Nigel Giffin KC

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Nigel Giffin practises mainly in the field of public law at 11KBW, although he still undertakes employment law and commercial law cases of certain kinds. His practice covers commercial and environmental judicial review, as well as many aspects of local government law including education, social services, housing, powers and finance and elections. He was formerly a member of the Attorney General's "A" panel of Counsel to the Crown, and undertook a number of important Human Rights Act cases in this capacity.

He is a CEDR accredited mediator, and has undertaken a number of mediations as both mediator and counsel.

Nigel studied law at Oxford, where he was awarded a first in his degree. He is the author of the chapter on Administrative Court proceedings in Foskett's Law and Practice of Compromise, and a member of the editorial board of Butterworths Local Government Reports.

Nigel has recently been acting as counsel to the Public Inquiry into the murder of Zahid Mubarek at Feltham Young Offenders' Institution.

> ***Nigel is a very bright and very experienced advocate.***
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> CHAMBERS & PARTNERS

Expertise

Local Government

Nigel Giffin KC has practised in local government law for 25 years. He undertakes this work as part of a broadly based public law, public procurement law and human rights practice, in the course of which he appears at all levels of courts and tribunals, including a large number of cases in the Supreme Court, House of Lords and Court of Appeal.

Nigel's clients include:

- Local authorities – he has acted for and advised a high proportion of county councils, London borough councils and other unitary authorities, and many district councils, in all parts of England and Wales, as well as authorities in Northern Ireland.
- Joint authorities and joint committees.
- Fire and rescue authorities and police authorities.
- Those dealing with local authorities, including service users, trade unions, contractors, joint venture partners, individual councillors, local government employees, regional development agencies and other statutory bodies, and central government departments.

Nigel's practice includes both a substantial volume of advisory work, and advocacy in litigation. He is a member of the editorial board of Butterworths Local Government Reports.

His particular areas of experience and expertise include the following.

Local government powers and finance

Nigel has regularly advised in this area for many years, dealing for example with:

- General powers under the Local Government Act 1972 and the Local Government Act 2000
- Charging and trading powers under the Local Authorities (Goods and Services) Act 1970 and the Local Government Act 2003, including the interface with public procurement law
- Local Government (Contracts) Act 1997 and powers to undertake PFI schemes and other major projects

> ***Nigel is excellent at getting into the detail of complex and sometimes esoteric areas of law, and is a real expert across local government.***
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- Local government reorganisation, including the implications of unitary reorganisation for employment and for existing commercial contracts, as well as advising on potential challenges to reorganisation decisions
- Central government funding of local authorities, including e.g. issues around revenue support grant, capitalisation directions, and specific grants
- Local authority budget-setting, discretionary council tax reductions and collection of revenue
- Issues of local authority funding and service provision, including e.g. withdrawal of grants, closures of museums and libraries and leisure facilities
- Local authority capital controls and use of capital receipts
- Local authority investment powers
- Credits and debits to Housing Revenue Account
- Land disposal issues, including best consideration, use of general consents and questions of state aid
- Issues of Wednesbury reasonableness, fettering, bias, proper consultation etc in a wide variety of factual context
- Public sector equality duties
- Disputes between local authorities and external regulatory bodies such as external auditors, the Audit Commission or other inspecting bodies

Local authority commercial contracts

Nigel Giffin's understanding, based on long experience, of the context in which local authorities operate, combined with his expertise in public law and procurement law, and his experience in commercial litigation more generally, make him well placed to deal with many issues and disputes concerning local authority contracts. Examples of his work include:

- Disputes concerning the ability of local authorities to bring about the early termination of waste collection contracts.
- Disputes concerning performance-related payments in revenue and benefits contracts.
- Local authority's damages claim for interruption of service following destruction of ICTprovider's premises in fire.
- Local authority's obligations to make financial contributions under development agreement.
- Claims for wasted expenditure arising from work done on project abandoned without formal conclusion of contract.
- Claim arising from authority's alleged misuse of confidential information obtained during abortive contractual negotiations on major ICT project.

- Arbitration concerning contractor's obligations under grounds maintenance contract.
- Bank's claim under guarantee given by authority, successfully resisted on ground that guarantee not validly given.
- Dispute between local authority and transport undertaking concerning amounts due under concessionary fare scheme.

R (Luton BC and others) v Secretary of State for Education

[2011] LGR 553

Appearing for local authority successfully challenging decision to terminate Building Schools for the Future funding

R (Risk Management Partners Ltd) v Brent LBC

[2010] LGR 99

Appeared for local authority in Court of Appeal in leading case on s 2 well-being power

Hazell v Hammersmith & Fulham LBC

[1992] 2 AC 1

Leading House of Lords case on "incidental" powers arising out of local authority interest rate swaps crisis – also acted for large numbers of authorities in restitutionary claims which followed decision that swaps were ultra vires e.g. TSB Bank of Scotland plc v Welwyn Hatfield DC [1993] 2 BankLR 267

R v Brent LBC ex p. O'Malley

(1998) 30 HLR 328

Challenge to major development project raising issues concerning capital finance regime then in force, and consideration for land disposals, as well as public procurement

R (Isle of Anglesey CC) v Secretary of State for Work and Pensions

[2004] LGR 614

Challenge to clawback of housing benefit subsidy

R (Liverpool CC) v Secretary of State for Health

[2004] LGR 635

Challenge to determination of preserved rights grant

R (Bedfordshire CC) v Secretary of State for Communities and Local Government

[2008] EWHC 628 (ADMIN)

Appeared for intervening authority to argue successfully against challenge to unitary reorganisation

R v Local Government Boundary Commission ex p. Somerset CC

(TIMES 4 JULY 1994)

Challenge to proposed unitary reorganisation

R v Secretary of State for the Environment ex p. Sutton LBC

(1997) 95 LGR 509

Successful challenge to decision that valuable commercial property passed to another authority without compensation on boundary change – also appeared in subsequent arbitration

R v Secretary of State for the Environment ex p. Hammersmith & Fulham LBC

[1991] 1 AC 521

Acted for several local authorities in challenge to first use of capping powers under community charge regime

R v Lambeth LBC ex p. Secretary of State for the Environment

(1990) 89 LGR 441

Dispute concerning local authority's ability to reperform budgetary calculations

R v Pembrokeshire CC ex p. Coker

[1999] 4 ALL ER 1007

Issue as to whether best consideration obtained for land disposal

R v Wirral MBC ex p. Milstead

(1989) 87 LGR 611

Challenge to scheme for factoring of future proceeds of council house sales