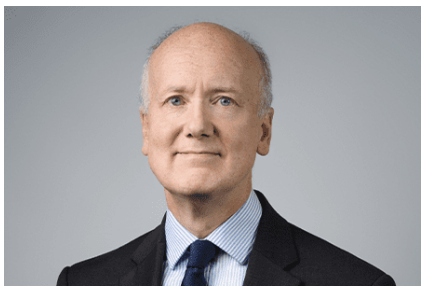
Radcliffe Chambers



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Howard Smith specialises in litigation and related advisory work in chancery and commercial cases. He is widely experienced in all areas of property work including conveyancing disputes and neighbour disputes involving rights of light, party walls, boundaries, easements and restrictive covenants, and professional negligence disputes involving property issues. He acts for both landlords and tenants in commercial and residential landlord and tenant disputes and leasehold enfranchisement.

His contentious commercial work involves contractual disputes, banking, insurance, third party costs and insolvency. His non-contentious commercial work includes drafting commercial contracts, security documents and overage agreements. He is the Consulting Editor of the "Deeds and other Instruments" volume of "Halsbury's Laws" (2019).

Howard also specialises in private client work, including Court of Protection, probate and estate disputes and charity issues.

PROPERTY

Howard's work involves all aspects of property law. He appears regularly in all courts and tribunals, and acts as the expert in expert determinations Howard has represented clients in numerous party wall disputes and was described in a recent judgment as a leading specialist in field. He has appeared in many party wall appeals, costs disputes and injunction applications and is the barrister member of the committee producing the RICS Party Wall Guidance Note (2019).

He advises regularly in relation to rights of light issues, commonly in the context of complex prospective developments, and he frequently acts in rights of light disputes and other easement and profit a prendre cases including rights of way, mooring, water rights, mining rights and commons disputes. He was the barrister member of the committee producing the RICS Rights of Light Guidance Note.

Howard also acts on behalf of landlords and tenants, dealing with commercial lease renewals and other disputes under the Landlord & Tenants Act 1954, dilapidations claims, breach of covenant claims, and renewal and repair claims.

Howard has appeared in numerous boundary disputes and was counsel for the successful party in *Joyce v Rigolli* 1 P&CR 22, the leading case C.A. on boundary agreements in relation to registered land, and the application of de minimis

principles in contracts for transfer of land under s.2 of the Law of Property (Miscellaneous Provisions) Act 1989.

Howard acts in all areas of leasehold enfranchisement, land registration and restrictive covenant disputes both in court and in the Land Tribunal, including in relation to the enforcement and modification of restrictive covenants; trusts of land and co-ownership disputes; estoppel & proprietary estoppel claims.

Some of Howards significant cases include:

- *Chlaichtein v Wainbridge Estates (Belgravia) Ltd* (2018) – Acting in a a dispute under the Party Wall etc Act 1996 on the proper approach to calculating compensation.
- *Milroy v Pirie* (2017) – Appearing in a case on what amounts to infringement of rights of light, removal of obstructions and removal of light of obstruction notices.
- *Edw.H.Whybrow Co.Ltd v James* (2017) – Appearing in a case on the scope a building owner's obligation to carry out remedial works to an adjoining owner's property, and when a final election is made to take damages in lieu.
- *Welford v Graham* (2017) – Appearing in an important decision by Morgan J on appeal, on the burden of proof in claims to a prescriptive easement. Whilst the legal burden of proof is on the person asserting a claim to an easement by prescription, nonetheless if the person claiming an easement proves open use for upwards of 20 years it will be assumed that use was as of right so that the person opposing the easement has the burden of proving that the use was not as of right – i.e. was by permission or by force.
- *SAI Ventures Ltd v Compar Properties Ltd* (2016) – Appearing in a case on the need for new notices where works varied and the effect of estoppel.
- *Diamantopoulos v Cohen* (2016) – Appearing in a case on liability for costs of removing overspill discovered the context of later party wall works.
- *Lyes Green Ltd v Entire Properties Ltd* (2016) – Acting in a case elating obligations to make an award based on an alternative scheme would reduce the risk of damage.
- *Derwentside v Willis* (2014) – Acting in a decision by Briggs J on the liability landowner to remedy a nuisance caused by a leaking pipe which passes through his land even though the leak occurs only on that part of a pipe which is outside his boundary, provided that the substance which leaks has passed through that part of the pipe which is on his land.
- *Scott v Aimiuwu* (2015) – Acting in a case on the scope of infringement of rights of light and the availability of mandatory injunctions to remove interference with rights of light.

COURT OF PROTECTION

Howard has long experience in advising on and appearing in cases in the Court of Protection, in particular in property & affairs cases and also on health & welfare issues. He has represented parties in many cases involving statutory wills; appointment and removal of deputies; enduring powers of attorney (EPAs) including disputes as to the validity of EPAs, suitability of attorneys and removal of attorneys; lasting powers of attorney (LPAs); breaches of duty by deputies and attorneys; approval of gifts, applications involving residence issues, acquisition and disposal of property, "after the event" approval of gifts and other transactions, settlements, conduct of litigation on behalf of P and other "best interests" applications.

Howard regularly advises deputies in relation to Court of Protection issues and in relation to other issues involving the deputyship. He acts in relation to personal welfare issues and is often asked to advise in relation to highly sensitive and confidential cases.

Howard has appeared in numerous cases in the Court of Protection, including leading cases under the Mental Health Act 1983 and the Mental Capacity Act

2005. He was counsel for the deputy in *Re M* [2011] 1WLR 344 (statutory wills and best interest decisions under the Mental Capacity Act 2005), *Re P* [2010] WTLR 1405 (best interest decisions on appointment of deputy and personal welfare applications in the Court of Protection)

PROFESSIONAL LIABILITY

Howard has wide experience of professional negligence claims involving solicitors, surveyors, construction professionals (including architects and engineers), accountants & other financial advisers. He acts for both claimants and defendants and on behalf of insurers.

Howard acts principally in relation to negligence claims arising out of property matters (including conveyancing, mortgages, easements, landlord & tenant construction, and conduct of litigation matters), administration of estates and trust issues (including will drafting, claims against trustees) and commercial matters.

WILLS AND ESTATES

Howard is regularly instructed in all areas of wills and estates work, both contentious and non-contentious.
Contentious work includes probate disputes, challenges to wills on the grounds of lack of capacity and want of knowledge & approval, replacement of executors and administrators, will construction, rectification claims by personal representatives to set aside previous lifetime dispositions,

Howard also advises frequently in relation to will constructions, issues arising out of the administration of estates, inheritance tax issues; deeds of variation and post-death arrangements.

His cases include:

- *Re M* [2011] 1WLR 344 – Leading a case on statutory wills and best interest decisions under the Mental Capacity Act 2005

CHARITIES

Howard's work in charity matters is both advisory (e.g. compliance with charity obligations, charitable trust issues) and litigious. He often acts in disputes between members of charities, including church and temple disputes.

Howard also acts regularly on behalf of charities in relation to disputes with third parties. Typically, these will involve probate disputes, property disputes and other claims arising under will bequests.

COMMERCIAL DISPUTES

Howard is regularly instructed in a wide range of commercial matters, both contentious and non-contentious.

Examples of the areas in which he acts are insurance claims, including commercial property claims, developer & construction claims, fire claims, business interruption claims, personal life assurance and loss claims (he was counsel for the successful claimant in *R&R Ltd v Axa Insurance UK plc* [2010] 2 AER (Comm) 527 (non-disclosure)); sale of goods; construction claims; suretyship; bills of exchange; bailment; agency and claims in unjust enrichment. He is also experienced in third party costs orders.

COMPANY

Howard's practice involves all issues arising out of corporate and personal insolvency. Examples of his work includes applications to replace liquidators and trustees in bankruptcy; claims for wrongful and fraudulent trading; preferences and transactions at an undervalue; directors' misfeasance & breach of fiduciary

duty; unlawful returns of capital; valuation of proofs; valuation of loss arising from disclaimed leases.

INSOLVENCY

Howard's practice involves all issues arising out of corporate and personal insolvency. Examples of his work includes applications to replace liquidators and trustees in bankruptcy; claims for wrongful and fraudulent trading; preferences and transactions at an undervalue; directors' misfeasance & breach of fiduciary duty; unlawful returns of capital; valuation of proofs; valuation of loss arising from disclaimed leases.

PARTNERSHIP AND JOINT VENTURES

Howard's practice involves all issues arising out of corporate and personal insolvency. Examples of his work includes applications to replace liquidators and trustees in bankruptcy; claims for wrongful and fraudulent trading; preferences and transactions at an undervalue; directors' misfeasance & breach of fiduciary duty; unlawful returns of capital; valuation of proofs; valuation of loss arising from disclaimed leases.

RECOGNITION

Howard is recommended for Court of Protection: Property and Affairs by *Chambers UK Bar* and Property Litigation by *The Legal 500 UK Bar*.

Recent editorial has included:

- *"Howard is an excellent barrister who comes into his own when on his feet"* (Property Litigation, *Legal 500 UK Bar 2026)*
- *"His understanding of construction and his ability to read technical drawings, coupled with his understanding of the law, makes him an excellent barrister."* (Real Estate Litigation, *Chambers UK Bar 2026)*
- *"Howard is very thorough and knows the party wall legislation like the back of his hand. He is also calm under pressure, very well respected and a consummate professional."* (Real Estate Litigation, *Chambers UK Bar 2025)*
- *"Howard is an excellent barrister in all respects. He is very approachable and good with clients and experts. His written work and pleadings are always well considered and to the point and his trial advocacy is very measured and effective."* (Property Litigation, *Legal 500 UK Bar 2024)*
- "His skeleton arguments are always excellent." (Real Estate Litigation, *Chambers UK Bar 2024)*
- "Howard is rock solid, is loved by clients and works as part of the team." (Real Estate Litigation, *Chambers UK Bar 2024)*
- *"Howard has a gift for identifying the key points in complex situations and explaining matters with clarity and economy. In court, he emits an air of quiet authority which is very effective in capturing and keeping the judge's attention, ensuring they are receptive to his submissions. His capacity to retain and retrieve large amounts of detail on the spot is thoroughly impressive."* (Property Litigation, *Legal 500 UK Bar 2023)*
- "*Howard is highly engaged, and extremely knowledgeable in the subject area of party walls in particular. He is calm and his delivery Is cogent and always well researched. His reputation is high. He is highly respected among fellow professionals of varying disciplines.*" (Property Litigation, *Legal 500 UK Bar 2022)*
- *"Very intelligent." "Easy to deal with."* (Court of Protection: Property & Affairs – All Circuits, *Chambers UK Bar 2021*)
- "*He is extremely approachable to clients and very believable at court due to his humble manner.*" (Property Litigation, *Legal 500 UK Bar 2021*)
- *"He is very easy to deal with."* (Court of Protection: Property and Affairs, *Chambers UK Bar 2020*)
- *"He has a razor-sharp attention to the fine detail of the law."* (Property Litigation, *The Legal 500 UK Bar 2020*)
- *"Grapples complex bundles down to the key points of argument."* (Property

Litigation, *The Legal 500 UK Bar 2019*)

- *"Howard has digested a great volume of material and presents cases in a concise and clear manner." "An understated advocate who knows the law and makes pragmatic decisions."* (Court of Protection: Property & Affairs, *Chambers UK Bar 2018*)
- *"An expert in party wall matters, he is fully on top of all the subtleties and intricacies of this challenging area."* (Property Litigation, *The Legal 500 UK Bar 2017*)
- *"He's very good at communicating with the solicitor, which is a must, especially in emergency applications. He's always very clear and concise in the advice he gives, and always happy to talk through something with you and amend if necessary."* (Court of Protection: Property and Affairs, *Chambers UK Bar 2017*).

PUBLICATIONS AND SPEAKING

- Howard was the barrister member of the RICS working group which produced RICS Rights of Light Guidance Note (2011).
- Howard was also the barrister member of the RICS working group which produced the RICS Party Walls Guidance Note (2012).
- He has written various articles for professional magazines on land law issues and private client matters. He is involved in co-writing a book on rights of light.
- Howard often gives seminars on property, private client and court of protection topics, including a recent LexisNexis webinar on court of protection practice.

QUALIFICATIONS

Howard was educated at Oriel College, Oxford (MA) where he was a scholar of the college and at City University, London (Dip Law). He sits as a deputy master of the High Court, Chancery Division.

MEMBERSHIPS

Chancery Bar Association; Property Bar Association.

POLICIES AND OTHER DETAILS

- Read Howard's Privacy Notice, Data Protection Policy and Disposal Policy
- VAT Registraton Number: 524038374
- Bar Membership Number: 21711