

Fiona Sinclair KC

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Fiona Sinclair KC excels in commercial cases with significant technical content, whether the technicality be financial, scientific or legal. She has particular experience in managing large, multi-party disputes (especially in the PFI context) and is expert in the complex issues of contribution, insurance and costs which such disputes engender.

Fiona deploys standout advocacy, impeccable drafting and commercial acumen to achieve outstanding results for her clients. Her flair and expertise in heavyweight disputes have led clients to praise her as “*a phenomenal advocate and technically brilliant*” (Chambers & Partners, 2020).

Fiona’s particular expertise is across these areas:

- Construction & Engineering
- Energy
- Insurance & Reinsurance
- Professional Liability
- Commercial (especially civil fraud)

Construction & Engineering

Fiona has extensive experience of very substantial energy, construction and infrastructure disputes, often with an international dimension, typically involving complex technical and/or financial evidence and frequently arising out of PFI schemes. She is familiar with the principal domestic and international standard contract forms, and with the rules of the major arbitral institutions. With colleagues at 4 Pump Court, Fiona developed and delivered a 2-day course on international arbitration to Chinese lawyers in Shanghai and Beijing.

Fiona has the distinction of being the only member of the Bar to appear in both of the cases on construction adjudication which have reached the UK Supreme Court since construction adjudication was introduced in the UK. In 2015, she appeared for the successful respondent in *Aspect v Higgins*, where the Supreme Court addressed the interface between adjudication and the law of limitation (via restitution, the inherent jurisdiction, and the declaratory jurisdiction). In 2020 she appeared in *Bresco v Lonsdale*, where the Court examined the interface between construction adjudication and the

insolvency regime and confirmed adjudication as a dispute resolution mechanism of utility to all.

Featured Construction & Engineering cases

Acting for an international insurance company in the defence of a £130M fraud claim relating to the issue of building warranty insurances (Curtiss v Zurich Insurance, 2022).

Acting in arbitration for an international multi-disciplinary consultancy in its delay and expense claim relating to the development of a new metro train line in the Middle East.

Defending a fraud claim against a contractor relating to the development of a £175M private dwelling.

Acting for the main design/build contractor in a dispute with an NHS trust, ProjectCo and the FM contractor under a PFI scheme for the construction/redevelopment of two hospitals. Issues included alleged defects and the interpretation of a settlement agreement between the principal project participants.

Acting for the same design/build contractor in a related claim against its architects.

Acting for the main design/build/FM contractors in a £150M dispute with a local authority and ProjectCo under a PFI scheme for the refurbishment of a residential estate comprising numerous tower blocks. The dispute involves 9 parties and contracts of unusual complexity. Believed to be the largest civil case so far generated by the use of 'Grenfell Tower-type' cladding on high-rise buildings. (Fiona has been instructed on disputes of this nature with total value c.£400M.)

Acting for a main design/build contractor in disputes with an NHS trust and ProjectCo arising from the redevelopment under a hospital PFI scheme, and for the same contractor in related claims against its supply chain.

Defending architects against a PFI developer's claim relating to the design and construction of education buildings.

Appearing for the respondent in the Supreme Court in Bresco Electrical Services Ltd (in Liquidation) v Michael J Lonsdale (Electrical) Ltd [2020] UKSC 25 concerning insolvency in the context of construction adjudication (hearing April 2020).

Acting for a US building contractor in an international arbitration concerning the redevelopment of a Caribbean island.

Acting for Hong Kong developer of £1bn landmark London development in damages claim against asbestos contractor.

Acting for the successful respondent in Ndole Assets Ltd v Designer M&E Services UK Ltd [2018] EWCA Civ 2865, an appeal concerning the proper role of claims consultants in construction litigation.

Acting for design/build contractor in 7-party litigation following subsidence of a distribution centre (unusual technical complexity: 17 experts).

Acting for the respondent in Aspect Contracts (Asbestos) Ltd v Higgins Construction Ltd [2015] UKSC 38, a landmark case addressing the interplay between construction adjudication, limitation, negative declarations and unjust enrichment. Fiona succeeded for her clients in the Court of Appeal and in the Supreme Court.

Advising international investors in connection with a South East Asian bridge-building programme.

Advising the EPC contractor in a dispute concerning the development of an oil field in Abu Dhabi.

Defending a design/build contractor in 'upstream' and 'downstream' disputes relating to innovative cladding on a broadcaster's flagship building.

Defending cladding engineers on a claim in connection with Bloomberg's flagship building (despite a contractual prohibition on proceedings more than 12 years after practical completion, Fiona persuaded the Court that s.1(3) of the Civil Liability (Contribution) Act 1978 meant that contribution claims made later could still succeed): *Bloomberg LP v Sandberg LLP & Buro Happold LLP* [2016] 1 BLR 72.

Acting for a main design/build contractor in 'upstream' and 'downstream' disputes arising from an allegedly defective warehouse/distribution centre: *Co-operative Group Ltd v Birse Developments Ltd (and Others)* [2012] EWHC 3060 (TCC), [2013] EWCA Civ 474, [2013] EWHC 1790 (TCC), [2013] EWHC 3100 (TCC), [2013] 3145 (TCC).

Acting for a metro-train manufacturer in an international conciliation and arbitration relating to the upgrading of the London Underground. The dispute involved unusually high levels of legal and technical complexity; new scientific developments were achieved during its investigation and presentation.

Energy

Fiona has extensive experience of substantial disputes concerning a range of power technologies and infrastructure (often with international aspects and typically involving complex technical evidence) as well as disputes concerning natural resources.

Featured Energy cases

Advising a USA/UK joint venture which is the main EPC contractor for the development of a WTE plant.

Acting for specialist consultants in arbitration relating to technical due diligence on a WTE plant for financing purposes.

Advising leading EPC contractor in the oil and gas production and processing industries in a dispute concerning the development of an oil field in Abu Dhabi (degassing flare systems).

Advising on correct construction and application of chains of international supply contracts (China, Hong Kong, Portugal, India) for solar voltaic panels for installation at a plant in Gujarat (express and implied quality obligations, liability exclusions insuring obligations, warranty provision, restitutionary remedies).

Advising on the contractual allocation between UK contractors of the risk refusal by Ofgem to grant carbon emission reduction target (CERT) credits.

Peterborough City Council v Enterprise Managed Services Ltd [2014] EWHC 3193 (TCC): Acting in litigation, then contractual adjudication, for the claimant council in a dispute concerning feed-in tariffs and the installation of a solar energy plant. The dispute produced the leading UK judgement on the dispute resolution procedures in the FIDIC Red Book (1999).

Acting in successful arbitration on subcontractors' payment claims under IChemE contracts for the construction of a bioethanol power plant (components and proof of Actual Cost, application of rates and markups, obligations as to records).

Insurance & Reinsurance

Disputes as to coverage and the construction of policies of insurance and reinsurance are a major part of Fiona's practice. Having had notable successes on behalf of her clients in arbitrations between insurers she is often brought in as an insurance specialist to provide advice on the insurance aspects of disputes, especially in relation to liability and property insurances. Fiona understands that insurance is the force which shapes much major litigation.

Featured Insurance & Reinsurance cases

Acting for an international insurance company in the defence of a £130M fraud claim relating to the issue of building warranty insurances (*Curtiss v Zurich Insurance*, 2022).

Defending design/build contractor's excess layer liability insurers against direct third party claims arising from defects in a UK airport car park.

Advising liability insurers on mitigation cost cover relating to a £2.5bn oil field development in the Middle East.

Advising primary layer insurers on policy coverage (allocation) issues relating to a £250M claim in connection with a major UK construction project.

Advising the liability insurers of a contractor which designed and built a waste management facility, following the collapse of massive specialist machinery.

Acting for professional indemnity insurers in arbitration concerning the correct allocation between successive policies of claims against accountants and tax consultants arising out of investment in Enterprise Zones.

Professional Liability

Fiona is renowned for her expertise and extensive experience in construction-related professional liability claims in the UK and abroad. She has been entrusted with claims touching every aspect of the services provided by construction professionals (feasibility, procurement, cost consultancy, design, contract administration, project management etc) across a wide range of specialism (including transport infrastructure, industrial refrigeration, geotechnical engineering, and mining) and on a wide variety of projects including many PFI projects including many PFU projects (eg. energy process and recycling plants, hospitals, leisure centres/ sports stadia, warehouse/ distribution centres, retail centres and general commercial, industrial and residential developments).

Featured Professional Liability cases

Numerous cases arising under major UK PFI schemes, defending claims by the Employer and/or ProjectCo against the main contractor, and claiming on against that contractor's professional consultants (and subcontractors). These cases involve particular contractual, technical and procedural complexity, and have concerned hospitals, educational buildings and high-rise residential developments.

In disputes with total value of c.£400M relating to the use of 'Grenfell Tower-type' cladding on high-rise buildings, acting

for and against construction professionals involved in the design and certification of such buildings.

Defending quantity surveyors in a £150M claim concerning costs advice given for the purposes of a mixed commercial/ residential/ retail development.

Acting for architects who designed the iconic Selfridges building at Birmingham's redeveloped Bull Ring Centre in complex multi-party litigation.

Acting for design/build contractor in claim against services engineers concerning design of an effluent treatment plant.

Defending architects against a £130M claim by a design and build contractor in connection with an ultra-high end residential development in London.

BMG (Mansfield) Ltd v (1) Galliford Try Construction Ltd (2) Aedas Architects Ltd [2013] EWHC 3183 (TCC) and [2013] EWHC 3468 (TCC): Acting for a main D&B contractor in a claim on against architects following a major fire at a designer shopping outlet.

Defending specialist construction law solicitors against a claim by the developers of three residential estates in the UK. Difficult issues of duty, breach, causation and loss.

Walter Lilly v DMV Developments: Defending building services engineers in a complex dispute relating to the construction of a "luxury-plus" residential development in London.

Acting for water treatment consultants in a claim relating to corrosion in a chilled water system.

Acting for refrigeration engineers in multi-party litigation arising out of frost heave at a food storage and distribution facility.

Defending a claim against structural engineers arising out of the piling design for a basement car park (issues as to responsibility for temporary works).

Defending structural engineers in a claim arising out of the collapse of a 200-year old retaining wall during groundworks.

Commercial Litigation

Fiona undertakes a wide range of commercial work, with a particular emphasis on civil fraud. Recent cases include a claim of fraud in the development of a £175M private residence, and a claim of systemic fraud by an international insurance company in the issue of cover notes for building warranty insurance.

Appointments

- Director, Bar Mutual Indemnity Fund Ltd (2017-)
- Committee Member, TECBAR (2012-2019)

Publications

Fiona was responsible for the Construction Professionals chapter in Jackson & Powell on Professional Liability (Sweet & Maxwell, 1995-2017) and is a contributing author to Construction Law, Costs and Contemporary Developments: Drawing the Threads Together (A Festschrift for Lord Justice Jackson) (Bloomsbury, 2018).

Education

- MA (Cantab), LLM (Cantab)
- Director, Bar Mutual Indemnity Fund Ltd (2017-)
- Committee Member, TECBAR (2012-2019)

Languages

- Italian (working knowledge)

Recommendations

Fiona Sinclair KC is recommended as a leading Silk in the Legal 500, Chambers & Partners UK and Chambers & Partners Global professional directories in the following practice areas:

- Construction (band 1)
- Professional Negligence (Technology & Construction) (band 1)
- Property Damage (band 1)
- Professional Negligence

In those directories, clients and instructing solicitors describe Fiona as:

- *A phenomenal advocate and technically brilliant.*
- *Strategically brilliant.*
- *A really excellent senior silk who is ferociously intelligent.*
- *A really excellent advocate who did brilliantly in the Supreme Court.*
- *Razor-sharp attention to detail.*
- *She has an incredibly amazing eye for detail with a laser focus on what the key issues are; she is a brilliant drafter and approaches cross-examination with the clinical precision of a surgeon.*
- *A brilliant advocate, she has teeth when she needs them and is fierce in cross-examination, but is charming with clients.*
- *Truly a high-flier and commands the respect of her opponents and the Bench.*
- *A cut above the rest: she can unravel the most complex of legal issues.*
- *Her analysis is brilliant: she makes the complex simple.*

- *She has the innate ability to orchestrate extremely complex and challenging multiparty cases in a manner that is straightforward and user-friendly.*
- *Charm personified, fiercely bright, incredibly user-friendly.*
- *She combines real intellectual rigour with incredible hard work, and she's a real team player.*
- *Excellent all round...academic, thorough, very personable and a team worker.*
- *Her approach is friendly, vigorous and relentless.*
- *An incredible barrister, she is forensic, intelligent and incredibly focused.*
- *A brilliant barrister and advocate.*