

Nigel Burroughs

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He clearly knows the law and gives clear and concise advice

- Legal 500

Nigel Burroughs joined 4 New Square after 15 years in commercial chancery chambers. He covers all areas of chancery work, and associated professional liability claims.

Nigel is also well known for his pensions' and offshore practice, and is recognised as a leading junior in these areas by The Legal 500.

His practice has taken him to Saudi Arabia, Jersey, Guernsey and the British Virgin Islands. He has been called to the bar of the Supreme Court of the Eastern Caribbean.

Nigel is variously described as "technically excellent, he's very good to deal with and he really does get his hands dirty with the materials" (Chambers & Partners); "great fun to work with, offers commercial and pragmatic advice, and has a wide chancery background which informs his pensions work" (Chambers & Partners); who 'can hold his own against QCs' (Legal 500).

Privacy Policy

Click here for a **Privacy Policy** for Nigel Burroughs.

Areas of Expertise

Chancery

After spending 15 years in a leading commercial chancery chambers, Nigel has considerable experience of all areas of chancery litigation. Whilst the majority of his work is commercial in nature, he is also well versed in traditional trust, wills and probate claims.

Real Property and Mortgages

Nigel's property work encompasses all contentious aspects of real property and the security over it. On the pure property side, he has dealt with conveyancing disputes, including specific performance applications, as well as boundary and easement problems. He has litigated a number of constructive trust claims. His security work encompasses the construction and enforcement of mortgages. He has fought actions involving the avoidance of mortgages on the grounds of misrepresentation and undue influence, and related professional negligence claims. Nigel has experience of enforcing lenders' rights under forged and equitable mortgages, and subrogation claims.



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Recent cases:

- Advising a national housebuilder on its obligation to complete the purchase of several sites where planning and other conditions remained outstanding.
- Mortgagee possession actions where the mortgagee sought to avoid the charge on the grounds of fraud and undue influence.
- Advising on the interrelation between an option contract over commercial property and a related supply agreement which had been subject to several variations.

Financial Services

Much of Nigel's financial services work concerns the misselling of personal pensions and life assurance products. He has also acted in claims against investment advisers and professionals involved with occupational pension schemes. Some of Nigel's cases have involved an overseas element, and he has appeared in court in the British Virgin Islands to obtain a pre-emptive costs order in favour of trustees for failing to comply with its investment duties to an off-shore trust.

Contentious trusts, wills and probate

Nigel has acted in numerous trust disputes. They have involved private trusts as well as pension and charitable trusts. Wills and probate cases have included claims for rectification, and challenges on the grounds of incapacity and want of knowledge and approval.

Recent cases have included:

- Acting for trustees seeking orders for sale of trust property opposed by the beneficiaries who alleged that the trustees had acted in breach of trust in failing to sell the property several years before.
- *Greenwold v Greenwold* – Construction of a will trust as to whether the expression 'my wife' also means 'my widow'.
- A claim for rectification brought out of time by the executors and a cross-claim by the residuary beneficiary under an earlier will for renunciation of probate on the grounds of incapacity and want of knowledge and approval.

Company and Insolvency

Nigel's company practice tends to focus on the more litigious aspects of shareholder and directors disputes, including unfair prejudice petitions. He also advises on pure company matters such as financial assistance.

On the insolvency side, Nigel usually acts for insolvency practitioners seeking to avoid antecedent transactions and recover assets. He also has considerable expertise in the construction of floating charges. In the last few years there have been an increasing number of cases involving insolvent companies and their pension schemes.

Recent cases have included:

- Acting for a Japanese owned food manufacturer in a dispute with a minority shareholder.
- Claims against a company's professional advisers arising out of a transaction which involved financial assistance in the purchase of its own shares. The advice included how to lawfully redo the transaction.
- Advising administrators in relation to the enforceability of an equitable charge securing an advance to purchase the business of the company which was superseded by a legal charge granted at a time when the company was insolvent.
- Acting for the supervisors of a CVA in connection with a claim for specific performance against the company.
- The recoverability of a deficit in a pension scheme from the principal employer in liquidation where the company had not employed any of the members of the scheme.

Commercial Litigation

Nigel deals with all areas of commercial chancery litigation, including contractual claims, sale of goods, fraud (including substantial financial services fraud), securities and guarantees, and insolvency. He has considerable experience of pre-emptive remedies and interim injunctions including freezing orders.



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Recent cases have included:

- Advising the sellers of a financial services business in relation to a claim by the purchasers for breach of warranties and the enforcement of indemnities contained in a share purchase agreement.
- *Lediaev v Vallen* – A dispute between two Russian businessmen concerning a property joint venture and an agreement to pursue the recovery of monies lost in an off-shore investment.
- The availability of set-off in a claim for freight and warehousing charges.
- The construction and enforceability of a long-term supply agreement between a drinks distributor and a national bingo hall chain.

Pensions

“Technically very strong, especially in interpreting complex trust deeds.” – *Legal 500, 2020*

“He clearly knows the law and gives clear and concise advice.” – *Legal 500, 2019*

Nigel acts in all types of pensions disputes. These range from the misselling of individual personal pensions to large occupational pension schemes. His expertise includes claims arising out of attempts to amend scheme documentation and issues on the winding-up of pension schemes. He also has considerable experience of professional negligence claims against lawyers, actuaries, administrators and financial advisers. These have often involved issues on limitation.

He has been instructed in many estoppel cases including *Hearn v Younger* and *Hodgson v Toray Textiles*. He also appeared in the Demaglass case (reported under the name *Alexander Forbes v Clarke*) which considered priorities on winding up following *Cripps v Trustee Solutions*.

Recent cases have included:

- Claims against solicitors and pension scheme administrators arising out of the drafting of a consolidated trust deed. There are also Part 20 proceedings between the solicitors and the administrators. One of the principal legal issues is the effect of section 37 of the Pensions Schemes Act 1993 which prevents amendments to a contracted-out scheme unless the actuary certifies that it continues to meet the reference scheme test.
- Acting for a firm of solicitors in relation to a negligence claim arising out of the drafting of a consolidating deed, and the removal of an underpin to pensions increases. One of the live issues is the extent to which the solicitors owed a duty of care to the principal employer which has suffered the loss, or only to the trustees (who seem to have suffered no loss).
- A claim involving a failure by administrators and pensions advisers to inform the principal employer of changes to the basis on which the debt on a solvent employer was calculated. Limitation is a live issue, as is causation and scope of duty.
- Claims against administrators and pensions consultants arising out of changes which were sought to be made to pensions benefits but which were improperly implemented.
- An appeal against the rejection of a proof by a liquidator. The issue was when the scheme commenced winding up which determined whether the debt on the employer should be calculated on the buy out or MFR basis.
- Advising a US company on seeking clearance from the Pensions Regulator on the sale of a UK subsidiary with a substantial pensions deficit.
- Considering the rights and obligations of trustees of a receiving scheme whose benefits were intended to mirror those of the transferring scheme, but which were different. This resulted in a deficit in the receiving scheme in respect of the transferred members.
- Advising the joint administrators of a principal employer which had never employed any members of the scheme as to its obligations to contribute to the deficit. Considering the liability of the professional advisers to the company who had consistently advised the directors that it was under an obligation to contribute to the scheme.

Professional Liability

Nigel has dealt with claims against lawyers, accountants, auditors, pensions administrators, actuaries, financial advisers, architects, surveyors and valuers. Due to his commercial chancery background, many claims have a chancery or financial aspect to them. He also has experience of lawyers' disciplinary matters.



Recent cases have included:

- Acting for the Jersey trustee of various family settlements in a dispute over the allocation of the proceeds of sale of the Jimmy Choo shoe business between the settlements.
- Advising auditors on their liability for the payment of *ultra vires* dividends.
- Acting for a firm of solicitors in a claim brought by the Attorney-General on behalf of charity.
- Claims against the administrators of a pension scheme for failing to properly implement amendments to the benefit structure.
- Part of a team acting for a high street lender in a series of claims against solicitors who acted on buy-to-let purchases and did not inform the lender about sub-sales and discounts.
- A claim against a valuer by a non-status lender. The lender relied solely on the valuation and did not enquire about the borrowers' income and their ability to repay the loan.

Offshore

“Incredibly bright, with a wealth of knowledge and experience in Chancery work.” – *Legal 500, 2020*

Nigel is ranked as a Leading Offshore practitioner by Legal 500. Nigel's offshore work tends to focus on trust matters, although he also experience of insolvency, commercial and property disputes and professional liability claims. He acts in domestic proceedings involving offshore structures and companies, as well as claims proceeding in offshore jurisdictions. His clients have included Swiss trust companies, Guernsey and Jersey trusts, and corporations based in various Caribbean jurisdictions.

He has been called to the Bar of the Supreme Court of the Eastern Caribbean, and has appeared in court in the BVI. His practice has taken him to Saudi Arabia and court in Guernsey and the Isle of Man. In the last year Nigel has undertaken two secondments with a leading international offshore law firm in Guernsey.

Recent cases have included:

- Acting on the discharge of a freezing order obtained against a Swiss trust company and challenging the court's jurisdiction to hear claims for dishonest assistance, breach of fiduciary duty and unjust enrichment.
- ***Synergy Capital Limited*** – Nigel acted for the UK individual who was the ultimate source of £8.5 million which was misappropriated by his account manager at UBS. The funds were paid into a complicated Guernsey company structure ending up in the hands of Synergy Capital Limited. The matter went to the Guernsey Court of Appeal on whether the individual had *locus* to wind up the company as an interested party (a provision unique to Guernsey insolvency law).
- Acting for Swiss trustees in relation to claims of gross negligence and breach of trust against former trustees, and the enforceability of inter-company loans totalling \$125 million. The claimants were the liquidators of various BVI companies ultimately owned by the trust, and the claims arose out of the insolvency of an Icelandic bank.
- Rectification proceedings in Guernsey which included consideration of whether the Royal Court should apply the English authority ***Pitt v Holt, Futter v Futter***, or decline to follow it (consistent with the approach in Jersey).
- Nigel has acted both for and against offshore trustees in several claims arising out of the poor performance of trust fund investments.

Qualifications & Memberships

Association of Pensions Lawyers
Commercial Bar Association
Supreme Court of the Eastern Caribbean

Education

B.A. (London) Dip. Law (PCL)

Insights



Expert Evidence on Share Valuations: When to use hot tubbing in unfair prejudice petitions

22 July 2019

A critical part of any unfair prejudice petition is the valuation of the minority shareholding. Paul Mitchell QC and Nigel Burroughs of 4 New Square were counsel on different sides in *Swain v Swains Plc*, a case in which the expert share valuation evidence was taken concurrently. They look at the pros and cons of hot tubbing, and offer practical advice on how to approach the way experts should give their evidence.

Pensions and extrinsic contracts

13 September 2011

An article which considers how the legal principles of extrinsic contracts and estoppel apply in the context of pension schemes.