



[Home](#) [◆](#) [Our People](#) [◆](#) [Duncan Heath](#)

Duncan Heath

[◆](#) [Back](#)



Year of Call: 2007

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Clerk: Ellen McInall

PRACTICE AREAS

Insolvency & Restructuring

Company

Commercial

Property

Wills, Trusts and Probate

Professional Negligence and Disciplinary

PROFILE

Duncan has an impressive all-round Chancery practice covering both traditional and commercial work with a particular focus on insolvency and company disputes, as well as property and contentious trust issues. He also maintains a busy probate and Inheritance Act practice. Duncan has a First Class Degree in German.

Duncan mainly appears in the High Court in Leeds, Newcastle, and London. He has considerable court room and trial experience.

He has been ranked in the Legal 500 and Chambers & Partners for several years in the following practice areas: Chancery, Commercial Dispute Resolution, Insolvency and Real Estate.

He is one of the contributing authors to “Bailey & Groves : Corporate Insolvency – Law and Practice”.

He is also the Barrister Lead for the Leeds Business and Property Courts Litigant in Person Scheme.

PRACTICE AREAS

Insolvency & Restructuring

Duncan regularly represents Insolvency Practitioners and private individuals faced with insolvency proceedings. His extensive property and contentious trusts practice makes him ideally placed to advise Insolvency Practitioners on the composition of the insolvent estate and third party interests in the same.

His work typically extends to: applications to set aside statutory demands, bankruptcy petitions, applications to restrain winding-up petitions, administration applications, clawback proceedings (misfeasance, TUV, preferences, s.423 IA 1986) and the like. He is also experienced in dealing with cross-border issues such as COMI disputes and recognition applications.

Recent cases include:

- Obtaining an Insolvency Administration Order on a contested petition under the Administration of Insolvent Estates of Deceased Persons Order 1986;
- Obtaining a *Berkeley Applegate* order for the administrators of a company of insolvency practitioners who were holding client monies in the company account (with a £5m shortfall on the client account);
- Acting for the guarantors under a personal guarantee given to a Swiss bank in their application to set aside a statutory demand (conflict of laws arising);
- Acting for the debtor to set aside a statutory demand served by a bank for circa £11m (on the grounds that a triable issue arose under the Consumer Credit Act 1974);
- Setting aside a statutory demand served on a guarantor (on the grounds that the guarantee was induced by a material non-disclosure by the bank) and successfully representing the guarantor on the appeal against the setting aside of the statutory demand (led by Hodge Malek QC on appeal);
- Advising the supervisors of IVAs on the correct treatment of PPI claims following the decision in *Green v Wright* ;

Company

Duncan acts and advises in shareholder disputes and unfair prejudice petitions.

Recent cases include:

- Acting with Leading Counsel in a multi-million pound shareholder dispute in which a daughter had been excluded from the family business.
- Advising the owner of a driving school in a shareholder dispute with his former co-director, who had set up a competing driving school.
- Acting in a shareholder dispute involving a lucrative property portfolio.

Commercial

Duncan has a burgeoning commercial practice, which has recently seen him instructed against Leading Counsel on several occasions.

Recent work includes:

- Appearing against Leading Counsel to overturn a summary finding of dishonestly assisting a breach of trust in a commercial transaction.
- Appearing against Leading Counsel in a dispute about the beneficial owner of shares in a Sri Lankan company and whether a loan had been assigned.
- Acting for a claimant seeking restitution against the defendant who had received a payment into his bank account following a fraud being perpetrated on the claimant via Nigeria.
- Acting in a claim for breach of warranty on the sale of shares in a dental practice.
- Representing Lincoln City Football Club in the 3 day trial of a claim brought by a former England international footballer (issues arising – unjust enrichment, restitution, ostensible authority of agent).
- Appearing at trial for a Company to successfully enforce a personal guarantee given in a trade credit application form.
- Appearing at first instance and on appeal against leading Counsel to oppose a bank's application for a stay on grounds of abuse of process because the borrower had issued similar claims in England and Ireland;
- Representing a German client in a freezing injunction application, in which third parties claimed ownership of the frozen monies.

Property

Duncan is regularly instructed in property claims including issues such as boundary disputes, rights of way, adverse possession, landlord and tenant disputes, proprietary estoppel and co-ownership disputes.

Recent work includes:

- An 8 day trial concerning beneficial interests in numerous properties and businesses in Bradford;
- The appeal arising out of the above trial, which concerned whether a co-owner of property was entitled to an account of rent (*Rashid v Munir* [2018] EWHC 1258 (QB); [2018] 5 WLUK 405; [2018] 2 P. & C.R. DG16).
- Representing the claimant, who asserted that particularly intransigent sheep were interfering with a right of way.

- Representing the applicant for an injunction preventing interference with shooting rights (*K v Fuller* [2016] EWHC 804 (Ch); [2016] 3 WLUK 744).
- Advising landlords on the construction of a lease of shooting rights;
- Advising the business tenant of a golfing range on renewal of business tenancy;
- Advising a local school on the construction of restrictive covenants in a lease and the prospects of renewing its tenancy;
- Appearing for successful Claimant in Party Wall / trespass dispute.

Wills, Trusts and Probate

Duncan has substantial experience in claims under TOLATA 1996, trustees' duties and powers and breach of trust claims and remedies. He also has particular experience and interest in probate actions and claims brought under the Inheritance (Provision for Family and Dependents) Act 1975.

He is frequently instructed in cases where trusts law overlaps with other areas, for example insolvency, company and inheritance disputes.

Recent work includes:

- Representing three defendants in an 8 day trial concerning beneficial interests in 15 properties and 6 businesses;
- Defending a proprietary estoppel claim valued at £3m;
- Advising the Supervisors of over 2700 Involuntary Arrangements on whether certain assets are held on trust for the IVAs;
- Applying for orders for sale in contested proceedings involving a property portfolio worth several million pounds;
- Challenging the validity of a Will on grounds of lack of testamentary capacity and insane delusions;
- Successfully opposing Inheritance Act claims brought by adult children in a 5 day trial in the High Court at Newcastle;
- Advising and representing estate on construction of a will (partial adoption being the main issue).
- Obtaining an order for the removal of an executrix after a three day trial in the High Court in Manchester;
- Obtaining the removal of a professional executrix;
- Advising residuary beneficiary under a will (issues arising: domicile, limitation; testamentary capacity; knowledge and approval; undue influence; lack of due execution; forgery; the composition of the estate)
- Advising executor accused of devastavit;
- Advising on and negotiating the settlement of a disinherited widow's claim under the Inheritance (Provision for Family and Dependents) Act 1975.

Professional Negligence and Disciplinary

Duncan acts in professional negligence claims against legal representatives and others.

Recent work includes:

- Advising whether conveyancing solicitors had negligently failed to advise on the limits of a restrictive

covenant and associated right of way.

- Advising and appearing at mediation in a claim concerning the negligent monitoring of clinical testing

SIGNIFICANT CASES

Rashid v Munir [2018] EWHC 1258 (QB); [2018] 5 WLUK 405; [2018] 2 P. & C.R. DG16

Whether co-owner of property entitled to account of rent.

<https://www.lawgazette.co.uk/law/judge-rails-at-festival-of-mendacity-in-case-where-truth-was-lifestyle-choice/5066224.article>

K v Fuller [2016] EWHC 804 (Ch); [2016] 3 WLUK 744

Whether injunction to be granted to prevent interference with shooting rights.

Charles v Lincoln City Football Club [2015]
(unreported.)

<https://www.birminghammail.co.uk/news/midlands-news/ex-aston-villa-star-gary-10405274>

Riley v Seed [2013] EWHC 4863 (Ch); [2013] 6 WLUK 222

Removal of executrix by the High Court in Manchester.

CAREER AND ASSOCIATIONS

Member of the Chancery Bar Association

Member of the North-Eastern Circuit

2013-2018: Appointed to the Attorney-General's Regional Panel of Junior Counsel to the Crown.

2007: Called to the Bar by the Honourable Society of Lincoln's Inn

2007: LLB, Nottingham Law School (First Class)

2006-2007: Bar Vocational Course (Nottingham Law School).

2005-2006: Graduate Diploma in Law, Nottingham Law School.

2001- 2005: MA German & Russian (First Class) Pembroke College, Cambridge

PUBLICATIONS

Contributor to the Landlord and Tenant Factbook 2012-2018

Winding-up: effects on creditors

Adverse Possession and Applications to the Land Registry



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