



CONSTRUCTION, ENGINEERING AND
INFRASTRUCTURE
INFORMATION TECHNOLOGY
PROFESSIONAL NEGLIGENCE
JURISDICTION DISPUTES AND CONFLICT OF LAWS
GENERAL COMMERCIAL

David Johnson

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PRACTICE

David Johnson is described as “*an exceptional barrister – hard working with exceptional advocacy skills*” and “*clearly a silk in the making*” by Chambers & Partners UK Bar Guide. Ranked as a leading Construction junior at the UK Bar and in the Middle East, he has been described in The Legal 500 as “*One of the best barristers I’ve worked with*” and “*able to identify the legal issues and come up with innovative solutions to complex problems*”. He has also been described by clients as “*an excellent junior, tenacious, charming and thoughtful with strong advocacy skills*”, and “*super pragmatic, very knowledgeable and approachable*”.

David practises in the fields of domestic and international construction, engineering, energy, and information technology. He acts both as sole counsel and junior counsel and has appeared in the High Court, Court of Appeal, and in arbitration disputes in the Far East and Middle East. He has recently acted for clients in disputes arising out of Korea, Taiwan, the Philippines, Oman, Dubai, Abu Dhabi, Singapore, Jersey, Ukraine, Nigeria and Liberia. He also works on-site with clients where extensive on-the-ground support has been required and has recently spent time working in Singapore.

Domestically, David appears regularly in the Technology and Construction Court and has recently been engaged in number of disputes involving cladding and fire-stopping issues following the Grenfell Tower tragedy, including the construction of MediaCity in Salford. David also accepts instructions in a range of general commercial matters. He is also an accredited adjudicator.

CONSTRUCTION, ENGINEERING AND INFRASTRUCTURE

“One of the best barristers I’ve worked with. Amazing work ethic and consistently produces the highest quality work.”

Construction, The Legal 500 2022

LITIGATION

- **Prater Ltd v. John Sisk and Son (Holdings) Ltd** [2021] EWHC 1113 (TCC) appeared as junior counsel (with James Howells KC) for a contractor seeking enforcement of an adjudication award concerning the assessment of sums due under a subcontract relating to the construction of an aircraft hangar. The defendant's arguments to resist enforcement on the basis that the conclusion had been based on an earlier decision (which was itself alleged to be unenforceable) were unsuccessful, as was the attempt to argue that more than one dispute had been referred to adjudication.
- **Bennett (Construction) Ltd v. CIMC (MBS) Ltd (formerly Verbus Systems Ltd)** [2019] EWCA Civ 1515: Appeared in the Court of Appeal as junior counsel (with Chantal-Aimée Doerries KC) for the successful Appellant in proceedings before Longmore LJ, Coulson LJ and Snowden J. The Court (overturning HHJ Waksman KC at first instance) concluded that certain Milestone payment provisions in a sub-contract did provide an adequate payment mechanism for the purposes of the Housing Grants Construction and Regeneration Act 1996 (as amended). The Court also addressed the operation of the Scheme for Construction Contracts, noting the lack of existing judicial guidance on its application, and observed that, save in exceptional circumstances, it did not exist to replace a workable payment regime that the parties had agreed with one based on a radically different set of parameters.
- **Clancy Docwra Ltd v. E.ON Energy Solutions Ltd** [2018] EWHC 3509 (TCC): Appeared as junior counsel (with Steven Walker KC) in Part 8 proceedings before Jefford J. The proceedings concerned the interpretation of a sub-contract for the installation of an underground district heating network and responsibility for various ground conditions.
- **Portsmouth City Council v. Ensign Highways Ltd** [2015] EWHC 1969 (TCC): Appeared as junior counsel (with Peter Fraser KC, now Fraser J) for the successful claimant in Part 8 proceedings before Edwards-Stuart J. The claimant was held not to be under a duty to operate a service point regime in a 25-year PFI highways contract in accordance with express or implied duties of good faith, fairness or mutual co-operation.
- **Vivergo Fuels Ltd v. Redhall Engineering Solutions Ltd** [2013] EWHC 4030 (TCC): Appeared as junior counsel (with Stephanie Barwise KC) for the successful defendant. The claimant's termination of a mechanical and piping contractor on a biofuel plant was held to be a repudiatory breach of contract. The defendant successfully avoided the claimant's threatened £20m claim as a result. David acted in all stages throughout from disclosure up to and including appearance and cross-examination in trial before Ramsey J.
- **Walter Lilly & Co. Ltd v. DMW Developments Ltd** [2012] EWHC 1773 (TCC): Appeared as part of the counsel team. Akenhead J made a number of wide-ranging pronouncements on the law relating to global claims, delay and disruption, and claims for loss and expense, concurrent design liability and the operation of third-party settlement agreements.
- Appeared as sole counsel in Part 8 proceedings on behalf of Surrey County Council in respect of limitation period issues and claims under the Late Payment of Commercial Debts (Interest) Act 1998. David obtained an award of indemnity costs on behalf of his client and resisted enforcement of an adjudicator's decision in parallel proceedings (**Surrey County Council v. Chris Wheeler Construction Ltd**, unreported).

- Successfully acting as junior counsel for an international airport in claims against a D&B contractor, its insurer and broker for £10m damages claims arising out of design issues and defective construction of a multi-storey car park. The dispute involved extensive expert structural engineering evidence and insolvency, notification, and insurance coverage issues.
- Acting as sole counsel for an investment bank under third party rights provisions in a £21m claim against a D&B contractor in respect of a defectively designed/constructed slab and attenuation tanks at a storage site in Erith, London.
- Acting as sole counsel for an investment fund in Technology and Construction Court proceedings against a contractor in respect of a defective slab at a high-bay warehouse in Hoddesdon, Hertfordshire.
- Acted as junior counsel for a contractor in Technology and Construction Court proceedings relating to the construction of Bridgewater Place, Leeds. The claim, which settled prior to the final hearing, involved issues of negligent design, contribution, and health & safety legislation.
- Acted as junior counsel on behalf of the employer in relation to a £200m dispute over an NEC3 contract concerning the construction of a metropolitan railway, including a pre-action application for specific disclosure.
- Acted as sole counsel in a dispute concerning the conversion works at the London Stadium in Stratford following the London 2012 Olympics.
- Acted as sole counsel on behalf of a supermarket roofing sub-contractor defending and bringing multiple contract, tort and restitutionary cross-claims against the main contractor, employer and specialist designer. David also advised on a number of complex limitation issues throughout.

INTERNATIONAL ARBITRATION

- Acted as sole Counsel for an Omani sub-contractor in an ICC arbitration (Muscat seat) arising out of the construction of Muscat International Airport and involving claims for delay and disruption, change of law issues and variations. Appeared in April 2021 preliminary issue hearing and 5-day final hearing in December 2022.
- Acting as sole Counsel for a Korean main contractor in a £31m ICC arbitration defending a delay and disruption claim and bringing counterclaims for defective work arising out of the construction of a wastewater plant in Oman. Appeared in 7-day final hearing in March/April 2022
- Acted as sole Counsel in a £7m dispute concerning the construction of a desalination plant in Sohar, Oman. Appeared in a 10-day arbitration hearing in Muscat in October/November 2019.
- Acted as sole Counsel for an Omani contractor in £14m proceedings relating to a waste water network and involving the deduction of excessive 'penalties'. Appeared in 3-day final hearing in Muscat, Oman in November 2018.
- Acted in a \$1.4bn electricity transmission and distribution dispute in the Philippines in SIAC arbitration proceedings.
- Acted for a Singapore shipyard as sole counsel in relation to a termination dispute concerning the construction of a luxury 'superyacht' in China.

- Advised and prepared submissions on behalf of a Vietnamese employer concerning English law assignment and on demand bond issues in injunctive relief proceedings before the Korean courts, in support of arbitration proceedings between the employer and a consortium of Korean contractors.
- Acted as junior counsel on behalf of the employer in a dispute relating to the construction of a skyscraper in Dubai (ADCACC Rules; UAE law). The dispute, which related to delay and disruption claims and a claim for an extension of time, settled just prior to the final hearing.
- Advising on behalf of a Ukrainian party in relation to claims made under a performance bond relating to the construction of a wind farm in Zaporizhia, Ukraine.
- Advising in relation to disputes arising under a number of EPC contracts and Framework Agreement relating to the construction of a solar photovoltaic plant in Mykolaiv Oblast, Ukraine.
- Carried out advisory work on behalf of a Taiwanese client in relation to the construction of an offshore wind farm.
- Carried out advisory work and drafted pleadings in proceedings concerning the construction of a Mass Rapid Transit (MRT) rail station in Singapore.
- Advised a Nigerian client in relation to the operation and termination of a Concession Agreement for the production and supply of explosives in Liberia.
- Acted on behalf of a Singapore company as junior counsel in £2.5 million Final Account proceedings in respect of mechanical and piping works on a steam turbine project in the United Kingdom.

ADJUDICATION

- Successfully bringing adjudication proceedings (TECBAR nominating body) on behalf of an international airport against a major international infrastructure consultant in relation to a defectively designed hydraulic pipeline.
- Defending (as sole counsel) a claim brought against a mezzanine systems sub-contractor by a main contractor, alleging defective design and construction.
- Defending and subsequently commencing proceedings on behalf of an international airport in relation to a £36m dispute over an interim account on an NEC3 project concerning the construction and refurbishment of a crew reporting facility and coaching route.
- Defending a claim relating to the final account brought by a contractor arising out of the construction of a hangar at an international airport. The contractor, who sought payment of over £2m, was awarded just £10.
- Successfully defending a £5 million claim for wrongful termination brought against a managed services contractor by a number of housing trusts.
- Acting as junior counsel for a joint venture PFI contractor in multiple linked adjudications concerning fire-stopping measures at a hospital.
- Acting for the employer in a claim against an architect concerning design and contract administration issues. David appeared at the hearing and conducted cross-examination of the defendant and its expert witnesses.

CLADDING/FIRESTOPPING DISPUTES

- Acted as junior counsel in a domestic arbitration concerning £45m firestopping and cladding claims and preliminary issues involving limitation and the Defective Premises Act 1972/Building Safety Act 2022. Appeared as junior counsel in 5-day final hearing in June 2023.
- Acting as sole counsel for an investment fund in respect of claims concerning defective cavity barriers at a mixed-use development in Wimbledon, London. Appeared in all procedural hearings in the Technology and Construction Court.
- Acted as junior counsel for a management contractor on a multi-party dispute in the Technology and Construction Court relating to the construction of MediaCity, Salford, UK.
- Acting as junior counsel in Technology and Construction Court proceedings for a university bringing claims in contract and tort against a D&B contractor relating to inadequate and/or missing cavity barriers across multiple student accommodation buildings.
- Advising as sole counsel on limitation issues relating to claims arising out of the construction of a hospital in the Midlands.

DELAY AND DISRUPTION

- Advising on the construction of the extension of time and loss and expense provisions in the JCT DB 2011 contract. David subsequently drafted adjudication submissions and provided tactical advice, running the case until settlement.
- Acting for a Singaporean employer in defending claims for extensions of time and prolongation/disruption costs in respect of multiple cladding and glazing projects.
- Advising on the merits of claims by an employer against a project manager and structural engineer arising out of the delayed completion of a supermarket.

ASBESTOS DISPUTES

- Acting in £3.5m arbitration proceedings involving allegations of defective construction and asbestos mismanagement in a luxury residential property in Warwickshire.
- Acting as sole counsel in claims against an asbestos removal contractor and building contractor in relation to asbestos discoveries in a school.
- Acting as junior counsel in defending a claim for fees by and bringing a counterclaim in professional negligence against an asbestos consultant in respect of asbestos surveys conducted at over 500 properties across the United Kingdom.

INFORMATION TECHNOLOGY

- Acting as junior counsel for a global IT and systems contractor in a major ad hoc arbitration against the UK Government in relation to the NHS Connecting for Health IT programme. The dispute was a termination dispute and involved claims valued at c.£700m relating to the design, supply, integration and operation of what was claimed by the UK government to be the largest global civilian ICT software project ever attempted.

- Acting for an IT services provider in a termination dispute relating to the implementation of an enterprise resource planning software solution across various Ministries of Iraq and related corporate entities.
 - Advising on and drafting particulars of claim in a claim against a developer of software and hardware for use in biomedical equipment.
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PROFESSIONAL NEGLIGENCE

- Advising on the merits and on quantum in relation to proposed claims in negligence and associated limitation issues against a litigation solicitor.
 - Defending a claim involving the provision of architectural services in relation to a residential care home.
 - Advising on contribution proceedings and limitation issues in a claim arising out of the defective design of a warehouse floor.
 - Advising on quantum in relation to a claim against a residential property surveyor.
 - Preparing responses to requests for further information in a claim relating to the construction of a visual arts facility.
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JURISDICTION DISPUTES AND CONFLICT OF LAWS

David has experience of a number of cases involving issues of private international law.

Recent examples include:

- Advising on serving proceedings on a number of defendants residing in Austria, Switzerland and Liechtenstein, involving issues of private international law under the Brussels Regulation, the Lugano Convention and the English common law.
 - Advising on service of proceedings, enforceability of judgments and cross-border insolvency issues between English, Jersey and Cayman Islands jurisdictions.
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GENERAL COMMERCIAL

- Advising on the assignment of a number of bonds and guarantees from a Cambodian contractor on behalf of a Japanese bank.
- Advising on the recovery of rent arrears arising out of the COVID-19 pandemic.
- Advising on the drafting of board resolutions for a joint venture Indian property development company relating to the proposed sale of a number of assets.
- Advising on the recovery of fees paid in respect of a bespoke aquarium and issues under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

In addition to all major standard contract forms (JCT, FIDIC, NEC3, ICE), David has experience of numerous bespoke contracts in the construction, shipping and energy industries.

NOTABLE CASES

Prater Ltd v. John Sisk and Son (Holdings) Ltd [2021] EWHC 1113 (TCC)

Bennett (Construction) Ltd v. CIMC MBS Ltd (formerly Verbus Systems Ltd) [2019] EWCA Civ 1515

Clancy Docwra Ltd v. E.ON Energy Solutions Ltd [2018] EWHC 3509 (TCC)

Portsmouth City Council v. Ensign Highways Ltd [2015] EWHC 1969 (TCC)

Vivergo Fuels Ltd v. Redhall Engineering Solutions Ltd [2013] EWHC 4030 (TCC)

Walter Lilly & Company Ltd v. (1) Giles Mackay & (2) DMW Developments Ltd [2012] EWHC 1773 (TCC)

LEGAL TEXTS

Contributing editor to *'Hudson's Building and Engineering Contracts'*, 14th Edition (2020)

General editor of the Building Law Reports

"Contractual Interpretation After Arnold v. Britton: What Does It All Mean?" ADR Digest, Issue 21, Autumn 2016

"Looking in the Right Direction? The Philosophy of NEC3" ADR Digest, Issue 19, Winter 2016

Contributing editor to *'Hudson's Building and Engineering Contracts'*, 13th Edition (2015)

"Security of Payment and Adjudication in Hong Kong" ADR Digest, Issue 18, Spring 2015

"Defective Premises Law: Time for Remedial Works?" published by the Society of Construction Law, June 2011; (2012) 2 Construction Law Journal 131

David edits a regular column in Building magazine with Sir Robert Akenhead, former Judge in Charge of the Technology and Construction Court.

QUALIFICATIONS AND AWARDS

2015 TECBAR accredited adjudicator

2011 Hudson Prize, Society of Construction Law, Joint Prize-Winner

2010 Called to the Bar of England and Wales

2009 – 2010 BVC, City Law School London - Outstanding

Astbury Scholarship, Middle Temple

2005 – 2009 Bachelor of Civil Law, St Peter's College, Oxford University

2005 – 2008 BA (Jurisprudence), Mansfield College, Oxford University

BCL – Distinction

Finals – 1st Class

Law Moderations – Distinction

College Scholarship (Mansfield College)

ADDITIONAL INFORMATION

David is a member of TECBAR, COMBAR and the Society of Construction Law. He was a member of the TECBAR Committee for a number of years.

David gives talks and seminars at solicitors' firms and to lay clients. He has recently given talks in Madrid, Seoul, Singapore, Cardiff and Dubai on subjects of contractual interpretation, concurrent delay, remoteness, liquidated damages, global claims and arbitration procedure. He has also given talks on topics including contractual and common law termination, adjudication enforcement, costs budgeting, design liability in construction contracts, and legal professional privilege.

RECENT RECOMMENDATIONS

"David Johnson is very bright and a real pleasure to work with."

"David is very good at grappling with complex technical points, and not just strong on the law but also on the general construction issues."

Construction, Chambers UK Bar 2024

"David is very responsive, detail-orientated, a team player and provides practical and timely advice. He is good with clients and understands their requirements."

Construction, The Legal 500 2024

"He has the right skill set and mindset and he's good with clients."

"David Johnson is particularly responsive and displays a real enthusiasm for the cases he's involved in."

"He has a keen eye for detail, which is needed in a technically complex matter."

"David is very responsive and his written work is of a very high standard."

Construction, Chambers UK Bar 2023

"David never fails to impress with his submissions and oral advocacy. He really gets into the detail of the case and is never one to shy away from taking on the difficult technical issues."

Construction, The Legal 500 2023

"David is a very hardworking barrister. He knows construction law inside and out and his advocacy skills are exceptional. Mr Johnson is a pleasure to work with."

Middle East: Construction, The Legal 500 2023

"His legal analysis is always spot on and he comes up with innovative solutions to complex legal issues."

Construction, Chambers & Partners UK Bar 2022

"One of the best barristers I've worked with. Amazing work ethic and consistently produces the highest quality work."

Construction, The Legal 500 2022

"He is an exceptional barrister - hard-working with exceptional advocacy skills." "He is able to get up to speed quickly when dumped with documents; he is clearly a silk in the making."

Construction, Chambers & Partners UK Bar 2021

"He is tenacious, highly intelligent, and drafts with fine style. He is culturally adept, grasps concepts quickly, gets across vast swathes of material with skill, speed, and stamina."

Construction, The Legal 500 2021

"Shows strong knowledge and great attention to detail when handling complex construction disputes."

Construction, Chambers & Partners UK Bar and Global 2020

"He is able to identify the legal issues and come up with innovative solutions to complex problems in the case. He is not afraid to take on difficult points."

Construction, The Legal 500 2020