



## Toby Vanhegan

Year of call: 1996

*'Very good at simplifying complex matters.'*

Legal 500

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## Practice Summary

Prior to his call to the Bar in 1996, Toby Vanhegan read Law at Oxford University, and did an LLM at King's College London. He was an Astbury Scholar of the Middle Temple.

Toby practises in the area of public law specialising in housing and homelessness, human rights and EU law, community care, discrimination, immigration and asylum, and in particular the rights of free movement of persons within the EU. His knowledge of immigration and asylum law has meant that he has developed an expertise in cases that involve the eligibility of immigrants and asylum seekers for housing and other forms of social assistance.

Toby has experience of all kinds of possession claims, in particular those brought on the grounds of nuisance, anti-social behaviour, succession, and arrears of rent. He also deals with disrepair, injunctions, committal applications, and housing benefit matters. Much of his work concerns Equality Act and human rights issues, and using the European Convention on Human Rights to challenge the lawfulness of excluding certain types of occupiers from security of tenure, for example Crown tenants, occupiers of almshouses and tenants of fully mutual housing co-operatives.

His homelessness work covers eligibility, who is homeless, intentionality, priority need, local connection, out of area placements, suitability of accommodation, contracting out homelessness decision making, restricted cases, private rented sector offers, and issues concerning the suitability and provision of temporary accommodation, and whether a fresh homelessness application must be accepted by the local housing authority. Toby also litigates over the lawfulness of allocation schemes and their applicability in individual cases.

His community care work is wide-ranging and covers, in particular, children and vulnerable adults.

His property practice covers both residential and commercial landlord and tenant work, including lease renewals, boundary disputes, trespass, adverse possession, mortgage repossession, easements, trusts of land, and charging orders. His asylum work covers a range of countries and he deals with all types of immigration appeals.

Toby has appeared in the Court of Justice of the European Union and represents clients in the European Court of Human Rights. He appears regularly in all sorts of courts and tribunals, including the Supreme Court, the Court of Appeal and the High Court, especially the Administrative Court.

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## **Public Law**

Particular expertise in human rights and EU free movement law, homelessness appeals, allocations, community care, discrimination, judicial review and all types of asylum and immigration appeals, especially issues concerning the eligibility of immigrants and asylum seekers for housing and other welfare benefits.

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## **Homelessness**

With years of dedication and experience in homelessness law, Toby has risen to become one of the leaders in the field. He has appeared in many of the leading cases in the area, and has thus helped to shape the law. He has also published widely on topics that relate to homelessness law. His practice covers homelessness appeals to the county court, and homelessness judicial reviews in the High Court. He has a particular interest in Equality Act issues in the homelessness context, as well as the lawfulness of contracting out of homelessness decisions by local housing authorities. His immigration knowledge has meant he has particular expertise in eligibility issues. His cases cover the whole range of matters including priority need, intentionality, homelessness and affordability, eligibility, suitability, out of area placements, the new Homelessness Reduction Act provisions, local connection, accommodation pending an original decision, a review and appeal, the refusal to accept applications, Equality Act issues including the public sector equality duty and issues of discrimination in homelessness decision making, the impact of children on outcomes, and contracting out issues. If it involves homelessness law, Toby is always keen to be involved.

He also practises in the area of allocations, in particular where schemes appear to be discriminatory under the Equality Act and/or under the European Convention on Human Rights, and where children give rise to issues under section 11 of the Children Act. He is often invited to speak and lecture on homelessness and allocations law.

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## **Housing**

All areas of housing law, especially homelessness, and all types of possession claims, in particular those brought on the grounds of nuisance, antisocial behaviour and arrears of rent, disrepair, succession, injunctions, committal applications and housing benefit issues. A particular emphasis on Equality Act and human rights matters, and using the European Convention on Human Rights to challenge the lawfulness of excluding certain types of occupiers from security of tenure, for example Crown tenants, occupiers of almshouses and tenants of fully mutual housing co-operatives.

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## **Local Government**

The powers and duties of local authorities found in statute, secondary legislation and their Constitutions. A particular emphasis on the ability to contract out functions pursuant to the Deregulation and Contracting Out Act 1994, especially homelessness and housing management functions, and the requirements set out in procurement law both domestically in the Public Contracts Regulations 2015 and in EU law under the Public Procurement

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Directive 2004/18/EC and in authorities' own Contract Procedure Rules. This work also covers the formal requirements in the Constitution to authorise a contracting out, and whether ultra vires acts of the authority can be cured by the application of the doctrine of ratification.

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## Community Care / Court of Protection

A wide range of community care work but with a focus on assistance under the Children Act 1989 and the Care Act 2014, including disputes as to which authority is responsible.

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## Real Property

Residential and commercial landlord and tenant work, including lease renewals, boundary disputes, actions for trespass, adverse possession claims, mortgage repossessions, easements, trusts of land, and charging orders.

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## Anti-Social Behaviour

Possession claims brought on the basis of antisocial behaviour, injunctions and committal proceedings, and issues of compliance by landlords with their applicable antisocial behaviour policy.

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## Public Access

Toby accepts instructions directly from organisations, companies and members of the public.

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## Memberships

- Administrative Law Bar Association
  - Immigration Law Practitioners' Association
  - Housing and Immigration Group
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## Languages

- Italian
  - Portuguese
  - French
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## Recommendations

- Recommended for "Social Housing" in **Chambers & Partners**, which says that he "leads on a series of high-profile housing matters, and is noted for his human rights, public law and EU law expertise. He is especially highlighted for his advice on allocation, eligibility and homelessness... [He is] a greatly respected, serious opponent... [who] turns cases around with clear and effective arguments."
  - Recommended as a leading junior in Social Housing with "a special interest in the free movement of persons in the EU" by **The Legal 500**.
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- Recommended as a leading junior in Immigration and Nationality Law by **The Legal 500** as specialising “in homelessness cases in the Supreme Court and the Court of Appeal.”
  - Highly recommended for Immigration Law in **Legal Experts**.
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## Noteworthy Cases

- *R(Goloshvili) v. Secretary of State for the Home Department and Liberty* [2019] EWHC 614 (Admin), the High Court considered a challenge to the lawfulness of the right to rent scheme. The case was heard with *R(JCWI) v. SSHD, RLA, EHRC and Liberty* [2019] EWHC 452 (Admin) which involved a similar challenge. Spencer J. held that the scheme gave rise to direct race discrimination but that various provisions of the Equality Act had the effect that the Secretary of State was not responsible for that discrimination. He also considered that the case was academic because the Secretary of State had recognised that the claimant did in fact have the right to rent and she had been granted indefinite leave to remain in the UK.
- *Forward v. Aldwyck Housing Group Limited* [2019] EWHC 24 (QB), the High Court held that the landlord was entitled to a possession order even though it was in breach of the public sector equality duty, because compliance would have made no difference.
- *Powell v. Dacorum Borough Council* [2019] EWCA Civ 23, the Court of Appeal considered a public sector equality duty defence in possession proceedings, and held that the local housing authority had complied with its duty on the facts of the case.
- *Haringey LBC v. Simawi* [2018] EWHC 290 (QB), a judgment of Nicklin J. which decided when academic cases should be permitted to go ahead.
- *Davis v. Watford BC* [2018] EWCA Civ 1529, [2018] 1 WLR 3157, [2018] HLR 24, it was held that a challenge to the refusal to provide accommodation pending a section 204 homelessness appeal against a section 184 homelessness decision, should be brought by way of judicial review and not by a section 204A appeal.
- *Kamara v. Southwark LBC, Leech v. St Albans DC, Piper v. South Bucks DC* [2018] EWCA Civ 1616, [2018] HLR 37, it was held that a homelessness review decision is not required to inform an applicant of the right to a face to face meeting when the "minded to" procedure is being used.
- *Haringey LBC v. Simawi* [2018] EWHC 2733 (QB), the High Court held that the succession provisions of the Housing Act 1985 were not in breach of article 14 of the European Convention on Human Rights when read with article 8.
- *Panayiotou v Waltham Forest LBC* [2017] EWCA Civ 1624; [2017] HLR 48
- *Bucknall v Dacorum BC* [2017] EWHC 2094 (QB); [2017] HLR 40
- *Trindade v Hackney LBC* [2017] EWCA Civ 942; [2017] HLR 37
- *Hertfordshire CC v Davies* [2017] EWHC 1488 (QB); [2017] 1 WLR 4395; [2017] HLR 33
- *Watts v Stewart* [2016] EWCA Civ 1247; [2017] 2 WLR 1107; [2017] HLR 8
- *Holley v Hillingdon LBC* [2016] EWCA Civ 1052; [2017] PTSR 127; [2017] HLR 3
- *Firoozmand v Lambeth LBC* [2015] EWCA Civ 952; [2016] PTSR 65; [2015] HLR 45
- *Mohamoud v Kensington & Chelsea RLBC* [2015] EWCA Civ 780; [2016] PTSR 289; [2015] HLR 38 – whether s.17 Children Act 1989 and s.11 Children Act 2004 apply in possession claims, such that the local housing authority must take account of the best interests of children when deciding whether to repossess accommodation.
- *Southward Housing Co-operative Ltd v Walker* [2015] EWHC 1615 (Ch); [2016] Ch 443 – whether the exclusion from security of housing co-operative tenants is a breach of art.14 of the Convention.
- *Sanneh v SSWP* [2015] EWCA Civ 49; [2016] QB 455; [2015] HLR 27 – whether the exclusion of *Zambrano* carers from homelessness assistance and welfare benefits is contrary to EU law.
- *Nicholas v SSD* [2015] EWCA Civ 53; [2015] 1 WLR 2116; [2015] HLR 25 – whether the Crown exemption from the Housing Acts 1985 and 1988 is compatible with art.14 of the Convention.

- *Hussain v Waltham Forest LBC* [2015] EWCA Civ 14; [2015] AC 1259; [2015] HLR 16 – whether the definition of violence under Part VII Housing Act 1996 should include threats of violence.
- *Sims v Dacorum BC* [2014] UKSC 63; [2015] AC 1336; [2015] HLR 7 – the rule that one joint tenant can unilaterally terminate a tenancy by the service of a notice to quit is not a breach of art.8 of the Convention.
- *R (N) v Lewisham LBC* [2014] UKSC 62; [2014] 3 WLR 1548 – where it was held that a court order was not necessary to evict an occupant from homelessness temporary accommodation.
- *Preston v Area Estates Ltd* [2014] EWHC 1206 (Admin) – whether the rent assessment panel must take into account the current state of a property and the value of the tenant's improvements when assessing the level of rent payable by the tenant.
- *Tachie v Welwyn Hatfield BC* [2013] EWHC 3972 (QB); [2014] PTSR 662
- *Huzrat v Hounslow LBC* [2013] EWCA Civ 1865; [2014] HLR 17 – where it was held that the duty in s.11 Children Act 2004 to take account of the best interests of children applies to local housing authorities making homelessness decisions but makes no difference to those decisions.
- *Ealing LBC v Purewal* [2013] EWCA Civ 1579; [2014] HLR 5 – which concerned the court's power to vary, rather than quash, a homelessness review decision.
- *Secretary of State for Transport v Blake* [2013] EWHC 2945 (Ch)
- *R (N) v Lewisham LBC* [2013] EWCA Civ 804; [2014] 2 WLR 719; [2013] HLR 46
- *Dawkins v Central Bedfordshire Council* [2013] EWHC 4757 (QB) – successful appeal against a refusal to extend time for a homelessness appeal.
- *Holt v Reading BC* [2013] EWCA Civ 641; [2014] PTSR 444; [2013] HLR 40 – in a ground 16 case under the Housing Act 1985 it was held unnecessary to identify specific alternative suitable accommodation at the time of trial, so long as it was available at the time the possession order took effect.
- *Sims v Dacorum BC* [2013] EWCA Civ 12; [2013] CP Rep 19; [2013] HLR 14
- *Hounslow LBC v Cumar* [2012] EWCA Civ 1426; [2013] HLR 17 – about the power to order the substitution of a party under CPR 19.
- *Dragic v Wandsworth LBC* [2012] EWHC 1241 (Admin) – which decided when time starts to run for the purposes of a homelessness appeal.
- *Bubb v Wandsworth LBC* [2011] EWCA Civ 1285; [2012] PTSR 1011; [2012] HLR 13 – the county court hearing a homelessness appeal has no jurisdiction to make findings of fact.
- *Dharmaraj v Hounslow LBC* [2011] EWCA Civ 312; [2011] PTSR 1523; [2011] HLR 18 – concerning the information to be provided to homelessness applicants about the statutory right of appeal.
- *R (Coombes) v SSCLG* [2010] EWHC 666 (Admin); [2010] L&TR 29 – whether the Protection from Eviction Act 1977 is compatible with the European Convention on Human Rights.
- *Teixeira v Lambeth LBC* (C-480/08) [2010] PTSR 1913; [2010] HLR 32 – the right to reside of parents with children in school in the EU.
- *Bracknell Forest BC v Green* [2009] EWCA Civ 238; [2009] CP Rep 31; [2009] HLR 38 – ground 16 claim concerning the relevance of the suitability of alternative accommodation to reasonableness.
- *Teixeira v Lambeth LBC* [2008] EWCA Civ 1088; [2009] HLR 9 – homelessness appeal concerning the eligibility of a parent with children in school in the UK.
- *R(M) v Watford BC* [2009] EWHC 2712 (Admin) – suitability of temporary accommodation granted to a homelessness applicant.
- *Brent LBC v Hodson* [2009] EWHC 566 (QB) – ground 16 possession claim concerning the application of the reasonableness test.
- *Wandsworth LBC v Randall* [2007] EWCA Civ 1126; [2008] 1 WLR 359; [2008] HLR 24 – the test to be applied when determining suitable alternative accommodation in cases of succession to a secure tenancy.
- *Nutting v Southern Housing Group Ltd* [2004] EWHC 2982 (Ch); [2005] HLR 25 – succession to a tenancy by a same sex partner.
- (2003) UKIAT 00176 K – test to be applied in deciding human rights issues in the immigration context.

## Legal Publications

### Author/Co-author

- Homelessness and Allocations (8th and 9th editions), Legal Action Group (with Andrew Arden QC and Emily Orme).
- Housing Volume of *Atkins' Court Forms* (Butterworths).

### Articles

- "Parliament gets a vote on Brexit", *Solicitors' Journal* 2017, 161(5), 18 (co-author).
- "Brexit challenge in the Supreme Court", *Solicitors' Journal* 2016, 160(47), 19 (co-author).
- "Case Study – Proportionality and second succession claims to property (Holley v London Borough of Hillingdon)", LexisNexis, 14 November 2016 (co-author).
- "No Brexit without Parliament", *Solicitors' Journal* 2016, 160(42), 19 (co-author).
- "Finger on the trigger", *Solicitors' Journal* 2016, 160(40), 19 (co-author).
- "Five things you really should know about Brexit", *Solicitors' Journal* 2016, 160(31) (co-author).
- "The Pryce of Eligibility" – *Legal Action*, February 2013.
- "Eligibility of Parents from Abroad with Children in School in the UK" – *Journal of Housing Law* 2010, 13(1).
- "The Eligibility of Bulgarian and Romanian Nationals for Social Housing" – *Journal of Housing Law* 2007, 10(3).
- "Housing rights of immigrants and asylum seekers" – *Legal Action*, October 2005.

### Lectures/Seminars

- Toby has lectured at the University of Oxford, the University of Bristol, City University, at the HLPAs Annual Conference and at a HLPAs advanced training seminar for the Chartered Institute of Housing, at the Legal Action Housing Conference, and at Arden Chambers Conference and Seminars.
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