



serle court

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## Andrew Francis

Year of Call: 1977

*"The restrictive covenant king." "He is the guru of rights of light." "He has thorough knowledge of the law, offers practical suggestions and deals with instructions very quickly."*

Chambers & Partners, 2022

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## Practice Overview

Andrew's practice has a very strong emphasis on real property law. He is recognised as a leading authority on the law of restrictive covenants affecting freehold land, and on the law of rights of light. He has been instructed in many of the major cases in these areas of law in the last three decades. He is the author of a textbook on restrictive covenants, and a co-author of textbooks on rights of light and private rights of way.

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## Areas of Expertise

### Professional Negligence

Andrew's experience in his fields of business and property work allows him to examine, advise upon and conduct claims where professional negligence issues arise. The particular areas of his expertise in easements and covenant law lead him to being instructed where there may have been negligence by professional advisers, such as counsel, solicitors, surveyors and valuers.

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### Property

The main areas of Andrew's expertise in the law of real property are restrictive covenants affecting freehold land, rights of light, rights of way and other easements, adverse possession, boundaries and party walls. His publications (see below) on the first three topics demonstrate his very high degree of knowledge and experience in these three fields. These are very much "niche" areas of work in which he pre-eminent as a barrister.

In view of his standing he may be asked to advise as a "single joint expert" for all parties. He will also act either as the mediator. or be instructed as counsel for the parties in ADR. His recent experience is in view of modern practice, that many parties engage in "informal" ADR such as without prejudice, lawyers only, meetings. He is frequently advising on this means of settling disputes and encourages his instructing solicitors and clients to engage in constructive ADR. He is acutely conscious of the burden of legal and other fees in any litigation. When acting under Direct Access instructions he is particularly keen to impress upon his clients the need to approach disputes this way wherever possible.

As will be seen below, his main area of work includes a number of specific fields of law and some additional arcane ones such as Reverters of title under the School Sites Acts.

Whilst not an expert on planning and public law matters (and he frequently encourages the use of counsel where that is needed) Andrew is familiar with the general law of Town and Country planning and public law rules to development of land and buildings and changes of use. He is also experienced in cases where private law rights are the potential subject of being overridden under s. 203 Housing and Planning Act 2016 and similar legislation. This is particularly relevant in rights of light matters.

It goes without saying that even where there is no dispute, his skill as a draftsman of documents used in property matters reflects his long experience in this area of law and goes with his standing at the Chancery Bar.

He was a member of the Law Commission's Advisory Board on the reform of the law of easements and covenants which led to the Report and draft Bill published in June 2011. He was also a member of the Law Commission's Advisory Board which examined the reform of rights of light and remedies for their breach, which led to the Report and draft Bill published in December 2014.

He has considerable and very recent experience both as an adviser and as an advocate in Claims in Court involving

covenants and easements and in Applications in the Upper Tribunal (Lands Chamber) to discharge, or modify restrictive covenants under s. 84(1) Law of Property Act 1925. He also has experience where disputes over restrictive covenants require a single Judge to decide them under different jurisdictions under the “double-hatting” procedure.

His work also includes advice and advocacy in registered land disputes, in the First-tier Tribunal, Property Chamber and in the County Court and the High Court and in the higher Courts on matters such as covenants, boundaries, easements, adverse possession and other title issues.

As much of his work is either non-contentious, or if contentious, the dispute settles, his expertise is often not in the public domain. Because of his long experience in covenant and rights of light cases, he has a comprehensive knowledge of City Centres (London, Leeds, Manchester etc.) and their buildings and other locations, such as residential estates, both as regards the present and their history in terms of development. This means that he can recognise locations where either he has worked before (often spotting potential conflicts of interest) or where Courts and Tribunals have decided cases affecting those locations in the past.

Finally, much of Andrew’s work is non-contentious, such as where he is asked to advise on covenants, easements and other issues for clients who need pre-contract advice, lenders, developers who need certainty on the effect of their proposals on third party rights and insurance indemnity policies.

### **Specific areas of expertise in his property work.**

There are four main specialist areas.

These are:-

- Covenants.
- Easements.
- Boundaries and Land Registration matters.
- Party Walls.

#### **(1) Covenants.**

As stated above, within the field of restrictive covenants affecting freehold land, he has specific expertise in disputes over the enforceability of restrictive covenants and claims to enforce them in Court. His work includes applications to discharge or modify such covenants in the Upper Tribunal (Lands Chamber) under s. 84(1) Law of Property Act 1925. In this, he has long-standing and strong professional links with expert surveyors, valuers and town planning consultants who may be expert witnesses in these disputes.

He advises on the validity and enforceability of trading covenants within Chapters I and II of the Competition Act 1998 and under the principles relating to unlawful restraint of trade.

When instructed in matters relating to restrictive covenants and other property rights and obligations, he works closely with the specialist Indemnity Insurance market, where he is asked to advise, and in contested claims, represent the insurer or the insured. In many other cases, he will advise insurers and brokers on the risk of claims before Indemnity Policies are issued. Finally, his advice is often used (on a non-reliance basis) by clients who are seeking indemnity insurance for covenants and other risks to ensure that the development is marketable.

#### **(2) Easements.**

The same involvement applies in rights of light matters where the rights of light surveyors are critical in assessing losses. In this area of practice he has long-standing and strong professional links with expert surveyors, valuers and town planning consultants who may be expert witnesses in these disputes.

As is the case with his work in covenants matters he works closely with the specialist Indemnity Insurance market, where he is asked to advise, and in contested claims, represent the insurer or the insured. In many other cases, he will advise insurers and brokers on the risk of claims before Indemnity Policies are issued. Finally, his advice is often used (on a non-reliance basis) by clients who are seeking indemnity insurance for rights of light and other risks to ensure that the development is marketable.

### **(3) Boundaries etc.**

Both advisory and contentious work where boundaries, title ownership such as adverse possession issues and other matters where specialist knowledge of the land registration system is required is a significant part of Andrew's practice.

### **(4) Party Walls.**

Andrew's experience in Party Wall work is well established. As a long-standing member of the Pyramus and Thisbe Society for many years (this being the learned Society which brings together many specialists of all professions engaged in Party Wall and related matters) he has an extensive knowledge of this technical area of property law.

### **Generally.**

In these and all his other cases, his key aim is to ensure good teamwork with the client and all those engaged on the client's behalf, whatever their role.

### **Decided Cases.**

*Gow-Wright v Law & Ors.* [2024] B&PCt. (Ch D). Declaration granted under s. 84(2) Law of Property Act 1925 declaring restrictive covenants (which would otherwise have impeded the development of the Claimants land) unenforceable by virtue of the absence of any evidence of their benefit to defined or ascertainable land. *Bath Rugby Ltd. v Greenwood & Ors.* [2022] (Court of Appeal) applied.

*Kay v Cunningham & Nix* [2023] UKUT (LC). Application to modify user covenant to allow limited use of historic mansion house in rural Derbyshire for bed and breakfast accommodation, with consideration of the effect of "nuisance and annoyance" covenant remaining unmodified as outside the Application.

*Collins v Howell.* [2022] UKUT 72 (LC). This was an Application to modify a restrictive covenant under s. 84(1)(aa) Law of Property Act 1925, to enable a manège (sand school for horse riders) to be built on a field in rural Devon. The Application was refused because the manège would interfere with the Objectors' enjoyment of their view over the field. This was also a case where the County Court Claim made by the Objectors for an injunction, which was stayed pending the determination of the s. 84(1) Application, was heard at the same time as the hearing of the latter under the "double hatting" procedure. This is an important case not only as an example of the effective use of the latter procedure, but also because it shows that even in rural areas, restrictive covenants have as much potential importance as in built-up areas, suburbs and high-class estates.

*Moskofian v Foster & Ors.* [2021] UKUT 214 (LC). The application to modify a restrictive covenant over land at Ealing, West London, under s. 84(1)(aa) Law of Property Act 1925, allowed on terms as to payment of compensation to the Objectors and to regulate one aspect of the implementation of the proposed development.

*Father's Field Developments Ltd. v Namulas Pension Trustees Ltd.* [2021] UKUT 169 (LC). The application to modify a restrictive covenant over land at Earls Colne, Essex, under s. 84(1)(aa) Law of Property Act 1925, allowed without the payment of any compensation to the Objector. The Tribunal rejected the Objector's case that compensation under this jurisdiction could be awarded on the "negotiating damages" or "release fee" basis under s. 84(1)(i) of that Act and it found that the evidence did not support compensation based on s. 84(1)(ii) thereof. That was so, even where the parties to the application were the original covenanting parties, the covenant was only 20 years old and it was a qualified one.

*The Incorporated Trustees of the Congregation of the Holy Spirit and the Immaculate Heart of Mary (British Province) v Antill & Anor.* [2020] EWHC 3466 (Ch) (High Court. Business and Property Courts of England and Wales.) Declarations as to the non-enforceability of restrictive covenants affecting freehold land in Bromley imposed before and after the commencement of Law of Property Act 1925.

*Briant v Baldacchino* [2020]. (Upper Tribunal (Lands Chamber)). The application to modify restrictive covenant over land at Wimborne, Dorset, was refused where the importance of the effect of different planning consents on the application land and their impact on the objector's property was stressed.

*Heaney v Kirkby* [2018] [2019]. (Leeds Business and Property Court. D.J. Claire Jackson and Barling J.). Court striking out the Claimant's claim based on tortious conspiracy and other allegations as an abuse of the process of the Court. This claim is related to the decision in *Kirkby v Heaney* (below).

*Hancock v Scott & Ors.* [2019] UKUT (LC). The application under s. 84(1) Law of Property Act 1925 in Upper Tribunal (Lands Chamber) to modify covenants over land near Caversham, Reading, to allow new houses to be built was allowed. The decision contains an important discussion in the Tribunal's decision on certain aspects of the grounds for applications under s. 84(1) and on the meaning of "the neighbourhood" under s. 84(1)(a) and on costs.

*Thomas Pocklington Trust v Aikman & Ors.* [2018] UKUT 256 (LC). Successful application under s. 84(1) Law of Property Act 1925 in the Upper Tribunal (Lands Chamber) to modify covenants over land at Northwood, Middlesex, to enable development for flats on the cleared application land.

*Lamble v Butacci.* [2018] UKUT 175 (LC). Successful application under s. 84(1) Law of Property Act 1925 in the Upper Tribunal (Lands Chamber) to modify covenants over land near Woking to enable development for a new replacement house and garage within curtilage of private land in Surrey Green Belt.

*Re Theodossiades' Application* [2017] UKUT 461 (LC). Successful application under s. 84(1) Law of Property Act 1925 in the Upper Tribunal (Lands Chamber) to modify covenants over land at Elstree to enable development for flats after the demolition of the existing house.

*Re Waggott's Application* [2017] UKUT 108 (LC). Successful application in the Upper Tribunal (Lands Chamber) to discharge restrictive covenant to allow change of use of building in Wantage from offices to residential, despite opposition from adjoining Chinese Take-Away Restaurant owner concerned over complaints about smells and noise from his restaurant from the future residential occupiers.

*Kirkby v Heaney* [2016] (Court of Appeal.) Court of Appeal upholding decision of the Upper Tribunal (TCC) ([2015] UKUT 178 (TCC)) on principles applicable to claims to adverse possession of land and s. 9(5) Land Registration Act 2002 and on certain aspect of appeals from the First-Tier Tribunal to the Upper Tribunal (TCC) in Land Registration cases.

*RHJ Ltd v Patten (Holdings) Ltd* [2008] Ch 34 (Court of Appeal). Rights of light and interpretation of terms in a lease as a "consent" under s. 3 Prescription Act 1832.

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## Competition Law and State Subsidies

The interface between restrictive covenants over land in England and Wales which restrict competition and the Competition Act 2008 requires Andrew's advice to be sought on such covenants. These covenants may be void under the relevant law now in force since 6th April 2011. His advice is regularly sought where the validity of covenants restrictive of trading in shopping centres and out of town "super store" sites is being considered. His consideration of the ECJ decision in *Groupeement des cartes bancaires* (September 2014) as applicable to land agreements potentially within Chapter I Competition Act 1998 has been published in the European Law Reporter (2014 no. 12). Competition law and the effect of that law on land covenants in England and Wales will not be changed to any real extent post BREXIT and the post-BREXIT legislation which deals with this event. Chapter 21 in the current (5<sup>th</sup>) edition of Andrew's book on restrictive covenants (see below under publications) deals with this aspect of land law.

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## Chancery

Within this heading Andrew advises upon and is the advocate in the hearing of disputes referred to above. His long experience at the Bar means that his knowledge of some arcane and less frequently encountered aspects of property law, such as unregistered titles and their conveyancing, settlements and trusts of land (eg. under the Settled Land Act 1925) and other unusual issues which can still arise, is invaluable. He has considerable experience in cases engaging the School Sites Acts and similar "reverter" legislation where the future use of land within those rules may be critical to the community in which the land is situated.

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## Recommendations

Real Estate (*Who's Who Legal, 2020-2024*)  
Private Client: Trusts and Probate (*The Legal 500 2022*)  
Property Litigation (*The Legal 500 2024*)  
Real Estate Litigation (*Chambers & Partners 2024*)

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## Quotes

"Andrew is very strong on rights of light and is exceptionally analytical and bright." (Chambers & Partners, 2025)

"Andrew is a very well-respected figure in rights of light property disputes." (Chambers & Partners, 2025)

"He is exceptionally clever, can absorb an enormous amount of complicated information and presents clear and committed advice. On his feet, he is utterly superb." (The Legal 500, 2025)

"A superb advocate and the amount of work he does is phenomenal." (Chambers & Partners, 2024)

"Andrew is strong on rights of light and restrictive covenants." (Chambers & Partners, 2024)

"He is very knowledgeable." (Chambers & Partners, 2023)

"The restrictive covenant king." "He is the guru of rights of light." "He has thorough knowledge of the law, offers practical suggestions and deals with instructions very quickly." (Chambers & Partners, 2022)

*"Very helpful, good with clients and very easy to pick up the phone and have a chat to." "As well as being hugely knowledgeable, he was responsive and delivered commercial advice."* (Chambers & Partners, 2021)


*"A highly regarded junior."* (The Legal 500, 2021)

*"Andrew is absolutely authoritative in his expertise and experience in the law and practice of land covenants and real property generally."* (The Legal 500, 2021)

*"He has a real grasp of property law and the technical aspects of real property disputes." "His strengths are his depth of knowledge coupled with his ability to get points across very well." "He is very precise and measured."* (Chambers & Partners, 2020)

## Publications

### Articles

- Modifying restrictive covenants – when the greenlight can turn red. Landlord and Tenant Review 2024, August. 28[4]. 160-164  "Beware the Boiler Plates" (Mackenzie v Cheung). New Law Journal, April 2024.
- "Beware the Boiler Plates" (Mackenzie v Cheung). New Law Journal, April 2024.
- ["Where planning law meets restrictive covenants"](#). New Law Journal, February 2024.
- "Two recent cases on restrictive covenants." Law Society Gazette, November 2023.
- ["A good man always knows his limitations."](#) Three recent judgments on limitations of claims, New Law Journal, September 2023.
- ["All the world's a stage."](#) Private nuisance cases and knotweed, New Law Journal, May 2023.
- ["The meaning of words. What do they mean?"](#) Law Society Gazette, April 2023.
- ["The nuisance next door."](#) Fearn v Board of Trustees of the Tate Gallery and the Supreme Court's judgment, New Law Journal, February 2023
- ["Property experts: the key to victory?"](#), New Law Journal, April 2022.
- ["Bath Rugby win at home,"](#) New Law Journal, February 2022.
- ["What is it worth",](#) New Law Journal, October 2021.
- ["Avoiding the Stigma of Cynical Breach. What can we learn from the Supreme Court's judgment in Alexander Devine Children's Cancer Trust v Housing Solutions Ltd.?"](#) (New Law Journal) (November 2020)
- ["Compare & Contrast: three lessons from the courts on covenants"](#) – (New Law Journal) (June 2020)
- ["Trouble with rights of light"](#) - (New Law Journal) (April 2020)
- ["Seeing the light through the trees"](#) - (New Law Journal) (May 2019)
- "The impact of the Morris-Garner and another v One Step' (Support) Ltd" - (Estates Gazette) (May 2019), a joint article with Emma Humphreys from Charles Russell Speechlys Law

### Books

- 'Restrictive Covenants and Freehold Land - a Practitioner's Guide' (LexisNexis) (5th Edn., 2020). New 6<sup>th</sup> Edition planned for 2025.
- 'Rights of Light - The Modern Law' (LexisNexis) (3rd Edn., January 2015) (with Stephen Bickford-Smith and Tom Weekes). New 4th Edn., with Tom Weeks KC and Christopher Stoner KC, due December 2024.
- 'Private Rights of Way' (Jordans) (1st Edn., 2012) (Andrew Francis and three Co-Authors).
- Until February 2024, 'Inheritance Act Claims' (LexisNexis) (Looseleaf: updated twice-yearly) with Miranda Allardice, Keith Gordon and Charles Holbech.

## Notes

Authorised by the Bar Standards Board to accept instructions under the Public Access rules.

## In the Press

See under “Articles” above.

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## Education & Qualifications

Oxford University (Keble College) 1973-1976. First Class Honours in Jurisprudence 1976. M.A. (1998).

## Memberships

Chancery Bar Association

Property Bar Association

Pyramus & Thisbe Society

Former member of Ministry of Defence Research Ethics Committee

Former appointee to the Independent Scientific and Technical Advice Register (ISTA) (Ministry of Defence)

Former member of Law Commission’s Advisory Board on Rights of Light Remedies Reform

A Bencher of Lincoln’s Inn

Associate Tenant at Trinity Chambers, Leeds.

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