

OUR PEOPLE

Nicole Sandells KC

CALL 1994

SILK 2018

LEGAL 500

“Intellectually extremely bright and knowledgeable on the law and procedure.”

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Nicole Sandells KC 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.

Described as ‘a mega-brain, with encyclopaedic legal knowledge and the ability to cut through complex legal issues with ease’, and ‘a master tactician who is exceptionally bright and has a fantastic ability to condense significant evidential information’, Nicole is recognised as a Leading Silk for her Professional Negligence work.

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, culminating in a successful Supreme Court appearance representing the defendant solicitor in the follow up case *AIB v Redler & Co*. 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 most recent Supreme Court case, *Swynson v Lowick Rose*, drew on her extensive unjust enrichment and subrogation expertise. Success in that case has helped to define the boundaries of equitable subrogation, restitution and unjust enrichment.

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 several failed Caribbean institutions, including appearing before the Court of Appeal of the Eastern Caribbean Supreme Court in Antigua. Nicole is currently instructed to appear as lead counsel in asset tracing litigation in several jurisdictions dealing with breach of trust, breach of fiduciary duty, restitution, tracing and the principles of accessory liability. Nicole is admitted to the BVI Bar.

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.

Expertise

Commercial 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 Redferns*) 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.

Featured Mortgages cases

- North East Property Buyers Litigation; *Scott v Southern Pacific*:
- [2012] EWCA CIV 17; Managed litigation concerning overriding interests, equities and priority in sale and rent back transactions, re-visiting *Abbey National v Cann*
- *Bank of Scotland v Joseph* [2014] EWCA CIV 28
- *Lloyds TSB v Markandan & Uddin* [2012] EWCA CIV 65
- *Garwood v Bank of Scotland* [2013] EWHC 415 (CH)
- *AIB Group (UK) plc v Mark Redler & Co* [2014] UKSC 58 [2015] AC 1503; Concerning breach of trust by solicitors in mortgage transactions and the appropriate equitable remedies to be applied, re-visiting *Target Holdings v Redferns*. Nicole represented the Respondent solicitor.
- *Bradford & Bingley plc (Appellants) v. Rashid* [2006] UKHL 37
- *National Westminster Bank Plc v Ashe* [2008] EWCA CIV 55
- *Cheval Bridging Finance v Hastings* [2008] EWCA CIV 1613; Acted for the successful lender in the Court of Appeal
- *Eileen Joan Rosina Filby v. Mortgage Express (No2) Ltd* [2004] EWCA CIV 759; LTL 18/6/2004; Acted for the successful lender in the Court of Appeal
- *Mortgage Agency Services (No 2) Ltd v. Chater* [2003] EWCA CIV 490; Acted for the successful lender in the Court of

Appeal

Banking & Financial Services

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.

Civil 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).

Featured Real Property cases

- *Lambeth London Borough Council v. Jack Blackburn* [2001] EWCA CIV 912; [2001] 25 EG 157 (CS); LTL 14/6/2001; Nicole acted for the successful party in this adverse possession case, including a successful application in the House of Lords

- The Queen (Lord Chancellor) v. Chief Land Registrar [2005] 4 ALL ER 643; THE TIMES AUGUST 9 2005; Advised the successful party on the land law aspects of this case
- North East Property Buyers Litigation [2012] EWCA CIV 17; Concerning overriding interests, the proprietary consequences of exchange of contracts, beneficial interests in land and priority. Nicole acted for the successful bank
- Bank of Scotland v Joseph [2014] EWCA CIV 28; Concerning the use and interpretation of unilateral notices
- Barons Finance v Kensington [2011] EWCA CIV 1592; Concerning priority and mistake
- Garwood v Bank of Scotland [2013] EWHC 415 (CH); Concerning re-registration of mortgages removed from the Register by mistake

Contentious Trusts & Probate

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.

Featured Contentious Trusts & Probate cases

- *Re Cameron* [1999] CH. 386; [1999] 3 WLR 394; [1999] 2 ALL ER 924; Ademption; enduring powers of attorney
- *Re J* (Enduring Power of Attorney) [2009] EWHC 436 (CH); Concerning the validity of enduring powers of attorney creating successive attorneyships
- *Lloyds TSB v Markandan & Uddin* [2012] EWCA CIV 65
- *AIB Group (UK) plc v Mark Redler & Co* [2014] UKSC 58 [2015] AC 1503; 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

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*.

Featured Commercial Dispute Resolution case

- Liselotte Myrup Abrahams v. The Trustee of the Property of Anthony Abrahams (A Bankrupt) LTL 13/7/99; TIMES, JULY 26, 1999; Nicole acted for the successful party

Professional Liability

“She immerses herself in the case and always brings insight to the matter.” – *Legal 500, 2020 (Professional Negligence)*.

“She is exceptionally bright and a ferocious advocate. She gives tactical advice and is a pleasure to work with. Clients speak extremely highly of her.” “If you want someone to think outside of the box and really come up with an innovative position, then she’s an excellent choice.” – *Chambers & Partners, 2020 (Professional Negligence)*.

“She is a mega-brain, with encyclopaedic legal knowledge and the ability to cut through complex legal issues with ease.” – *Legal 500, 2019 (Professional Negligence)*.

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.

Featured Professional Negligence cases

- AIB Group (UK) plc v Mark Redler & Co [2014] UKSC 58 [2015] AC 1503; Represented the defendant solicitor in the Supreme Court
- Lloyds TSB v Markandan & Uddin [2012] EWCA CIV 65; Acted for the successful bank in the Court of Appeal

Accountants, Auditors & Actuaries

Nicole has experience of:

- acting for and against accountants on allegations of negligent tax advice, company valuations, due diligence reports, accounts provision, audit services and company formation and secretarial services
- dealing with conflict of interest and breach of fiduciary duty claims and claims involving breach of ACCA codes, including the Code of Ethics
- 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
- representing accountants in claims relating to alleged breaches of duty while acting as administrators, in both “old-style” and “new-style” administrations
- claims concerning alleged breach of the International Standards on Auditing, including multi-million pound cross-

- jurisdictional auditors' negligence claims
- accountants' and auditors' negligence claims arising from major Ponzi schemes or pyramid frauds and the consequent failure of international banks and insurance companies.

Nicole acted for Lowick Rose in the court of Appeal in *Swynson v Lowick Rose LLP* [2016] 1 W.L.R. 1045 and is instructed to represent them in the Supreme Court in November 2016.

Featured Case

- *Swynson v Lowick Rose LLP* [2016] 1 W.L.R. 1045; [2015] EWCA CIV 629; [2016] 1 WLR 1045; [2015] PNLR 28; Successfully acted for Lowick Rose in the Supreme Court

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*.

Featured cases

- Lloyds TSB v Markandan & Uddin [2012] EWCA CIV 65; Nicole acted for the claimant bank
- AIB Group (UK) plc v Mark Redler & Co [2014] UKSC 58 [2015] AC 1503; Acted for the defendant solicitor
- Re J (Enduring Power of Attorney) [2009] EWHC 436 (CH)
- North East Property Buyers Litigation [2012] EWCA CIV 17

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).

Nicole is admitted to the BVI Bar.

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.

Awards



Qualifications

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

Education – B.A. (Oxon) (First Class)

Languages – French and Spanish
