

# Graeme Kirk



Graeme is an experienced practitioner specialising in commercial and property law, and related areas including employment, company law and personal/corporate insolvency, as well as landlord and tenant work. Graeme also drafts commercial contracts.

He combines a commercial and practical method and is always very approachable.

Graeme is very happy to provide seminars, and previously taught at BPP Law School.

Graeme accepts appropriate Direct Public Access instructions.



**Year of Call: 2001**

## Further information

### Qualifications

- MA in Modern History (Lincoln College, Oxford)
- CPE (PGDip Law), City University
- BVC, Inns of Court School of Law

### Interests

Graeme has three teenagers who keep him busy when he is not at work.

He loves all sorts of music, West Ham United and, until he had children, did a lot of travelling.

### Commercial

Graeme has a wide experience in commercial law, and considers it essential to have a complementary, in depth understanding of associated areas including insolvency and employment law.

Much of Graeme's commercial work concerns debt recovery, guarantee claims and contractual disputes, and he has appeared in trials, appeals and all manner of interim applications including summary judgments, charging orders, disputed disclosure and costs.

Graeme also has experience in drafting commercial contracts.

### Notable Cases

*Jofa Ltd & another v Benherst Finance Ltd [2019] EWCA Civ 899* – an important decision on the correct approach

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that the court should take to costs awards in Norwich Pharmacal (non-party disclosure) applications.

*R (on the application of Wilson) v Dover District Council* (2016) Lawtel 22/04/16 – the judicial review of a decision not to include a putative candidate on the list for the election of a Police Commissioner.

*Wiemer v Zone and others* [2012] EWHC 107 (QB) – an important procedural decision which features in the White Book on when it is appropriate to extend time for the service of a Claim Form.

*Payless Travel v Baba Krupa Holidays* [2004] EWCA Civ 472 – a commercial dispute concerning a travel agent and ticket consolidator, in the industry in which Graeme worked for seven years prior to being called to the Bar.

*R (on the application of Anthony Martin) v Parole Board* [2003] EWHC 1512 (Admin), (2003) Times 15th May – the judicial review of a decision not to grant early release to a well-known prisoner (during Graeme's pupillage at One Essex Court).

## Property

Graeme's trial and advisory practice includes experience in the following areas:

- Claims for the possession of commercial and residential properties
- Termination and renewal of commercial leases
- Boundary and easement disputes
- Neighbour disputes including nuisance claims
- Disrepair disputes
- Service charge disputes in the First Tier Tribunal
- Injunctions and other proceedings relating to trespass

## Notable Cases

*Clacy and Nunn v Sanchez and others* [2015] UKUT 387 (LC) – a service charge dispute engaging issues of lease construction, limitation and notice.

*Ashdale Land and Property Company Ltd v Maoriello & others* [2010] EWHC 3296 (Ch) – a fascinating Right of Way dispute concerning the effect on a third party of an injunction prohibiting use of an access road.

*French v Groupama* [2010] EWHC 2827 (QB) – a High Court decision in which Graeme successfully argued that a householder was indemnified by her insurer in relation to certain damage to her property and consequential loss.

## Employment

Graeme has appeared in Employment Tribunals around



the country, most typically in claims concerning unfair dismissal and discrimination, and has appeared in the Employment Appeal Tribunal.

His trial experience includes his representing a sample group of around 120 who were found to have been dismissed contrary to the collective redundancy procedure provisions.

## **Notable Cases**

*Balamurali and Sandhu v Secretary of State for the Home Department* [2003] EWCA Civ 1806 – uncharacteristically, an immigration case during Graeme's early practice.

## **Insolvency**

Graeme has wide-ranging experience at High and County Court levels, in both corporate and personal insolvency matters. He acts for individuals and companies on the instructions of solicitors, insolvency practitioners or under Direct Public Access rules. As a member of the Property and Commercial teams, he is particularly interested in the overlap between these areas.

## **Examples of recent insolvency work**

- Re. B (2018) – ongoing dispute about jurisdiction (based on COMI) in personal bankruptcy.
- Re. Swimbetter (2018) – directions from the Business and Property Court upon creditors' failure to approve proposals.
- Re. Davies (2017) – claims by Trustees in Bankruptcy for (amongst other things) an Order for Sale of a property which a former bankrupt had ostentatiously converted contrary to planning regulations, which had led to his conviction, and concerning the costs associated with those criminal proceedings.
- Re. GL Management (2016) – resisting attempts by a liquidator to make personal claims against Directors of a company against allegations of unlawful distribution.
- Re. Greenwood (2013) – resisting attempts by a liquidator to recover company debts against a businessman in circumstances where companies had (he alleged) fraudulently been incorporated using his name, but of which he was not a director or shareholder and had no executive involvement.
- Official Receiver v J, Official Receiver v K (2013) – a series of cases in which German national resisted attempts by the OR to establish interests of bankrupts in the UK.
- Towsey v Highgrove Homes Ltd [2013] BLR 45 – concerning efforts to wind a company up based on an adjudicated construction debt for which



summary judgment has not initially been obtained from the TCC.

## Seminars/Training

Graeme is available to deliver seminars on any insolvency-related issue, including the subject matters of the cases summarised above. He is a member of the construction and insolvency teams and would be delighted to provide training in these areas.

## Notable Cases

*Utip v McLelland* [2022] 3 WLUK 309 – a decision on whether a statutory demand can be set aside when the existence of an interim charging order to provide security for the creditor would be defeasible if a bankruptcy order was made before the order became final.

*Towsey v Highgrove Homes Ltd* [2013] BLR 45 – concerning whether it is possible to seek to wind a company up based on an adjudicated construction debt for which summary judgment has not initially been obtained from the TCC.

