

# Jonathan Lewis KC

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Jonathan Lewis specialises principally in construction and engineering disputes in litigation, arbitration and adjudication.

He also has considerable experience in professional negligence work involving construction professionals.

## Construction & Engineering

Jonathan has extensive experience in acting in all types of construction and engineering disputes whether in the Technology and Construction Court, arbitration or adjudication. His additional expertise in insolvency makes him unusually qualified to advise and act in construction disputes where issues of insolvency or potential insolvency arise. He has specialist knowledge of step in rights, bonds, disclaimer, vesting orders, novation and assignment in an insolvency context. He is familiar with most standard forms including NEC forms published by JCT, FIDIC and ICE. He has recently been involved in a number of substantial disputes under PFI contracts.

Recent cases in which he has been instructed include a \$500 million ICC arbitration concerning a giga-project in Saudi Arabia; a \$60 million ICC arbitration concerning gas pipelines in UAE; a €40 million LCIA arbitration concerning a gas explosion in the UK; a £70 million dispute concerning piling defects in a major development in Northern Ireland; a multi-million pound LCIA arbitration concerning defects in and late completion of a city center tram system; a £70 million dispute concerning the design and construction of walls for a major port; the collapse of a coal mine tip onto the railway resulting in substantial damage and disruption to the railway valued in excess of £30 million; an £80 million dispute concerning the fit-out of the Shangri-La Hotel at the Shard; a significant dispute under a framework utilities contract for the replacement and repair of waste and clean water infrastructure valued at £50 million and the catastrophic collapse of a partially constructed church.

Jonathan has considerable experience in acting in adjudications. He is regularly instructed to draft adjudication documents, appear at adjudication hearings and appear at enforcement proceedings in the Technology and Construction Court.

## Featured Construction & Engineering cases

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Acting in an ICC arbitration on behalf of a Saudi/US JV against Middle Eastern designer in relation to major dispute in Saudi concerning the design of a multi-billion dollar rail project.

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Acting in ICC arbitration in relation to a dispute concerning gas pipelines in the UAE including issues of CAR insurance coverage.

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Acting in an LCIA arbitration on behalf of international construction company against International rail and systems company in relation to a major dispute concerning a light rail project.

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Acting in an LCIA arbitration on behalf of major Finish engineering company in relation to a dispute with Austrian insurer concerning a gas explosion.

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Acting on behalf of Irish engineering company in an international dispute relating to the design and construction of the North Sea link.

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Acting on behalf of International contractor with regard to the design and construction of diaphragm walls for a new port.

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Acting on behalf of a major German construction company in respect of a dispute relating to Crossrail.

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Acting on behalf of a major Australian construction company in a dispute relating to the design and construction of a radio systems.

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Acting on behalf of Irish employer against a Portuguese contractor in respect of a significant project in Northern Ireland.

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Acting in related arbitrations concerning defects in and the late completion of a major city center tram system. The cases concern (amongst other things) issues relating to concrete technology and delay analysis.

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Acting in serial adjudications and High Court proceedings related to alleged piling defects and major basement construction of a new University in Northern Ireland.

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Acting for the successful claimant in the important adjudication enforcement case of Hutton Construction Ltd v Wilson Properties (London) Ltd [2017] EWHC 517 (TCC) in which the court gave guidance on the use of Part 8 proceedings to resist enforcement.

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Acting in the TCC case of Spartafield Ltd v Penten Group Ltd [2016] EWHC 2295 (TCC), which concerned contract formation and Letters of Intent.

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Acting in High Court proceedings relating to alleged defective pipework design and installation in the Norwich and Norfolk University Hospital.

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Acting for the claimant in High Court proceedings against multiple defendants from the design and engineering consultant team concerning major defects in the design and construction of a housing development in London.

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Acting in a dispute relating to the design and construction of major diaphragm port walls. The dispute involved complex engineering and geotechnical expert evidence. Value of dispute: £70 million.

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Acting for National Rail in relation to a major collapse of a coal mine tip onto the railway. Value of the dispute: £35 million.

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Acting for the fit-out contractor in an £80 million dispute concerning the fit-out of the Shangri-La Hotel at the Shard. The case concerned (amongst other things) complex delay analysis.

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Acting for a group of Power Companies in an action concerning their failure to achieve the Community Energy Saving Programme Target (“CESP Target”) imposed by the Department of Energy Climate and Change and administered by Ofgem. The value of the dispute was 14 million. The dispute required a detailed understanding and application of The Electricity and Gas (Community Energy Saving Programme) Order 2009. The Order set an obligation on certain gas and electricity suppliers and certain electricity generators to reduce carbon dioxide emissions by promoting a range of energy efficiency measures (qualifying actions) to domestic energy users.

Acting for National Grid in a series of adjudications and in the TCC in disputes concerning the design and installation of security upgrade works to critically important electricity and gas substations. Issues included: delay and disruption, application of liquidated damages, rights of suspension and termination. Value of dispute c. £20 million.

Acting for National Grid and Transco in relation to a large explosion in London resulting in the destruction of several properties and businesses. The claims (valued in the many millions) concern property damage and business interruption losses.

Acting for a major utilities company against a main contractor in relation to a complex and substantial dispute under a utilities framework contract for the replacement and repair of waste and clean water infrastructure. Value of the dispute: £50 million.

Acting for the owner of a church in a dispute arising from its catastrophic collapse during construction. The dispute involves complex engineering evidence as to the cause of the collapse and concerns a number of parties. Value of the dispute: £3 million.

Acting for a firm of architects and designers in relation to a dispute with a main contractor concerning the design and construction of numerous schools and colleges.

Acting for Tube Lines in a dispute with its signaling contractor concerning the defective design and installation of signaling for the Jubilee and Northern Line Upgrade. Dispute involved complex expert electrical engineering evidence relating to the effects of capacitive coupling in multi-core cabling. Value of dispute: £10 million.

Dhamija v Suningdale [2010] EWHC 2396 (TCC): Acting for the Employer in a professional negligence action against quantity surveyors. This was the first reported decision in 40 years concerning the duties owed by quantity surveyors.

Acting for the main contractor in the case of Farrelly (M&E) Building Services Ltd v Byrne Brothers (Formwork) Ltd [2013] EWHC 1186 (TCC) concerning the enforcement of an adjudicator’s decision. This case raised important issues in respect of breach of natural justice and the evidence required to demonstrate potential insolvency in the context of an application for a stay.

Acting for Engineers in an adjudication concerning the alleged defective design of a failed drainage scheme for a large housing development.

Acting for a group of Housing Associations in multi-million pound claim in the TCC concerning alleged over-charging by maintenance contractor.

## Professional Negligence

The main focus of Jonathan’s professional negligence practice concerns construction professionals, including acting for and against architects, engineers, project managers and surveyors. Many of the construction and engineering cases in

which he has been involved concern issues of professional negligence.

## Featured Professional Negligence cases

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Acting in a \$500 million ICC arbitration in relation to alleged design defects against designer.

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Acting for the Employer against Employer's Representative under a PFI contract in a significant professional negligence action valued at £30 million. Central allegation concerns certification of works without identification of widespread serious defects.

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Acting for M&E engineers in a claim for professional negligence in relation to pipework design under a PFI contract for the construction of a hospital.

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Acting for engineers in a claim for professional negligence in relation to the design of a waste to energy plant.

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Acting for the employer in a claim for professional negligence against structural engineers in relation to the design of a recycling plant.

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Acting for the employer in claims for professional negligence against numerous members of the consultant team (M&E engineers, architect, structural engineers and employer's agent) in relation to design and construction defects of a housing development.

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Acting for the employer in claims for professional negligence against architect, geotechnical and structural engineers in relation to piling and basement construction for a major development.

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Acting for National Grid in a case concerning the cause and consequences of a gas explosion in a London High Street which resulted in the destruction of a numbers of properties.

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Acting for National Rail in a dispute concerning the cause of the collapse of a coal mine onto the railway. The case concerned (amongst other things) the failure to identify defective construction and maintenance of a coalmine tip involving complex geotechnical and engineering expert evidence. The subsequent collapse was the largest since the Aberfan disaster.

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Acting in a dispute relating to the design and construction of major diaphragm port walls. The dispute involves complex engineering and geotechnical expert evidence. Value of dispute: £70 million.

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Acting in a dispute concerning the total collapse of a 5-storey building caused by the negligent design of structural steelwork. Acting for the owner against consultant engineers and steelwork connection designers.

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Acting for the architects in five successive actions arising from the alleged negligent design of 5 schools under a PFI contract.

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Acting for consultants in a major multi-party professional negligence action concerning the alleged negligence of the professional team in a compulsory purchase claim of a tower block in London. Value of dispute: £10 million.

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Acting in the important case of *Dhamija v Suningdale* [2010] EWHC 2396 (TCC) which was the first reported decision concerning the duties owed by quantity surveyors in 40 years.

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# Insolvency

In addition to his insolvency experience in the construction field, Jonathan also has a wider commercial insolvency practice and acts on behalf of and against Liquidators and Administrators in cases involving antecedent transactions (preference and transactions at undervalue), directors' misfeasance proceedings and the making and resistance of Administration orders.

## Featured Insolvency cases

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Advising the board of Balls Brothers Limited concerning the high profile attempts by its bankers to put the company into administration.

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Acting on behalf of a director in director disqualification proceedings arising from the farming of bio-oil in Australia.

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Appearing in the important case of *Hellard and Wade v Chadwick* [2014] EWHC 2158 concerning the question of whether claims under ss.339 and 340 of the Insolvency Act 1986 are provable debts and are thus liable to be stayed at the court's discretion.

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Acting for the receivers in the case of *JL Homes v Mortgage Express & Anor* [2013] EWHC 3928 (Ch). An important case concerning the duties owed by receivers to borrowers and lenders.

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Advising Kuwait Petroleum on UK insolvency law.

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Acting on behalf of directors defending multi-million pound misfeasance and related disqualification proceedings following the failure of a well known electronics retailer.

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Acting on behalf of directors in substantial misfeasance proceedings following the failure of a large construction company.

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Acting for trustees in bankruptcy in an important case concerning the application of section 285 of the Insolvency Act 1986 (stay of proceedings against a bankrupt).

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Acting for the Liquidator in high profile misfeasance proceedings against the former directors of a well known managing agency business. The central allegation being that the directors operated the business as a 'Ponzi scheme'.

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Representing the respondents opposing an appeal by major creditors against the approval of IVA's in the context of a multi-million pound deficiency. Issues concerning dishonesty of respondents and the dissipation of assets.

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Successfully representing the Liquidators in a preference and transaction at undervalue claim in the Chancery Division against the former director of this substantial engineering company.

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*Power v Brown* [2009] EWHC 9 (Ch), [2009] B.P.I.R. 340 Ch.D: Acting for trustee in bankruptcy in a case concerning the assignment by a trustee in bankruptcy of a cause of action without the court's sanction and locus of third parties to treat a transaction as void under section 284 of the Insolvency Act 1986.

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Acting on behalf of an internationally renowned professional poker player in a high profile application to set aside a statutory demand for a substantial sum arising from spread betting, [2010] EWHC 1353 (Ch); [2010] B.P.I.R. 815.

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Acting in numerous opposed applications for Administration Orders.

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Acting in an action for breach of a share purchase agreement in the context of a reverse merger.

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Andrews v Bohm & Another [2005] All ER (D) 161, Mann J: First reported decision of the High Court confirming the jurisdiction under the Insolvency Rules to dispense with personal service of a bankruptcy petition.

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Jay Benning Peltz (a firm) v Brian Deutsch [2001] BPIR 510(Ch), Neuberger J: Chancery Appeal concerning the interrelationship between the CPR and Insolvency Rules and the way in which a court should exercise its power to make an order of its own motion.

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## Other commercial work

Jonathan has considerable experience of litigation in the Chancery and the Queen's Bench Divisions concerning shareholder disputes (including section 994 petitions), claims for breach of warranties in share purchase agreements, guarantees, breach of mandate, agency and the international and domestic sale of goods.

Jonathan has particular experience of applying for and resisting applications for Freezing Injunctions and Search and Seizure Orders in the context of the areas in which he practices.

## Awards

Jonathan was named Barrister of the Year in the Insolvency and Rescue Awards.

## Publications

- Jonathan is a past editor of the Adjudication Society Newsletter

## Education

- LLB (Hons) (Manchester University)

## Recommendations

Jonathan is recommended as a leading Construction barrister in Chambers & Partners, Chambers Global and the Legal 500.

Comments include:

- an astonishingly gifted advocate, who is calm under pressure and great on construction-related insolvency matters
- born to litigate, he has an impressive and enviable ability to dismember every single one of his opponents' arguments point by point
- simply the best junior at the Construction Bar in my opinion. A brilliant thinker and a highly experienced advocate who has just about the best cross-examination style I have ever seen
- the complete package
- an excellent advocate with a stinging intellect
- exceptionally bright
- he has fantastic energy and stamina
- able to precisely dissect the most complex case and reduce it to its bare essentials
- a highly regarded junior sought after for his expertise in insolvency related construction matters
- renowned for his impeccable attention to detail and extremely thorough preparation
- very commercial and legally precise
- a pleasure to work with