

## Daniel Clarke



Call: 2013

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### Profile

Daniel has a wide range of experience across private law, public law and human rights work. His main areas of practice are housing, social welfare and community care, with a particular focus on discrimination, public law and human rights issues. He also undertakes work in civil actions against the police and other public authorities, and in media law.

He is ranked in the legal directories in relation to his work in social housing, community care and public law & human rights.

He is regularly instructed to represent clients in claims for judicial review in the High Court, as well as parties and interveners in a range of other proceedings from the County Court to the Supreme Court.

Daniel has particular experience in relation to cases raising issues of mental capacity. In 2022 he was appointed to co-chair a Civil Justice Council **working group on Procedure for Determining Mental Capacity in Civil Proceedings**.

### What others say

Chambers and Partners 2024:

- *"Daniel's advice is always extremely thoughtful and detailed, and he is good at dealing with difficult problems as well as being an impressive advocate."*
- *"Daniel is clever, thorough, imaginative and knowledgeable. A really safe and capable pair of hands."*

Legal 500 2024:

- *"Daniel is highly dedicated to his cases, effective on his feet and calm under pressure."*

Chambers and Partners 2023:

- *"Dan is an excellent barrister. He is highly intelligent and quick-thinking, provides detailed advice and responds very quickly."*
- *"Daniel is a housing law mastermind; he finds simple solutions to often very complex legal issues. He is hard-working, dynamic and reliable."*

Legal 500 2023:

- *"Daniel is diligent and thoughtful. His drafting is clear, precise and persuasive. He is practical and gives considered and thoughtful advice within agreed timescales to get the best outcome for vulnerable clients."*
- *"Daniel constructs extremely clear and well-thought-through arguments and, is adept at getting the judge onside."*

Chambers and Partners 2022:

- *"Daniel has an encyclopaedic knowledge of housing law. He sees the points that no one else uncovers and is extremely committed and hard-working for clients."*

Legal 500 2022:

- *"His thoroughness and attention to detail alongside his steely determination to achieve the best possible outcome for the clients have often yielded fantastic results way beyond what might have been expected."*

Chambers and Partners 2021:

- *"He is the perfect combination of fiercely intelligent, thoughtful and brave in litigation with a strong legal knowledge over a range of areas."*

Legal 500 2021:

- *“Dan is very quick at turning instructions around, he provides in-depth and clear advice, works very well together with the instructing solicitor, he is very sensitive to the client’s specific requirements and needs, he will have great ideas about how to push the current legal boundaries to our clients’ advantage.”*

## **Education**

BA Archaeology (University of Cambridge), First Class

MPhil Social Anthropology (University of Cambridge), Distinction

Graduate Diploma in Law (BPP), Outstanding

Bar Professional Training Course (BPP), Outstanding

## **Languages**

Spanish

## **Related practice areas**

Housing, Social Welfare and Property

Actions Against the Police and Public Authorities

Community Care and Health

Administrative & Public Law

## **Administrative and Public Law**

Daniel has a wide range of experience in public law, both within his other practice areas and more generally. Examples include:

- *R (BN) v Hounslow LBC [2023] EWHC 3083*: Judicial review of the residence requirement under a local authority’s housing allocation scheme on the basis that it indirectly discriminated against the Claimant on grounds of her race and sex (contrary to the Equality Act 2010) and as a refugee and survivor of gender-based violence (contrary to Article 14 ECHR). Settled with the authority agreeing to review the requirement and exempt refugees and victims of gender-based violence. Led by Jamie Burton KC.
- *R (SA) v Hackney LBC (2023) September Legal Action 49*: Judicial review of the local authority’s systemic failure to accept applications to join its housing register and exclusion of homeless applicants not owed the ‘main housing duty’ under s193 Housing Act 1996. Settled with the authority agreeing to put in place a system for accepting

applications and to amend its scheme to remove the restriction on homeless applicants.

- *R (DF) v Essex CC* [2023] EWHC 3330 (Admin): Judicial review of the local authority's decision that a 17-year-old did not require accommodation under section 20 of the Children Act 1989 following the death of her mother, including issues as to whether she was homeless within the meaning of the Housing Act 1996 and, if so, whether she necessarily required accommodation for the purposes of the Children Act. Led by Sarah Hannett KC.
- *R (D) v Independent Office for Police Conduct*: Judicial review of various decisions of the IOPC in relation to the investigation of the death of a Black man following police restraint, on grounds including breach of Articles 2 and 14 of the European Convention on Human Rights. Settled after issue, with the IOPC agreeing to take the actions requested. Led by Fiona Murphy KC.
- *R (Detention Action) v Lord Chancellor* [2022] EWHC 18 (Admin): Judicial review of the Lord Chancellor's monitoring and enforcement in relation to the detained duty advice scheme for immigration detainees in immigration removal centres. Led by Ben Jaffey QC.
- *R (SM) v Lord Chancellor* [2021] EWHC 418 (Admin): Judicial review of the failure to provide free initial advice to immigration detainees in prisons, as provided to detainees in immigration removal centres. Difference in treatment held to constitute unlawful discrimination contrary to Article 14 of the European Convention on Human Rights (ECHR). Instructed by Bail for Immigration Detainees (BID) as intervener, led by Laura Dubinsky.
- *R (AKN) v Secretary of State for the Home Department*: Judicial review of the Home Office's decision to evict destitute failed asylum seekers accommodated during the Covid-19 pandemic, before the end of the Government's "Roadmap out of Lockdown". Settled upon the Secretary of State's agreement not to resume evictions until the end of the Roadmap. Led by Simon Cox.
- *R (JD) v Secretary of State for Work and Pensions* [2020] EWHC 1976 (Admin): Judicial review of the Loans for Mortgage Interest ("LMI") scheme on the basis of discrimination against disabled claimants. Following the grant of permission to appeal by the Court of Appeal, the Secretary of State amended the relevant regulations. Led by Jamie Burton.
- *R (Joint Council for the Welfare of Immigrants) v Secretary of State for the Home Department* [2019] EWHC 452 (Admin) and [2020] EWCA Civ 542: Judicial review of the "Right to

Rent” scheme, prohibiting landlords from renting properties to people without leave to remain in the UK, on the grounds that the scheme was discriminatory and incompatible with the European Convention on Human Rights (ECHR). Instructed by Liberty as interveners in the in the High Court and Court of Appeal, led by Martin Westgate QC.

- *R (X) v Ealing Youth Court* [2020] EWHC 800 (Admin): Judicial review of the Youth Court’s decision to order late release of a young offender convicted of terrorism. The first reported decision relating to the exercise of the power to order late release under section 102 of the Powers of Criminal Courts (Sentencing) Act 2000. Instructed by the claimant, led by Richard Thomas.
- *LB v Tower Hamlets LBC* [2020] EWCA Civ 439: Court of Appeal decision confirming that, in considering whether it would have been reasonable for a victim of domestic violence to continue to occupy her former accommodation (in order to determine whether she is to be treated as “intentionally homeless”), a local authority is required to take into account incidents of domestic violence which occurred after she left the accommodation. Instructed by the appellant, led by Jamie Burton.
- *R (DA) v Secretary of State for Work and Pensions* [2019] UKSC 21: Judicial review of the Benefit Cap, as applied to lone parents, on the grounds that it was discriminatory and incompatible with the European Convention on Human Rights (ECHR). Instructed as junior counsel for Just Fair as interveners in the Supreme Court, led by Jamie Burton.
- *R (Harris) v Islington LBC*: Judicial review relating to the application of the new provisions of the Homelessness Reduction Act 2017.
- *T (Titiloye) v Southwark LBC*: Judicial review of Southwark’s failure to recognise accommodation provided to destitute migrant families under the Children Act 1989 as being Houses in Multiple Occupation (“HMOs”), subject to the protection of the HMO licensing scheme. Settled with Southwark agreeing to accept that accommodation for destitute migrant families is subject to HMO licensing.

## Housing and Social Welfare

Daniel undertakes a wide range of housing work in the county courts and High Court, including advising, drafting and advocacy in homelessness appeals and possession claims. Examples homelessness and judicial review work include:

- *R (BN) v Hounslow LBC* [2023] EWHC 3083: Judicial review of the residence requirement under a local authority's housing allocation scheme on the basis that it indirectly discriminated against the Claimant on grounds of her race and sex (contrary to the Equality Act 2010) and as a refugee and survivor of gender-based violence (contrary to Article 14 ECHR). Settled with the authority agreeing to review the requirement and exempt refugees and victims of gender-based violence. Led by Jamie Burton KC.
- *R (SA) v Hackney LBC* (2023) September Legal Action 49: Judicial review of the local authority's systemic failure to accept applications to join its housing register and exclusion of homeless applicants not owed the 'main housing duty' under s193 Housing Act 1996. Settled with the authority agreeing to put in place a system for accepting applications and to amend its scheme to remove the restriction on homeless applicants.
- *Blackwood v LB Redbridge* (2022) September Legal Action 49: Successful appeal under section 204 of the Housing Act 1996 against a decision that B&B accommodation was suitable for a homeless applicant with mental health issues and a history of drug addiction. Decision varied to one that the accommodation was not suitable, on the basis that no reasonable authority could conclude otherwise.
- *F v Peterborough* (2021) May Legal Action 41: Successful appeal under section 204 of the Housing Act 1996 against a finding that the appellant was intentionally homeless as a result of rent arrears arising in consequence of financial abuse.
- *Mohamed v LB Ealing* (2020) November Legal Action 42: Successful application for costs following dismissal of appeal under section 204 of the Housing Act 1996, including consideration of the approach to deemed receipt of a section 184 decision under s184(6).
- *LB v Tower Hamlets LBC* [2020] EWCA Civ 439: Court of Appeal decision confirming that, in considering whether it would have been reasonable for a victim of domestic violence to continue to occupy her former accommodation (in order to determine whether she is to be treated as "intentionally homeless"), a local authority is required to take into account incidents of domestic violence which occurred after she left the accommodation. Instructed by the appellant, led by Jamie Burton.
- *R (Harris) v Islington LBC*: Judicial review relating to the application of the new provisions of the Homelessness Reduction Act 2017.
- *T (Titiloye) v Southwark LBC*: Judicial review of Southwark's failure to recognise accommodation provided to destitute migrant families under the Children Act 1989 as

being Houses in Multiple Occupation (“HMOs”), subject to the protection of the HMO licensing scheme. Settled with Southwark agreeing to accept that accommodation for destitute migrant families is subject to HMO licensing.

- *Scarville v Lewisham LBC* (2017) October *Legal Action* 33: Successful appeal under section 204 of the Housing Act 1996 against Lewisham's decision to discharge its duty to the appellant on the basis of his refusal of accommodation in Bedford.
- *R (Edwards & others) v Birmingham City Council* [2016] **EWHC 173**: Judicial review relating to Birmingham’s treatment of homeless applications under Part 7 Housing Act 1996, led by Zia Nabi.

His possession work includes defending tenants on a range of public and private law grounds, and has involved dealing with new or unusual points of law, as well as dealing with clients suffering from disabilities or who lack capacity to litigate. Examples include:

- *Kaye v Lees* [2022] **EWHC 1151 (QB)**; and [2022] **EWHC 3326 (KB)**: Successful application for re-entry and nullification of a purported sale of the applicant’s home, under an order for sale, in breach of a Mental Health Crisis Moratorium; and successful opposition to creditor’s subsequent application to cancel the moratorium, led by Martin Westgate KC.
- *Arkin v Marshall* [2020] **EWCA Civ 620**: Court of Appeal case concerning the lawfulness of the stay of possession proceedings for 3 months during the COVID-19 under PD 51Z. Instructed by the Housing Law Practitioners Association (HLPA) as interveners in the Court of Appeal, led by Martin Westgate QC.
- *Hackney LBC v Henry* (2017) June *Legal Action* 32: Successful defence to a possession claim against a potential successor to a secure tenancy, on the basis that, although the notice to quit was left at the property more than 28 days before it expired, it had not been sent to the Public Trustee until later.
- *Flagship Housing Group v McAllister* (2017) April *Legal Action* 38: One of a very small number of examples of successful defences to a possession claim under Article 8 ECHR, in a case involving a tenant found guilty of drug offences.

Daniel also undertakes a wide range of other housing work, including cases related disrepair, harassment and unlawful eviction. Examples include:

- *Brem v Murray & Marchant* [2022] EWHC 1479 (QB): Successful appeal against finding that a tenant was liable for the unlawful eviction by his landlord of his sub-tenant. Mr Brem did not have a duty to prevent Ms Murray's unlawful eviction by a third party, and in any case had not been in a position to stop the eviction by Mr Marchant.
- **Insalaco v One Room UK**: Claim for damages for unlawful eviction and harassment, resulting in an award of damages of over £36,000.
- *Chaudry v Cooley* (2016) November *Legal Action* 40: Claim for damages for disrepair and breach of tenancy deposit requirements, resulting in deposit compensation in relation to each of a series of 3 tenancies and damages in relation to disrepair equating to 70% of the monthly rent.
- *Tyto v Narang* (2016) July/August *Legal Action* 47: Claim for damages for unlawful eviction and breach of tenancy deposit requirements, resulting in a judgment for over £29,000 in damages.

He has given seminars on various aspects of housing law, including at the Housing Law Practitioners' Association annual conference.

## Community Care and Health

Daniel has experience of a range of community care work, particularly in relation to securing accommodation outside the provisions of the Housing Act 1996.

He has conducted a number of judicial review claims against local authorities under the Children Act 1989, successfully securing urgent interim relief for vulnerable children and their families. Examples of his community care work include:

- *R (DF) v Essex CC* [2023] EWHC 3330 (Admin): Judicial review of the local authority's decision that a 17-year-old did not require accommodation under section 20 of the Children Act 1989 following the death of her mother, including issues as to whether she was homeless within the meaning of the Housing Act 1996 and, if so, whether she necessarily required accommodation for the purposes of the Children Act. Led by Sarah Hannett KC.
- *R (C) v A London Borough*: Judicial review of a local authority's failures to produce a lawful pathway plan and lawfully to consider making a referral to the Pan-London



Housing Reciprocal Scheme, in respect of a care leaver who had been the victim of trafficking. Claim allowed by consent.

- *R (JP) v Newham LBC*: Judicial review of Newham's decision that the claimant – who suffered from paranoid personality disorder with delusional beliefs about the local authority – had capacity to refuse an assessment under the Care Act 2014.
- *R (OP) v Lewisham LBC*: Judicial review of a local authority's failure to comply with its duties to a care leaver in prison, including securing accommodation in order to secure his early release on home detention curfew.
- *T (Titiloye) v Southwark LBC*: Judicial review of Southwark's failure to recognise accommodation provided to destitute migrant families under the Children Act 1989 as being Houses in Multiple Occupation ("HMOs"), subject to the protection of the HMO licensing scheme. Settled with Southwark agreeing to accept that accommodation for destitute migrant families is subject to HMO licensing.
- *R (MD) v LB Waltham Forest*: Judicial review of the local authority's failure to provide accommodation to a homeless teenage girl and, once she turned 18, to support her as a care leaver. Settled at
- *R (JP) v Hackney LBC & East London NHS Foundation Trust*: Judicial review of assessments under the Care Act 2014 and section 117 Mental Health Act 1983 in relation to a young adult with autism and gender identity disorder.
- *R (LW) v Coventry CC*: Judicial review of a local authority's refusal to failure to produce a pathway plan and provide accommodation to a 20-year-old care leaver with a history of non-engagement with social services.
- *R (DB & RD) v Lambeth LBC & Southwark LBC*: Judicial review of two authorities' failure to conduct an assessment under section 17 Children Act 1989 and to provide interim accommodation to a homeless single mother and her young child, each instead blaming the failure of the other.

Daniel is a contributor to '*Disabled Children: A legal handbook*', 3rd edition (2020).

Media law, privacy and related work

In 2019, Daniel was awarded the **Times Newspapers Fellowship**, spending 2 months working with The Times' in-house legal team. He gained experience of the full range of work of the team, from advising journalists on a range of issues prior to publication through to dealing with post-publication complaints and litigation.

He continues regularly to advise on a range of pre- and post- publication matters.

Examples of media and related work include:

- *Barclay v Barclay* [2020] EWHC 424 (QB): Instructed for the defendants in high-profile proceedings relating to covert recordings at the Ritz Hotel. Led by Heather Rogers QC.
- *R v Pencille*: Instructed by The Times in an application to vary a reporting restrictions order in relation to identification of children involved in a high profile murder trial at the Old Bailey.
- Advice to a national newspaper on a proposed application for access to confidential arbitration documents on a matter of significant public interest.

## Actions Against the Police and Public Authorities

Examples of actions against the police and other public authorities include:

- *R (D) v Independent Office for Police Conduct*: Judicial review of various decisions of the IOPC in relation to the investigation of the death of a Black man following police restraint, on grounds including breach of Articles 2 and 14 of the European Convention on Human Rights. Settled after issue, with the IOPC agreeing to take the actions requested. Led by Fiona Murphy KC.
- *MTA v Commissioner of Police of the Metropolis & Lord Chancellor* [2023] EWHC 117 (KB): Claim for damages in relation to the arrest, under an interim injunction, of a young man subsequently found to have lacked capacity to litigate. Successfully resisted the Lord Chancellor's application to strike out the claim against him under section 9 Human Rights Act 1998 as an abuse of process on the basis that the relevant orders had not been appealed. Led by Martin Westgate KC.
- *OS v Commissioner of Police for the Metropolis*: Claim for damages for breach of Article 3 ECHR in relation to failures and delays in investigation of rape. Settled with payment

of damages and costs.

- *CS v Chief Constable of Leicestershire Police*: Claim for damages for malicious prosecution of an anti-hunting protester. Settled with payment of damages and costs.
- *ML v Croydon LBC*: Claim for damages for breaches of rights under the European Convention on Human Rights (ECHR) in relation to delays in taking a child into care. Settled with payment of damages and costs.
- *PR v Commissioner of Police for the Metropolis*: Claim for damages for false imprisonment, assault, malicious prosecution and breach of Article 5 ECHR in relation to an arrest and prosecution for breach of a restraining order that had been revoked 6 months previously. Settled with payment of damages and costs.
- *GK v Commissioner of Police for the Metropolis*: Claim for damages for false imprisonment, assault and malicious prosecution in relation to the arrest and prosecution of a protester. Settled with payment of damages and costs.
- *R (Y) v Commissioner of Police for the Metropolis*: Claim for judicial review of the decision to issue a caution. Settled with agreement to withdraw caution and pay costs.

Daniel is a contributor to '*Police Misconduct: Legal remedies*', 5th edition (2022).