



## Kate Selway KC

Silk: 2020 | Call: 1995

### King's Counsel

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"Kate is at the top of her game. She's a voice of calm assurance when things get complex and frenetic."

*Kate enjoys an excellent reputation as a highly experienced commercial and traditional Chancery litigator specialising in private client, property and charity law.*

*Kate's great strength is her ability to combine intellectual rigour and commercial acuity with an unwavering dedication to her clients' best interests. Kate has garnered extensive praise in the directories for her down-to-earth approach, her empathy with clients and her ability to explain complex and technical issues in straightforward language.*

She has appeared in the Supreme Court, the Court of Appeal and has a wealth of trial experience in the High Court. She also regularly appears in the first tier and upper tribunals in tax, charity and property appeals and in the Court of Protection. As a junior she was on the Attorney General's A, B and C Panels for many years, amassing extensive experience of government litigation, particularly for HMRC and the GLD.

Kate is primarily a litigator, but also has a strong advisory practice in her core areas of expertise. She specialises in all aspects of private client, trusts, probate, taxation, charity and property law. Kate's expertise in probate and estate administration law extends to a number of offshore jurisdictions and she regularly advises charities on governance issues and property disposals.

#### TRUSTS

Kate has extensive advisory and litigation experience in this core practice area. She often acts for beneficiaries in breach of trust claims and advises lay, professional and institutional trustees on the nature, extent and exercise of trustees' powers, duties and fiduciary obligations.

Kate is regularly instructed to draft trust deeds and related trust documentation and often advises trustees and beneficiaries on the taxation of trusts. Kate

frequently appears in the Chancery Division acting both for and against trustees in a variety of CPR Part 64 claims.

Significant work in this area includes:

- *Densham v Charity Commission for England and Wales* [2018] UKUT402 (TCC) – Appearing for the Commission in an appeal concerning the fundamental nature of allotment charities and trusts for the labouring poor
- *Holden-Hindley v Holden-Hindley* [2014] W.T.L.R. 275 – Acting in a case considering the scope of the exercise of trustees’ powers of appointment, whether resettlement of trust assets was for beneficiary’s benefit and *Pilkington* type resettlements
- *Coombes v HMRC* [2007] EWHC 3160 (Ch) – Appearing in a case considering whether capital gain could be attributed to the appellant as the settlor of the settlement
- *Commissioners of Inland Revenue v Mohamed Akram Hashmi* [2002] EWCA Civ 981, [2002] 2 BCLC 489, [2002] WTLR 19 – Representing the Commissioners in a case concerning a transaction at an undervalue in the context of the Insolvency Act 1986.

## **REAL ESTATE AND PLANNING**

Kate’s wealth of expertise in this core practice area extends to all aspects of real property and landlord and tenant law.

She deals regularly with the following: easements and restrictive covenants; propriety estoppel; beneficial interests in the home; mortgages and securities; registered and unregistered conveyancing; Land Registry indemnities and other aspects of Land Registry practice; adverse possession and boundary disputes; highways and planning; compulsory purchase and compensation; overage and development; Stamp Duty Land Tax; business and residential tenancies; agricultural holdings and farm business tenancies; leasehold enfranchisement; tenants’ rights of first refusal.

Kate regularly advises and acts for both borrowers and lenders in a wide range of mortgage-related work including forged and fraudulent mortgages, misrepresentation and undue influence, subrogation, marshalling, equitable mortgages and charges, enforcement, breach of warranty of authority, breach of fiduciary duty, and land registration issues including indemnities.

Kate has significant experience of local government and planning work, having been a member of the Attorney General’s B and C Panels from 1999 to 2008 when she was regularly instructed by the Highways Agency and the Department for Transport on planning and compulsory purchase matters. She has also represented the Highways Agency in three major public road inquiries.

Significant work in this area includes:

- *Christodoulides v Marcou* [2017] EWHC 2691 (ChD) Morgan J; [2017] EWHC 2632 (Ch) – Acting for the successful respondent in relation to two applications for permission to appeal in a case concerning fraudulent calumny, inter vivos transfer of land and presumed undue influence
- *Marcou v Christodoulides* (2017) – Representing the claimant in a ten-day trial concerning fraudulent calumny, inter vivos transfer of land and presumed undue influence
- *SOCA v Szepietowski* [2013] UKSC 65; [2011] EWCA Civ 856; [2010] EWHC 2570; [2009] EWHC 1560; [2009] EWHC 344; [2009] EWHC 655 – Acting as junior counsel at the Supreme Court, Court of Appeal and trial stages of a leading case concerning the doctrine of marshalling, an important equitable remedy
- *Taff v Highways Agency* JPL2010, 2, 264-8, Lands Tribunal – Acting in a case concerning compensation for compulsory purchase and waste management licences
- *Elizabeth Court (Bournemouth) Ltd-v-HMRC*(2007) – Appearing in a case

concerning liability to pay Stamp Duty Land Tax where a right of collective enfranchisement to purchase freehold was exercised.

## WILLS AND ESTATES

Kate has built up a wealth of advisory and litigation experience in this practice area.

Her extensive probate practice regularly includes the following: 1975 Act litigation; will validity issues: testamentary capacity, want of knowledge and approval, undue influence, execution and attestation, forgery; lost wills; probate receiverships; domicile and conflicts of laws issues; will construction problems; tax and estate planning; will drafting and deeds of variation; administration of estates; intestate succession and bona vacantia matters; devastavit claims against personal representatives; advising and representing charitable residuary legatees.

Significant work in this area includes:

- *Hall v HMRC* [2023] UKFTT 32 (TC) (on the nature of an interest in possession for IHT purposes, and when a right of occupation arises in the administration of an estate where there is insufficient liquidity in the estate to pay the IHT without resorting to the property)
- *Christodoulides v Marcou* [2017] EWHC 2691 (ChD) Morgan J; [2017] EWHC 2632 (Ch) - Acting for the successful respondent in relation to two applications for permission to appeal in a case concerning fraudulent calumny, inter vivos transfer of land and presumed undue influence
- *Marcou v Christodoulides* (2017) - Representing the claimant in a ten-day trial concerning fraudulent calumny, inter vivos transfer of land and presumed undue influence
- *Siaw v Lock & Ors* [2011] EWHC 2926 (Ch) - Acting in an administration of events case concerning consent orders, proprietary estoppel and receivers' powers and duties
- *The Solicitor for the Affairs of Her Majesty's Treasury v Doveton* [2008] EWHC 2812, [2009] BPIR 352 - Acting in a case concerning will forgery
- *IRC v Arkwright* [2004] WTLR 855, [2005] 1 WLR 1411 - Appearing in a case determining that a special commissioner had jurisdiction to hear an appeal in relation to an inheritance tax dispute on an issue of law but had no jurisdiction to determine the value of the interest in a property for the purposes of inheritance tax, as it was an issue for the Lands Tribunal.

## TAX

Kate regularly advises clients on tax matters arising in the context of her property, trust and probate work (typically Inheritance Tax, Capital Gains Tax and Stamp Duty Land Tax).

As a member of the Attorney General's A, B and C Panels before taking silk Kate was regularly instructed by HMRC in Tax Tribunal litigation which has enabled her to develop a wide-ranging knowledge of revenue law, practice and procedure generally.

Significant cases include:

- *Hall v HMRC* [2023] UKFTT 32 (TC) (on the nature of an interest in possession for IHT purposes, and when a right of occupation arises in the administration of an estate where there is insufficient liquidity in the estate to pay the IHT without resorting to the property)
- *HMRC-v-Netbusters (UK) Ltd* [2022] UKUT 175 (TCC) and *Netbusters (UK) Ltd v HMRC* [2020] UKFTT 438 (TC). (VAT: whether the supplies of pitch hire and football and netball league management services were grants of interests in or rights over land or licences to occupy land for the purposes of Sched 9, Group 1, VATA 1994; and whether leasing or letting for the purposes of Article 135 of the Principal VAT Directive)
- *LCP Management Ltd v HMRC* [2019] FTT (Tax) TC/2017/09251, (VAT and

property: whether the option to tax had been disapplied by Schedule 10 of VATA 1994 in respect of a grant of a lease of air space by a company in the Appellant's VAT group because no existing building, or part of a building, was converted for use as a dwelling)

- *Reid v Revenue and Customs Commissioners* [2018] UKFTT 236 (TC) – Appearing in an appeal concerning film industry partnerships and tax avoidance, HMRC enquiry processes, closure notices, carry-back reliefs
- *Elizabeth Court (Bournemouth) Ltd v HMRC* (2007) – Appearing in a case concerning liability to pay Stamp Duty Land Tax where a right of collective enfranchisement to purchase freehold was exercised
- *Coombes v HMRC* [2007] EWHC 3160 (Ch) – Appearing in a case considering whether capital gain could be attributed to the appellant as the settlor of the settlement
- *Significant Ltd v Farrel (HMIT)* [2006] STC 1626 – Acting in an appeal concerning the procedure and time limits for transmitting case stated to High Court and whether High Court had jurisdiction to extend time limit.

## **CHARITIES**

Kate regularly advises charities, clubs and unincorporated associations on a wide variety of matters including charity governance, charitable status, charity trading, charity land, club rules, the validity of charitable bequests and the dissolution of unincorporated associations by the court.

Her recent work includes representing the successful respondent in *Densham v The Charity Commission for England and Wales* [2018] UKUT 0402 (TCC), an appeal brought by local allotment holder Pauline Densham, who sought to argue that the wording of two mid-19th century enclosure awards allotting land in Hughenden, Bucks “on trust for the labouring poor” did not create a charitable trust of allotment land. She also acted for the Charity Commission in the First Tier Tribunal.

## **COURT OF PROTECTION**

Kate has a wealth of experience in the Court of Protection and regularly appears in property and affairs related matters including statutory will and deputyship applications. She is also developing increasing experience in the personal welfare side of the Court of Protection's work including deprivation of liberty applications.

## **BUSINESS DISPUTES**

Kate has considerable experience of litigating commercial disputes. Typically, Kate's commercial work will involve civil fraud, asset recovery and freezing injunctions, loan and finance agreements, guarantees and indemnities, agency and partnerships. Kate has also drafted innumerable contracts, agreements and related documentation for a broad spectrum of business and commercial clients.

She acted as junior counsel in the Supreme Court, Court of Appeal and trial stages of the leading case on the doctrine of marshalling, an important equitable remedy, *SOCA v Szepietowski* [2013] UKSC 65; [2011] EWCA Civ 856; [2010] EWHC 2570; [2009] EWHC 1560; [2009] EWHC 344; [2009] EWHC 655.

Kate deals regularly with a wide variety of partnership issues in the context of her property and administration of estates related work. Her experience includes advising the surviving partners in a farming partnership that dissolved on death and acting for professional trustees who hold a share in a property development partnership and intend to bring proceedings for an account.

## **PROFESSIONAL LIABILITY**

Kate regularly advises professional and lay clients on professional negligence issues arising in her main fields of expertise; typically in property, trust and probate matters.

Recent examples have included a will draftsman's failure to follow the "golden rules", an executor's distribution of an estate in ignorance of the applicability of foreign law, a conveyancer's failure to carry out proper identity checks on a fraudster, and a surveyor's incomplete preparation of auction sales particulars.

## **MEDIATION**

Kate regularly represents clients at mediations, most often in property, trust and probate related matters. Praised in the directories as a tough negotiator as well as a pragmatist, Kate has scored some notable recent successes for clients at mediation.

## **COMMUNITY AND PRO BONO**

Kate is very committed to increasing diversity at the chancery bar and is the course director and committee chair of the Radcliffe Chambers Student Barrister Experience Programme, which is hosted in collaboration with Big Voice London.

## **RECOGNITION**

Kate Selway is recommended as a leading silk by *Chambers UK Bar* and/or *The Legal 500 UK Bar* for commercial chancery, traditional chancery, agriculture and property litigation. Examples of recent directory comment include:

- *"Kate's advice is always thorough and technically first-class."* (Private Client: Trusts and Probate, *Legal 500 UK Bar 2024*)
- *"Kate is wonderful with clients and able to provide positive robust opinions in a well thought out and careful manner."* (Chancery: Traditional, *Chambers UK Bar 2024*)
- *"She is technically very good, prepared to make tough calls, down to earth and great with clients."* (Chancery: Traditional, *Chambers UK Bar 2024*)
- *"Kate is at the top of her game. She's a voice of calm assurance when things get complex and frenetic."* (Chancery: Traditional, *Chambers UK Bar 2024*)
- *"Kate is wonderful with clients and able to provide positive robust opinions in a well thought-out and careful manner."* (Chancery: Traditional, *Chambers HNW London Bar 2023*)
- *"She is technically very good, prepared to make tough calls yet down to earth and great with clients."* (Chancery: Traditional, *Chambers HNW London Bar 2023*)
- *"Kate is at the top of her game. A voice of calm assurance when things get complex and frenetic."* (Chancery: Traditional, *Chambers HNW London Bar 2023*)
- *"Approachable, down-to-earth and extremely knowledgeable."* (Charities, *Chambers UK Bar 2023*)
- *"Kate has a high level of in-depth knowledge, which she presents in a straightforward and comprehensible manner. An approachable and empathetic silk, her hands-on approach is a pleasure to work with."* (Property Litigation, *Legal 500 UK Bar 2023*)
- *"Kate really gets to grips with the lay client's case and is wonderfully responsive and collaborative when working with her instructing solicitors too."* (Private Client: Trusts and Probate, *Legal 500 UK Bar 2023*)
- *"She's very clever, a very pleasant person to be against, a good advocate and good at her job. She knows her stuff and is sensible and clever."* (Charities, *Chambers UK Bar 2022*)
- *"Absolutely terrific. She's so user-friendly, analytical, practical and reliable."* (Chancery: Traditional, *Chambers UK Bar 2022*)
- *"Kate gives a good solid opinion that you can rely on and she isn't shy about saying what she thinks. Some barristers are very equivocal which is unhelpful but not Kate. her opinions are clear and easy to follow. She has excellent technical expertise."* (Property Litigation, *Legal 500 UK Bar 2022*)
- *"A high level of in-depth knowledge presented in a straightforward and*

*comprehensible manner for both instructing solicitors and their clients. Approachable and empathetic.*" (Private Client: Trusts and Probate, *Legal 500 UK Bar 2022*)

- *"A silk with strong academic knowledge."* (Charities, *Legal 500 UK Bar 2022*)
- *"Thoughtful, excellent with complex details, very, very thorough and excellent at analysis" and "always the most organized and practical of advocates."* (Chancery: Traditional, *Chambers HNW London Bar 2021*)
- *"Excellent - very thorough, clever and practical." "She's very good at guiding clients through quite complex issues, and has a balanced approach to claims."* (Chancery: Traditional, *Chambers UK Bar 2021*)
- *"Authoritative and gives extremely clear advice."* (Charities, *Chambers UK Bar 2021*)
- *"Takes a robust stance with her opposition whilst providing clear advice to her client, with an empathetic approach."* (Charities, *Legal 500 UK Bar 2021*)
- *"A very approachable new silk."* (Private Client: Trusts and Probate, *Legal 500 UK Bar 2021*)
- *"She is extremely good at explaining issues to clients and takes them through the key elements step by step. Kate also considers the wider picture for the client and will look for a practical solution."* (Property Litigation, *Legal 500 UK Bar 2021*)
- *"Excellent - very thorough, clever and practical."* (Chancery: Traditional, *Chambers HNW London Bar 2020*)
- *"She's very good at guiding the clients through quite complex issues, and has a balanced approach to claims."* (Chancery: Traditional, *Chambers HNW London Bar 2020*)
- *"Gets on top of her case really well and deals with it exceptionally; she is not intimidated by anyone or anything." "She is very knowledgeable and has sympathy for the client's position."* (Charities, *Chambers London Bar 2020*)
- *There's nothing she doesn't know. She's exceptionally efficient, explains trust law so clearly and is constantly patient with stupid questions." "She has an impressive working knowledge of the legislation."* (Chancery: Traditional, *Chambers London Bar 2020*)
- *"Takes a robust stance with her opposition whilst providing clear advice to her client, with an empathetic approach."* (Charities, *The Legal 500 UK Bar 2020*)
- *"Is able to translate complex legal concepts into straightforward advice for solicitors and lay clients without being patronising."* (Private Client: Trusts and Probate, *The Legal 500 UK Bar 2020*)
- *"Crystal clear, enthusiastic, calm and an overall pleasure to work with."* (Property Litigation, *The Legal 500 UK Bar 2020*)
- *"Great with clients and knows how to advise them in the right way." "Really conscientious and highly knowledgeable on the law, she gives 100% effort to her cases."* (Chancery: Traditional, *Chambers UK Bar 2019*)
- *"Highly recommended."* (Private Client: Trusts and Probate, *The Legal 500 UK Bar 2019*)
- *"Encourages cooperation between solicitor and counsel."* (Agriculture, *The Legal 500 UK Bar 2019*)
- *"Advises a range of charity clients including the Charity Commission and charitable trusts."* (Charities, *The Legal 500 UK Bar 2019*)
- *"She is very engaging and helpfully talks through the position"* (Property Litigation, *The Legal 500 UK Bar 2019*)
- *"Her advice is crystal clear, and she is very client-friendly, enthusiastic and a pleasure to deal with. She is very prompt and always reacts well to what the other side throws at her."* (Chancery: Traditional, *Chambers UK Bar 2018*)
- *"She is very engaging, positive and upbeat, and talks through her advice clearly."* (Property Litigation, *The Legal 500 UK Bar 2017*)
- *"Clients love her, she is positive and upbeat."* (Private Client, *The Legal 500 UK Bar 2017*)
- *"She is very engaging and encourages cooperation between solicitor and*



*counsel.*" (Charities, *The Legal 500 UK Bar 2017*)

- "Clients love her." (Agriculture, *The Legal 500 UK Bar 2017*)
- "Provides prompt and pragmatic advice, and is not afraid to give a definitive opinion." (Real Estate Litigation, *Chambers UK Bar 2017*)
- "Her paperwork is excellent, and she is extremely clear and very thorough. She's great with clients and they have a lot of confidence in her." (Chancery: Traditional, *Chambers UK Bar 2017*)
- "Truly excellent." (Private Client: Trusts and probate, *The Legal 500 UK Bar 2016*)
- "Practical and clear advice." (Chancery: Traditional, *Chambers HNW 2016*)

## **PUBLICATIONS**

- Kate was a co-editor of Wurtzburg & Mills on Building Society Law from 1996-2010.
- "Landscape, Land Tenure and Ways of Seeing the Past", *Christie's Bulletin for Professional Advisers*, Autumn 2016, Vol. 20, Number 2
- "Establishing Fraudulent Calumny", *Law Society Gazette*, 4 December 2017

## **SEMINARS**

Kate regularly gives seminars in property, trust and probate related matters.

## **EDUCATION**

Before studying Law, Kate read History. She has a 1st Class BA from Bristol and a DPhil from Oxford, where she specialised in late medieval English history.

## **MEMBERSHIPS**

- Chancery Bar Association
- Charity Law Association
- Court of Protection Bar Association
- Property Bar Association
- STEP

## **POLICIES AND OTHER DETAILS**

- Read Kate's [Privacy Notice](#), [Data Protection Policy](#) and [Disposal Policy](#)
- VAT Registration Number: 681554419
- Bar Membership Number: 34267