

Luke Wygas

Call 2004



Luke worked in the construction industry, mainly in the Far East, prior to coming to the bar. Given this technical background, Luke's practice has focused on construction and engineering claims or disputes involving technology of one form or another. Whilst Luke's practice is focused on construction, his ability has led him to dealing with cases ranging from matters arising from the Chernobyl disaster to disputes concerning the most technical nature of automotive design. Luke has also been instructed in some heavy commercial cases, particularly in relation to fraud.

Luke has particular expertise in the following areas:

- International Arbitration
- Construction
- Energy & Utilities
- Professional Negligence
- Commercial disputes
- Property Damage
- Technology and Telecoms
- Insurance
- PFI

International Arbitration

Luke has been instructed on numerous international arbitrations, both as sole counsel, as part of a larger team and appointed as arbitrator. The majority of Luke's arbitration experience concerns subjects where his construction and technical background have been relevant.

Featured International Arbitration cases

- Instructed on a £1.2billion arbitration in relation to the provision of one of the largest pieces of software ever envisaged. Matters include the true nature of the design, changes in scope and complex issue in relation to delay.
- Instructed as sole counsel in a \$35million dispute concerning the construction of a gold mine in West Africa. There were technical issues regarding the construction, for example the extent to which the delay in crushing and

reusing the large amounts of rock produced by the construction was the employer or the contractor's risk. There were also difficult issues concerning jurisdiction and whether claims in restitution could be brought under the material arbitration agreement.

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- Instructed in relation to a dispute concerning a hydro-electric plant in the Middle East. There were various complicated technical issues in relation to how the alleged defects in the plant were causative of delay and/or how they impacted in the ongoing construction of the plant.
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- Instructed in a dispute arising from a contract to provide telecoms infrastructure in Eastern Europe. Luke has to deal with having limited factual evidence and the difficult legal issues concerning the interpretation of the contract.
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- Instructed in relation to the construction of a cement process plant and alleged defects with the final production levels of the plant. Issues included problems with rock crushing, and the homogenising the stacker deposits.
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- Luke was instructed in a dispute concerning the development of a prestigious international hotel. The matter turned on issues of fraud, including cover pricing, double charging and falsification of invoices.
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- Instructed in an arbitration concerning the provision of government subsidies to a particular industrial sector. The arbitration was made difficult by the lack of information provided by the other side and the need to initially work without a clear understanding as to basis of the other side's case.
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Construction & Engineering

Luke has been instructed on construction cases and cases concerning construction professionals in the TCC and has experience of all the standard form contracts. Luke also has extensive experience of adjudication, both acting in adjudications and in dealing with enforcement proceedings.

Featured Construction & Engineering cases

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- Instructed on behalf of the contractor in relation to a very substantial design and build contract regarding a waste to energy plant. Issues included the adequacy of the completed plant and the length of the period that the employer could claim damages for.
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- Instructed on behalf of an employer in relation to the use of renewable technology to be used on a commercial development. Issues included the extent to which renewable technology would be constant and reliable.
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- Instructed on behalf of a design and build contractor in relation to the major refurbishment of a prison. Issues included the impact of defects within the building which were not subject to the works and what effect this would have always had on the works carried out.
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- Instructed on behalf of the contractor in a publicly funded major infrastructure project. Issues concerned the adequacy of the pre-tender design and the extent that the contractor could claim damages for matters which were arguably obvious on inspection of the site.
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- Instructed in relation to a multi-million pound design and build contract. Issues included the adequacy of pre-tender investigations and the subsequent liability for matters which were not discovered prior to works commencing.
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- Acting in a case relating to the development of a multi-million pound residential development. Matters relate to the defective works and what can be recovered from the contractor's insurers as the contractor is now insolvent.
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- Acting for a main contractor in relation to an allegedly defective concrete pavement. Matters relate to the appropriateness of proposed remedial works and particularly how they impact on the continuing business operation.
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- Instructed by the responding party in an adjudication relating to a multi-million pound tunneling contract. Issues involved delay and disruption caused by unforeseen ground conditions and the impact of various attempted remedial schemes.
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- Instructed by the referring party in a multi-million pound dispute in relation to building services provided for T5 at Heathrow, procured under an NEC contract. Issues included the cost management of sub-contractors throughout the contract.
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- Instructed in the enforcement of an adjudication award where issues of set-off of a further adjudication award were involved. The matter also concerned an application for a stay of execution on the basis of the financial state of the payee party.
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- Instructed in the enforcement of an adjudication award where issues included the impecunious state of the paying party and the impact of findings in previous and subsequent adjudication awards on the material award.
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Energy & Utilities

Luke has been instructed on EPC contracts, including in relation to gas turbine and waste to energy plants. Luke also has significant experience in relation to renewable energy, including wind turbines and solar energy. Luke has also been instructed on mining cases around the world.

Featured Energy & Utilities cases

- Acting as part of a team in an ICC arbitration concerning alleged substantial defects in a power plant in the Middle East. Issues included the ability to present very complex technical issues to the tribunal.

- Acting for an operator of a waste to energy plant in a claim against the technology provider. Issues included the specification of the plant and technical issues concerning its operation.
- Acting for a mine owner in a multimillion dollar international arbitration claim relating to a claim by the main contractor in relation to the cost of constructing various aspects of the mine. Issues included the allocation of risk for various matters.
- Acting for a contractor in an arbitration relating to the installation of offshore wind turbines.
- Acting for a sub-contractor in relation to the tunneling needed for the installation of high voltage cables.

Professional Negligence

Luke has extensive experience of claims against professionals, particularly construction professionals.

Engineers

- Acting for an engineer in relation to a multi-million pound sea defence project. Includes complicated quantification of delay and alleged extra over costs claimed against the engineer.
- Acting for an engineer in relation to the alleged negligent design of a tanking system for the basement of a commercial property. Issues included what proportion of the costs of the remedial works was recoverable and what was rightly considered to be betterment.
- Acting for a structural engineer in relation to the design of a retaining wall behind a hotel. Issues included the necessary strength of the retaining wall given the ground conditions (including the water content) and the best way for the retaining wall to stop water ingress into the property.
- Acting for engineers in claims concerning the requirements of foundations and piles. Issues involved the extent of the engineer's responsibility for the final design and the requirements for supervision of the contractor.

Architects

- Acting for an architect engaged on a multi-million pound redevelopment project. Issues included the duty an architect is under when asked to provide an ad hoc inspection of the fabric of the building and the extent to which an architect should question the specification provided by the employer.
- Acting for an architect in a claim where it was alleged that plans had been negligently produced. Issues of the scope of an architect's duty to maximize the profits of a development and the need to consider how best to obtain the least restrictive planning restrictions.
- Acting for an architect defending a claim brought his client, a well-known celebrity. Issues included whether the demands made by the client during the design and construction were reasonable and the standard of the final finish which was appropriate.
- Luke has also represented architects in RIBA and ARB hearings in relation to a number of allegations, including alleged overcharging, failing to follow clients' instructions and failing to provide relevant information to

clients, particularly in relation to costs escalations or limitations arising from the design of the property. Luke has also represented other professionals in other professional disciplinary matters, including structural engineers.

Valuers

- Acting in numerous claims brought by lenders against valuers, including a number of pieces of managed litigation. Issues involve fraud, breach of fiduciary duties, identification of the appropriate comparables and market, particularly when considering, buy-to-let applications, non-standard residential properties, or issues relating to the manufacturing of an artificial market by a third party. Matters also include the quantification of loss, particularly when mortgage books have been securitized from the original lender and when properties have been purchased at an undervalue.

Commercial Disputes

Luke has been instructed on substantial commercial disputes, including cases involving fraud.

Featured Commercial Disputes cases

- Instructed in the EDF Mann v Come Harvest litigation, one of the most significant fraud cases of recent years, where damages were assessed at US\$284m and the matter went to the Court of Appeal.
- Instructed on an £80m fraud case in relation to the construction of a hotel in Glasgow. Issues included the extent to which changes to the design of the hotel were necessary, as opposed to fraudulent means of trying to defraud the contractor.
- Instructed on a £40m fraud claim in relation to the development of a hotel and retail complex in Plymouth. Issues included whether the funder wrongly and deliberately withheld funding so that it could acquire the development at a reduced cost and so defrauding the developer.
- Instructed in relation to transportation and particularly rail disputes. These include appearing in specialist tribunals including in relation to appeals to the ORR.

Property Damage

Luke has been instructed in relation to numerous property damage claims, including fires and floods.

Featured Property Damage cases

- Acting in relation to a fire at a newly built residential development. The fire spread through the development quickly on account of problems with the cladding and fire stopping. Issues related to the appropriate allocation of liability between designers and contractors.
 - Acting in a subrogated recovery action relating to a fire which completely destroyed a hotel. The incident fire was allegedly caused by a fridge. Issues included the fact that an electrical fire had taken place at the hotel a week earlier, so proving the true cause of the incident fire and the quantum to be claimed was difficult.
 - Acting in a subrogated recovery action relating to a fire at a food processing plant. Issues included the way the fire spread and the alleged failure of the fire stopping at the plant.
 - Acting for an electronic competent manufacturer who supplied a ventilation system to a waste recycling plant. It was alleged that the failure of the component resulted in the fire spreading more than would otherwise have been the case.
 - Acting in a subrogated claim for a drinks retailer whose distribution centre was severely damaged by a fire which started in a neighbouring industrial unit. Issues included proving the amount of stock which was destroyed and the true impact on the business.
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Technology & Telecoms

Luke is a member of the 4 Pump Court Technology and Telecoms Team and has experience of contentious IT disputes. Luke has an in-depth understanding of the methods used in the development of software having written various pieces of software.

Featured Technology & Telecoms cases

- A \$100million claim in relation to the provision of wireless technology in preparation for the Olympics.
 - Involved in a claim concerning the provision of educational software and related communications hardware. Issues included the adequacy of the integration with legacy systems and the impact on the system of the changing scope of the customer's requirements.
 - Involved in a claim concerning the provision of international billing software. Issues included the capacity of the software to process the relevant number of simultaneous transactions.
 - Instructed in a case relating to the provision and management of telephone services. Issues included the scope of the agreement between the parties and the ability of the customer to terminate the contract, in whole or in part.
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- Instructed in an IT case relating to personnel alarms. Issues included the fitness for purpose of the software and the relative potential liability of the software manufacturer and the software installer.
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Insurance

Luke is instructed by both insurers and brokers in disputes regarding policy coverage, non-disclosure, misrepresentation, fraudulent claims and issues surrounding subrogation.

Featured Insurance cases

- Claiming a reimbursement after non-disclosure prior to a policy's inception.
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- Advising in relation to aggregation clauses, particularly with regard to professional indemnity policies and the impact of fraudulent activities.
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- Acting on behalf of an insurer in a claim brought by a lender against a solicitor concerning the extent of cover provided under the relevant minimum terms.
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- Advising and acting for insurers in claims concerning potentially fraudulent claims brought under the relevant policies.
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- Acting on behalf of a group of solicitors in a dispute concerning the repayment to insurers of referral fees paid by solicitors to a claims farming company. Issues included the duties owed by the solicitors to insurers who they had no direct contractual relationship with.
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PFI

Featured PFI cases

- Instructed in relation to a PFI maintenance contract. The prices were amended by the parties during the term of the contract without using the express contractual mechanism for doing so. Issues included whether there was a waiver of the required provisions or whether there was an estoppel so that the employer could not recoup money already paid.
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- Currently instructed in relation to a £40 million claim arising out of the PFI contract for the construction of a hospital. Issues include the correct way to interpret the unavailability provisions within the contract in relation to alleged defects in the construction when there is also an alleged lack of maintenance of the hospital.
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- Instructed on a £50 million claim in relation to the interpretation of a PFI contract regarding the cost of repairs to roads. Issues included the precise interpretation of formulas within the contract and whether the contract should be interpreted strictly or not.
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- Instructed in relation to a PFI contract for the maintenance and repair services to local authorities. The dispute centered on the way to apply the price increase mechanism within the contract.
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Publications

- Co-author of Atkins Court Forms: Professional Negligence
- Editor of Lexis Nexis Adjudication Know-How

Education

- MA MEng (Cantab)
- Dip Law (City)

Recommendations

Luke is recommended in Chambers and Partners and Legal 500, where comments include:

- A knowledgeable, responsive and easy-to-work-with barrister who is also very impressive on his feet in court
- Highly responsive, works incredibly hard for his clients and is always willing to go the extra mile
- He is a robust advocate
- Extremely user-friendly and has a good overall understanding of the construction world from both a legal and technical perspective
- Highly intelligent, user friendly and well regarded by clients
- He has valuable engineering expertise and builds a great rapport with clients
- He is very commercial and down to earth
- Very straight-talking and a pleasure to work with

Luke was nominated for Construction & Energy Junior of the year at The Legal 500 UK Awards 2023.

Accreditations

