

# Duncan McCall QC

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Duncan McCall QC is a commercial litigator, specialising in construction and engineering, infrastructure, technology & telecoms, general commercial litigation and professional negligence in related fields.

He is particularly experienced in the litigation of 'project' claims arising from turnkey contracts (including EPC, D&B and PFI contracts). Many of his professional negligence, IT, construction and property damage cases have involved insurance coverage questions; he is familiar with the PI, Contractor's All Risks, EAR and Property Insurance policies of many leading insurers. He also has wide expertise in other business and commercial issues relating to his principal areas of work, including performance bonds, project funding, and software licensing.

He regularly represents clients in contentious matters ranging from emergency injunctions to lengthy trials in all divisions of the High Court, in the Appellate Courts, in domestic and international arbitrations, and in the DIFC Court, Dubai.

## International Arbitration

### Featured International Arbitration cases

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Acted for a Russian developer in an LCIA arbitration regarding the right to control a joint-venture development project in Moscow.

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Acted for a Chinese state-owned hydroelectric company in a claim pursuant to price escalation mechanisms under sub-clause 13.8 of the FIDIC Yellow Book terms. The contract concerned the construction of the Merowe Dam on the fourth cataract of the River Nile in northern Sudan. Statistical evidence relevant to the pricing mechanisms under the contract was adduced from representatives of China's National Bureau of Statistics.

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Acted for a Chinese state-owned coal trading company in an LCIA arbitration concerning the sale of several shipments of high sulphur coal into China.

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Represented the Claimant in an AAA arbitration (New York law) regarding royalty payments associated with peer-to-peer file sharing software.

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ICC arbitration (Paris) concerning delays to the construction of the second-longest oil pipeline in the world.

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ICC Belgian law arbitration, acting for the supplier of allegedly defective ERP software.

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Successfully resisted appeal application (arising in proceedings to enforce an arbitration award) in the DIFC Court, Dubai.

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## Commercial Litigation

### Featured Commercial Litigation cases

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Work in the Life Sciences sector, advising a client in relation to a collaboration agreement regarding the exploitation of a process involving the harvesting of human stem cells.

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Group Hotelero Urvasco v Carey [2013] Bus. L.R. D45; [2013] 5 Costs L.R. 669: 10-week trial in the Commercial Court concerning a loan agreement to fund a commercial hotel development. Issues included the application of a MAC (material adverse change) clause, loss sustained under a hotel management contract, and the interpretation and application of default clauses under Spanish law.

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Sharman Networks Limited v Claria Corporation: Acted for the successful Claimant in a contested claim (Commercial Court) to enforce a New York law arbitration award. The award concerned a claim for software royalty entitlements.

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CDV Software Entertainment v Gamecock Media: Trial regarding the termination of a publishing and distribution contract for video games.

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Claim concerning the landfill tax implications relating to commercial landfill activities. The issues depended on the correct classification and treatment of waste in the landfill site.

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Arbitration under the Rail Industry Dispute Resolution rules concerning the distribution of ticketing income between Train Operating Companies.

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Playup Interactive v Givemefootball: Acted for the Defendant, a joint venture involving the Professional Footballers' Association, in relation to the sponsorship rights regarding the PFA's website and associated annual awards.

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# Technology & Telecoms

## Featured Technology & Telecoms cases

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BT Cornwall v Cornwall Council: Acted for the service provider in a Commercial Court trial concerning the termination of a Services Delivery Agreement to provide an extensive range of ICT and telecoms services to the County of Cornwall. Issues included the analysis of KPI statistics in order to determine whether termination triggers had been reached.

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Represented the Respondent in an ad hoc arbitration concerning the functionality of the IT and telecoms systems running a Spanish TV gameshow promotion; complex quantum issues related to the assessment of the reduction of viewing figures.

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Represented the Claimant in a trial in the DIFC Court, Dubai, seeking recovery of losses arising from the deliberate sabotage of the Claimant's IT system. The claim involved a forensic investigation of the cause of, and responsibility for, the sabotage of the system.

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Claim for licences fees relating to the satellite broadcast rights for an international cricket tournament. Issues included 'natural overspill' of satellite coverage.

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Acted for one of the world's largest ICT services and consultancy firms, providing advice in relation the possible termination of a framework agreement for the provision of telecom and IT services.

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Vogon International v The Serious Fraud Office: Successfully defended The Serious Fraud Office at first instance (TCC) and in the Court of Appeal in respect of a claim for fees for forensic data recovery.

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Acted for one of the suppliers involved in the on-going NHS National Programme for IT. This is the largest UK civil IT procurement ever with a budget estimated to be in the region of £13 billion.

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Ansol v Rusal: Acted for the Defendant in highly-publicised computer hacking litigation with a background in international aluminium trading. The hacking involved the use of spyware.

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Arbitrations representing a leading IT services company in a dispute valued at over £100m under a PFI contract and project to implement, support and fund a major new ticketing system for a public transport network.

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# Construction & Engineering

## Featured Construction & Engineering cases

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Acted for the main contractor in litigation concerning the commercial fall-out of a hydroelectric scheme on the Zambezi. The scheme included the building of an underground power station, with associated major tunnelling works.

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Acted for the employer local authority in a multi-party action relating to the construction of a waste management facility. Issues concerned delays and related costs arising from the inability of the plant to meet contractual

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requirements relating to odour control.

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Acted for a specialist energy and infrastructure contractor in an ICC arbitration (Qatar law) concerning the development of a polysilicon plant. Claims included compensation for disrupted work on a chaotic construction site.

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Acted for the main EPC contractor in an arbitration concerning valuation of construction works for a £100m combined cycle gas turbine power station. Issues included valuation of the works, technical engineering issues, and programming of the works.

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Acted for a Police Authority in relation to the proposed termination of a PFI contract (concerning the provision of works and services relating to police stations) on the basis of material and persistent breaches of contract.

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Acted for the designer of the turbine blocks at a combined heat and power station in England. Issues included responsibility for cracks in the turbine blocks, with consequent investigation of possible causes.

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ICC arbitration relating to two large offshore wind farms concerning errors in the principal design standard used worldwide in the design of the foundations for such structures. Issues included a claim for damages for breach of an obligation to procure insurance; the question was whether insurance had been obtained which met the requirements of the contract, giving rise to a question as to the right of the claimant to make a direct claim against the insurer.

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Acted for the main contractor in a JCT arbitration concerning valuation of construction works for a £100m combined cycle gas turbine power station. Issues included valuation of the works, technical engineering issues, and programming of the works.

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Claims arising from unexpected physical conditions in respect of a tunnelling contract on NEC3 terms. Other relevant issues included interpretation of the contractor's payment entitlement under NEC3 clause 50.2, and the appropriate reduction for Disallowed Costs under clause C11.2(25).

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Acted for specialist marine engineers who carried out design checks relating to the construction of a new ferry terminal at Mersey Docks.

## Infrastructure

### Featured Infrastructure cases

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Acted for the successful Respondent in an arbitration under the Rail Industry Dispute Resolution rules regarding the interpretation of liquidated damages provisions in a contract for the purchase of rolling-stock.

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Instructed on behalf of the supplier of transport infrastructure equipment in a series of ICC arbitrations. Issues included defects in cabling and CCTV systems, breaches of warranty of quality, and causation of loss.

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Instructed on behalf of the Defendant in relation to the supply of new tilting trains for the huge infrastructure investment on the West Coast Mainline railway. Issues included investigation and analysis into the causes of delay.

## Memberships

- Registered advocate of the Dubai International Financial Centre (DIFC)

## Education

- BA (Oxon) Jurisprudence

## Recommendations

Duncan McCall QC is recommended in Legal 500 and in Chambers & Partners.

Comments include:

- he is clever, quick, highly knowledgeable and great with clients
- his advice is always balanced and takes account of commercial realities.
- an excellent strategist, who is good on his feet
- extremely assiduous, accurate in his pleadings, good on his feet, he won't let you down
- one of the best for contractual interpretation
- he has a technical mindset
- doesn't avoid any difficult questions
- a safe pair of hands in a crisis
- excellent both on paper and as a cross-examiner
- a commercially minded barrister with good business acumen