remedies, and section 61 of the Trustee Act 1925.

Nicole advises and represents both trustees and beneficiaries with regard to breach of trust claims and accounting for trust property. She advises on and litigates Court of Protection matters including statutory wills, receiverships, deputyships and Enduring and Lasting Powers of Attorney. She appeared in *Re Cameron* (ademption; enduring powers of attorney) and acted for the successful applicant in *Re J*, concerning the validity of enduring powers of attorney creating successive attorneyships.

A significant minority of Nicole's practice involves representing trustees or beneficiaries in mediation or other alternative dispute resolution. She has recently been involved in settling two multi-million pound claims under the Inheritance (Provision for Family and Dependents) Act 1975 acting in one for executors and in the other for minor child claimants.

Nicole has recently appeared in both *Lloyds Bank v Markandan & Uddin* and *AIB v Redler*, which dealt with issues of breach of trust, account, remedies for breach of trust, defences under section 61 of the Trustee Act 1925 and contributory negligence and causation in the trust context.

Charities

Nicole has acted for a number of local and national charities representing them in trust disputes, estate issues, breach of trust and matters relating to construction of settlements and wills and defending inheritance tax claims.

Commercial Dispute Resolution

Nicole takes on litigation and advisory work in relation to all varieties of domestic and international contractual disputes including:

- insurance
- corporate and commercial fraud
- financial services
- banking
- guarantees
- construction
- pre-emptive remedies including interlocutory injunctions, freezing and search orders.

She has particular experience of claims under the Unfair Terms in Consumer Contracts Regulations.

Nicole has also developed a niche practice litigating National Lottery syndicate disputes after acting for the successful party in *Abrahams v. Abrahams*.

Professional Liability

The majority of Nicole's professional liability work is related to the general categories of Chancery and commercial dispute resolution. Nicole has broad experience not only in direct professional liability claims, but also in underlying actions brought to correct or mitigate alleged errors. Most recently she represented the defendant solicitor in *AIB v Redler* in the Supreme Court and the successful bank in *Lloyds Bank v Markandan & Uddin* in the Court of Appeal.

She is never happier than when tackling complex and difficult points of law, or pursuing novel or unusual solutions to professional liability problems. Nicole has recently settled a number of multi-million pound claims involving alleged fraud and deceit by valuers, breach of fiduciary duty by solicitors, and accessory liability/knowing assistance involving solicitors.

Nicole is a member of the Chancery Bar Association, the Professional Negligence Bar Association, COMBAR and the London Common Law & Commercial Bar Association.

Accountants, Auditors & Actuaries

Nicole has experience of:

- acting for and against accountants on allegations of negligent tax advice, company valuations, accounts, and company formation and secretarial services
- acting for and against accountants and financial service professionals in claims relating to breaches of their duties as trustees of wills, trusts and/or settlements and/or other fiduciary duties
- representing accountants in claims relating to alleged breaches of duty while acting as administrators, in both “old-style” and “new-style” administrations.

Construction Professionals

Nicole has experience acting for and against construction professionals in a wide variety of construction related disputes ranging from failure properly to damp proof domestic residences to claims for failing to advise properly as to planning issues for proposed residential development.

Financial Services Professionals

Nicole has experience:

- acting for and against defendants on allegations of negligent tax advice, financial planning, pension and investment advice
- acting for and against financial advisers regarding advice given on the investment of trust funds
- acting for and against accountants and financial service professionals in claims relating to breaches of their duties as trustees of wills, trusts and/or settlements.

Lawyers

Nicole has wide-ranging experience of solicitors' and barristers' negligence, fraud and breach of trust claims, for and against defendants, including:

- loss of litigation
- property-related disputes, including conveyancing errors and title rectification issues
- claims related to wills, trusts, inheritance planning and lasting and enduring powers of attorney
- claims arising out of trusteeships, executorships and attorneyships
- claims arising out of Court of Protection receiverships or deputyships
- breach of trust claims in the context of mortgage fraud and more widely
- defences under section 61 of the Trustee Act 1925
- accessory liability

Most recently Nicole has acted for the Claimant bank in *Lloyds TSB v Markandan & Uddin*, and for the Defendant solicitor in *AIB v Redler*. Nicole also advises defendants and claimants with regard to coverage issues and disputes, and advises claimants with regard to claims on the Law Society Compensation Fund. Nicole's practice also covers the underlying corrective litigation required to limit the liability of defaulting professionals, such as construction or rectification actions and the enforcement of equitable interests in land – see for example, Nicole's successful arguments in *Re J (Enduring Power of Attorney)* and *North East Property Buyers*.

Surveyors & Valuers

Nicole has broad experience acting mainly against surveyors and valuers, often in mortgage-related actions. In addition to the more usual negligence claims, Nicole has recently settled a multi-million pound surveyors' fraud claim concerning fraudulent valuations provided in back to back sale transactions.

Offshore

Nicole has experience of advising on and acting in litigation taking place overseas, as well as in UK-based disputes with a cross-border component. Her offshore work covers all aspects of her domestic practice, for corporate and private clients. The majority of her experience is Caribbean related, and she is currently instructed to appear as lead

counsel in asset tracing litigation in Antigua dealing with breach of trust, breach of fiduciary duty and breach of the International Business Corporations Act, together with principles of accessory liability. She has been involved in litigation, internationally as well as in England, seeking variously to recover and to defend assets for, among others, the liquidators of failed Caribbean banks (including assisting with a Privy Council appeal which settled just before hearing).
