



# Nicolas Stallworthy KC

**Year of Call:** 1993  
**Year of Silk:** 2011  
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Nicolas Stallworthy KC's practice involves the interaction of **commercial trusts**, contract law, **insolvency** and **professional negligence** at very high levels of complexity and value.

He undertakes cases concerning the interpretation of trusts, contracts, financial instruments & legislation; and the application of trust principles in the broader **commercial context**. His professional negligence practice focuses on solicitors, insurance companies, benefits consultants, professional trustees, actuaries & investment advisers.

He also has extensive experience of **regulatory** cases under the pensions regulatory regime. His work is conducted in the Business & Property Courts, the Tax & Chancery Chamber of the Upper Tribunal and appellate courts.

Nick's expertise is acknowledged by the legal directories. He is top-ranked by both Chambers & Partners UK (2020) and Legal 500 (2020) for Pensions. Chambers & Partners UK (2020) also ranks him for Commercial Chancery, and the Legal 500 (2020) ranks him for Professional Negligence.

Nick is called to the Bar of Northern Ireland (2010) and registered at the DIFC (2013). He is also a Head of Chambers (Deputy Head of the Business Team).

## Areas of Expertise

### Pensions

Nick is one of the most highly regarded practitioners at the pensions bar, with specialist knowledge of almost all issues affecting pensions schemes. His cases have concerned the interpretation of trust deeds & rules and legislation (including e.g. indexation issues), the scope and exercise of powers (in particular, amendment powers and the formal validity of amending instruments), the application of equitable doctrines in the pensions context, rectification, the employer debt and scheme funding legislation, the powers of the Pensions Regulator (in particular its financial support direction and contribution notice powers), pensions and insolvency, European law's impact on pension schemes (in particular in connection with 'equalisation') and pensions-related professional negligence claims (concerning solicitors, insurance companies, benefits consultants, professional trustees, actuaries & investment advisers).

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Nick has been top-ranked as a pensions expert by Chambers & Partners and the Legal 500 for a number of years. Legal 500 describe him as a “*an intellectual giant and tireless worker and inspirational litigation lead counsel in the shoes of an affable gentleman.*”

Nick's wider trusts practice covers other commercial trusts and financial instruments; in particular their interpretation (including applications under section 48 of the Administration of Justice Act 1985); rectification; applications to set aside transactions (on grounds of equitable mistake, the principle in *Re: Hastings-Bass*, collateral and improper purposes and/or conflicts of interest/duties); and proceedings to challenge or confirm the formal validity of the exercise of powers.

## **Notable Pensions cases**

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*Atos IT Services Ltd v Atos Pension Schemes Ltd, Re: the Atos UK 2011 Pension Scheme* [2020] EWHC 145 (Ch), [2020] Pens. L.R. 17

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An important authority on the interpretation of pension scheme indexation provisions.

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*Carr v Thales Pension Trustees Ltd & Thales UK Ltd* [2020] EWHC 949 (Ch); [2020] Pens. L.R. 19

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An appeal from the Pensions Ombudsman about the interpretation of a pension scheme rule which contained a latent inconsistency.

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*Arup UK Ltd v Trustees of the Arup UK Pension Scheme* [2020] EWHC 1064 (Ch), [2020] Pens. L.R. 21

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Concerned the interpretation of the scheme's indexation rule which would require or (as a matter of discretion) permit a switch away from the Retail Prices Index for future increases to pensions in payment.

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*SPS Technologies Ltd v Moitt* [2020] EWHC 2421 (Ch)

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The employer sought rectification of the error across these successive instruments; so-called 'serial rectification'.

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Re: the Barnardo's Pension Scheme

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In the Court of Appeal and Supreme Court

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*The Pensions Regulator v ITV & Granada*

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Re: *Box Clever Pension Scheme* – the first ever substantive trial before the Upper Tribunal of a reference from the Determinations Panel; and the upholding of that decision by the Court of Appeal.

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Shannan v Viavi, Re: the Wandel & Goltermann Pension Scheme

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In the Court of Appeal

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M v St. Anne's Trustees Ltd

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Advising on first appellate Hastings-Bass decision since Pitt v Holt (Guernsey Court of Appeal)

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IBM v Dalgleish

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The 'Project Waltz' proceedings

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Re: the Docklands Light Railway

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The operation of employer contribution rules

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The Lehman Litigation

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Re: Nortel & Re: Lehman Brothers Pension Scheme; The Pensions Regulator v Lehman Brothers; and Re Storm Funding Ltd

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IBM v Metcalfe

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The rectification proceedings

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Industry-Wide Coal Staff Superannuation Scheme Co-ordinator v Industry-Wide Coal Staff Superannuation Scheme Trustees

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Bridge Trustees v Yates

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PNPF v Taylor

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HR Trustees v German

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Re IMG Pension Plan

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Kennedy v Kennedy

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Smithson v Hamilton

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## Professional Negligence

Nick has substantial expertise in professional negligence cases concerning solicitors, insurance companies, benefits consultants, professional trustees, actuaries, investment advisers and insurance companies, particularly in connection with pension schemes or trusts. However, most of the time Nick manages to keep his clients, particularly his defendant clients, out of court: e.g. operating successfully behind the scenes in claims related to cases.

Nick has sued or defended around 20% of the firms listed by Chambers & Partners for pensions expertise.

Nick's expertise is acknowledged as by all the main legal directories, including Chambers & Partners and Legal 500, with Legal 500 (2017) ranking Nick for Professional Negligence, and Chambers & Partners UK (2018) ranking Nick for Commercial Chancery.

## Notable Professional Negligence cases

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Misys v Misys Retirement Benefits Trustees

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Losses removed by rectifying the drafting error

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Kennedy v Kennedy

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Losses removed by rescinding transaction on grounds of mistake so as to remove tax liability, and

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Archer v Travis Perkins plc

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Capital Cranfield Trustees Ltd v Pinsent Curtis

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Harland & Wolff Pension Trustees Ltd v Aon Consulting Financial Services Ltd

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## Commercial & Chancery

Nick's Commercial & Chancery dispute resolution practice includes: the interpretation of debentures (e.g. the Box Clever litigation), contested valuation issues (e.g. the Box Clever litigation), sale and purchase agreements (e.g. warranties and expert determination clauses), commercial trust instruments and legislation (e.g. the Lehman litigation); challenges to the exercise of contractual discretions (e.g. IBM) and expert determinations; rectification; the application of trust principles in commercial contexts (e.g. M v St Anne's Trustees Ltd); restitution; insolvency, such as the principle against 'double dipping' (e.g. Re: Storm Funding); regulatory investigations (e.g. Duke Street Capital, Re: Focus & Do-It-All) and professional negligence claims.

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Chambers & Partners UK (2018) and ranks Nick for Commercial Chancery; and the Legal 500 ranks him for Professional Negligence.

## **Notable Commercial & Chancery cases**

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The Pensions Regulator v ITV & Granada

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Re: Box Clever Pension Scheme

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M v St. Anne's Trustees

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IBM v Dalglish

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The 'Project Waltz' proceedings

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Re: the Docklands Light Railway

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The Lehman litigation

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Re: Nortel & Re: Lehman Brothers Pension Scheme; The Pensions Regulator v Lehman Brothers; and Re Storm Funding Ltd

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IBM v Metcalfe

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The rectification proceeding

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Industry-Wide Coal Staff Superannuation Scheme Co-ordinator v Industry-Wide Coal Staff Superannuation Scheme Trustees

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## **Insolvency**

Ever since completing his postgraduate degree (the Bachelor of Civil Law) – a quarter of which was devoted to corporate insolvency – Nick has undertaken a substantial amount of work involving insolvency and restructuring.

## **Notable Insolvency cases**

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[Granada Rental & Retail Ltd & Others v The Pensions Regulator \[2019\] EWCA Civ 1032](#) | [\[2019\] B.P.I.R. 1121](#) | [\[2019\] Pens. L.R. 20](#)

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A leading authority on 'connection and association' under the insolvency legislation and on the interpretation of voting control provisions under debentures.

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Re Storm Funding (In administration) [2013] EWHC 4019 (Ch) | [2014] Bus. L.R. 454 | [2014] Pens. L.R. 73

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A leading authority on 'double dipping', i.e. the general principle that a creditor cannot recover more than 100% of what is in substance the same debt from two estates. This was an administrators' application for directions in relation to the Lehman Brothers group. The application resolved the interpretation of the Pensions Regulators' financial support direction legislation to clarify whether multiple 'contribution notices' each claiming Lehman Brothers Ltd's full statutory debt under section 75 of the Pensions Act 1995 could be claimed against multiple Lehman group companies in administration.

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Garvin Trustees Ltd v The Pensions Regulator [2015] Pens. L.R. 1

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Concerning the extent to which a company's legal professional privilege survives its dissolution.

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Bloom & Others v Pensions Regulator & Others [2013] UKSC 52 | [2014] A.C. 209 | [2013] 3 W.L.R. 504 | [2013] 4 All E.R. 887 | [2013] Bus. L.R. 1056 | [2013] B.C.C. 624 | [2013] 2 B.C.L.C. 135 | [2013] B.P.I.R. 866 | [2013] Pens. L.R. 299

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Pinsent Curtis v Capital Cranfield Trustees Ltd [2005] EWCA Civ 860 | [2005] 4 All E.R. 449 | [2005] I.C.R. 1767 | [2005] O.P.L.R. 385 | Independent, July 20, 2005 |

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While the appeal decision remains a landmark case on the interpretation of pension scheme contribution rules, the conjoined proceedings at first instance had included Companies Court proceedings challenging the liquidators' rejection of a proof of debt and ability to go behind prescribed calculation methodologies for relevant debts (with associated disclosure arguments).

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Bradstock Group Pension Scheme Trustees Ltd v Bradstock Group Plc [2002] EWHC 651 (Ch) | [2002] I.C.R. 1427 | [2002] O.P.L.R. 281 | [2002] Pens. L.R. 327 | [2002] W.T.L.R. 1281 | (2002) 99(36) L.S.G. 40 | Times, July 10, 2002

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The landmark case concerning the extent to which statutory debts under section 75 of the Pensions Act 1995 can be compromised by trustees in the face of impending corporate insolvency, without impermissibly seeking to 'contract out' of that legislation. The application was expedited and considered (amongst other matters) whether the trustees' compromise and payment was at any risk of constituting an unlawful preference.

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## Memberships

- Association of Pension Lawyers – member of the Main Committee
- Chancery Bar Association
- Commercial Bar Association
- Financial Services Lawyers Association

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- Professional Negligence Bar Association

## Recommendations



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