

# Fiona Sinclair QC

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Fiona Sinclair QC has a broad commercial practice, both domestic and international.

She has particular expertise in the following areas:

- Construction & Engineering
- Energy
- Insurance & Reinsurance
- Professional Liability
- Commercial

She excels in cases with significant technical content, whether the technicality be financial, scientific or legal. Fiona is adept at choosing and using different dispute resolution strategies to achieve outstanding results for clients. She has particular experience in managing large, multi-party disputes and is expert in the complex issues of contribution, insurance and costs which such disputes engender.

## 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. In 2018, with others 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 two 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

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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 include alleged defects and the interpretation of a settlement agreement between the principal project participants.

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Acting for the same design/build contractor in a related £20M claim against its architects.

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Acting for the main design/build/FM contractors in a £200M 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.

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Acting for a main design/build contractor in disputes with an NHS trust and ProjectCo arising from the redevelopment under a PFI scheme of two hospitals, and for the same contractor in related claims against its building services engineers.

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

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Acting for the respondent in the appeal to the Supreme Court in *Bresco Electrical Services Ltd (in Liquidation) v Michael J Lonsdale (Electrical) Ltd* [2019] EWCA Civ 27 concerning insolvency in the context of construction adjudication (hearing April 2020).

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

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Acting for the defendant contractor in a claim of alleged fraud relating to the development of a £175M private dwelling.

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

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Acting in numerous cases arising out of 'Grenfell Tower-type' cladding on high-rise buildings. The developments involved include broadcasting, commercial, residential, hotel and educational buildings.

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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.

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

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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.

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

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

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

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Bloomberg LP v Sandberg LLP & Buro Happold LLP [2016] 1 BLR 72: 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).

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Acting for an international property developer/joint venture in a £20M dispute concerning a major new London hotel.

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Advising a water utility company on the Water Industry Act 1991 and the New Roads and Street Works Act 1990.

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Defending the main contractor in an arbitration concerning the collapse of concrete sewage tanks constructed using pre-tensioned steel cables (steel corrosion cracking).

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## 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

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

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

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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).

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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).

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

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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).

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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).

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## 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

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

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

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

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

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

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Markel Capital Ltd v Gothaer Allgemeine Versicherung AG [2008] EWHC 2517 (Comm): Acting for reinsurance brokers in a tripartite dispute with reinsured and reinsurers (policy construction and notification issues).

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## Professional Liability

Fiona is renowned for her expertise and extensive experience in construction-related professional liability claims in the UK and abroad. Recent examples include claims touching on every aspect of the services provided by construction professionals (feasibility, procurement and cost consultancy, design, contract administration, project management etc) across a wide range of specialisms (eg. building services including industrial refrigeration, geotechnical engineering, mining, etc.) and on a wide variety of projects (eg. process plant, energy generating plant, waste recycling plant, leisure centres and sports stadia, a dry ski-slope, warehouse/distribution centres, retail centres, hotels and general commercial, industrial and residential developments).

### Featured Professional Liability cases

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Defending architects on a PFI developer's claim in relation to design and construction of education buildings.

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

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Acting for architects who designed the iconic Selfridges building at Birmingham's redeveloped Bull Ring Centre in

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complex multi-party litigation.

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

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

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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.

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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.

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Defending health & safety consultants against a claim by a building contractor following serious personal injury on a construction site.

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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.

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

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

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

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

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## Commercial Litigation

Fiona also undertakes a wide range of other commercial work (e.g. sale of goods, corporate insolvency, share warranty and other contractual claims). She appears regularly in the Commercial Court.

## Appointments

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

## Publications

Fiona was responsible for the chapter on Construction Professionals 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)

## Languages

- Italian (working knowledge)

## Recommendations

Fiona Sinclair QC 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
- Professional Negligence (Technology & Construction)
- Property Damage
- 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
- A cut above the rest: she can unravel the most complex of legal issues
- Excellent all round...academic, thorough, very personable and a team worker
- Charm personified, fiercely bright, incredibly user-friendly
- She has the innate ability to orchestrate extremely complex and challenging multiparty cases in a manner that is straightforward and user-friendly
- A brilliant barrister and advocate