

Martyn Naylor

Call 2009



Martyn Naylor has a broad commercial practice, specialising in insurance and construction disputes.

He has particular experience in the following areas:

- Insurance & Reinsurance
- Construction & Engineering
- Professional Negligence
- Technology & Telecoms
- Commercial Litigation

He is regularly instructed as both sole and junior counsel across most of Chambers' core areas, particularly in insurance / reinsurance and construction matters. Much of his work concerns litigation in the Commercial Court or Technology & Construction Court (TCC), but he is also frequently involved in international commercial arbitrations and construction adjudication proceedings. He has experience of appellate proceedings, having appeared in both the Court of Appeal and Supreme Court.

Martyn has recently been involved in a number of leading cases on the most topical insurance and construction matters, such as those arising out of the COVID-19 pandemic (including being instructed as junior counsel for one of the insurers in the FCA test case on business interruption insurance, both at first instance and on appeal in the Supreme Court) and cladding disputes following the Grenfell Tower fire (including in relation to a number of claims brought by the Premier Inn hotel chain against its design and build contractor).

Insurance & Reinsurance

Martyn is regularly instructed on a wide range of insurance and reinsurance matters. His work includes advising on policy coverage, drafting statements of case and conducting both interim and final hearings for insurers and policyholders. He has also acted on behalf of insurance brokers in professional negligence actions.

He has recently been instructed on a number of matters arising out of the COVID-19 pandemic, including the FCA test case on business interruption insurance, which was the subject of a ‘leapfrog’ appeal to the Supreme Court, as well as several other pieces of litigation and advisory work.

In terms of general experience in the insurance market, Martyn has spent several months working in-house with a leading London insurance broker and acquired a good understanding of the issues usually raised in claims by and against brokers. Martyn undertook a further secondment with the in-house legal team of a major international insurer and is aware of the practices and pressures currently facing the insurance market.

At the end of 2015, Martyn spent three months with a leading litigation law firm in Bermuda, where he gained experience of international insurance arbitration work, including Bermuda Form arbitrations in particular.

Martyn was a founding committee member of the Insurance and Reinsurance Legacy Association’s Young Professionals’ Group (the IRLA YPG) and is also a member of the British Insurance Law Association (BILA).

Featured Insurance & Reinsurance cases

Acting as junior counsel for one of the insurers in the FCA ‘test case’ on coverage for the COVID-19 pandemic under policies of business interruption insurance, in both the Commercial Court (Flaux LJ and Butcher J) and the UK Supreme Court (Lord Reed, Lord Hodge, Lord Briggs, Lord Hamblen and Lord Leggatt): *Financial Conduct Authority v. Arch Insurance (UK) Ltd & Others* [2021] UKSC 1; [2021] Lloyd’s Rep IR 63.

As sole counsel, obtaining summary judgment in favour of the insurer under a business interruption insurance policy with a ‘closed list’ disease clause, which included “*Plague*” but not COVID-19, on 22 February 2021 (Winchester County Court, HHJ Parkes QC).

Acting as junior counsel for the insurer, a Lloyd’s Syndicate, in ongoing Commercial Court proceedings brought by 19 holiday park / camp site owners or operators seeking more than £60 million in alleged business interruption losses due to the COVID-19 pandemic.

Advising numerous insurers and reinsurers on a wide range of matters arising from the COVID-19 pandemic, including on complex issues of coverage, quantification and aggregation.

Acting as junior counsel for an insurance broker facing allegations of professional negligence in relation to a commercial property policy for the Littlewoods Building in Liverpool. At a remote hearing before Butcher J in the Commercial Court on 5 June 2020, the broker successfully resisted an application for joinder and succeeded in obtaining an order for security for costs against the claimant.

Acting as junior counsel on behalf of a Congolese insurer and South African reinsurer in a claim arising in relation to a gold mine project (and damage caused to a hydro-electric power plant in particular). The case involved difficult questions concerning a ‘Cut-Through’ clause in the reinsurance policy, which was considered by the Commercial Court in the course of the insurers’ successful application to strike out parts of the claim against them: *Randgold Resources Ltd v. Santam Ltd & Another* [2018] EWHC 2493 (Comm); [2019] 1 Lloyd’s Rep 467.

Advising and attending a successful remote mediation as sole counsel on behalf of a property insurer faced with a substantial claim for, amongst other things, damage allegedly caused by the use of a warehouse as an illegal cannabis farm.

Advising and acting for a leading international and London market insurer on a wide range of policy issues, including

coverage, exclusions, aggregation provisions and misrepresentation / non-disclosure.

Advising a major UK insurer on potential claims arising from the 'Construction Blacklist' litigation, including on data protection and deliberate wrongdoing issues.

Acting as sole counsel for insurers in several multi-track trials of coverage disputes requiring expert evidence (e.g. in relation to property damage caused by water ingress as a result of alleged storm damage and in relation to allegedly defective construction work).

Advising on relevant financial regulations, professional indemnity insurance coverage (particularly in relation to solicitors' PI policies) and late payment / reinstatement issues.

Advising, pleading and arguing defences for insurers based on allegations of fraudulent claims and/or devices (and recovering wasted investigation costs).

Instructed as junior counsel in *Société Generale v. Various Underwriters* (listed by The Lawyer magazine as one of the top 20 cases of 2011, albeit the case settled before trial). The dispute involved issues of policy coverage, breach of warranty, non-disclosure and misrepresentation in respect of a global commodities (specie) policy.

Acting for insurers across the full spectrum of consumer cases, including claims arising from motor, home and contents and building/property insurance policies.

Before joining 4 Pump Court, Martyn was a research assistant at the English Law Commission, where he worked on the Commission's detailed review of insurance contract law. In the course of this work, he acquired particular experience of a wide range of English insurance law issues, including non-disclosure, misrepresentation, breach of warranty, damages for late payment and fraudulent claims. He has given a number of presentations on the Commission's reform project, including the two important pieces of legislation which resulted from it, namely the **Consumer Insurance (Disclosure and Representations) Act 2012** and the **Insurance Act 2015** (as subsequently amended by the **Enterprise Act 2016**). Martyn is very familiar with these recent Acts, and is well-placed to deal with matters arising under them.

Construction & Engineering

Martyn has considerable experience of a wide range of construction matters, often involving allegations of professional negligence on the part of construction professionals including surveyors, structural engineers and other building contractors. He regularly appears in construction (and construction-related) litigation in both the TCC and the County Courts, and has substantial experience of the adjudication scheme established by the Construction Act. He has also been involved in several international arbitrations involving large construction projects.

Martyn is currently instructed as junior counsel for one of the defendants in the ongoing TCC litigation concerning cladding on a number of Premier Inn hotels. He has also recently been instructed by a party involved in the Grenfell Tower Inquiry. He therefore has a detailed understanding of cladding issues, including in relation to Building Regulation B4(1) and the relevant guidance in Approved Document B.

Featured Construction & Engineering cases

Advising and acting on behalf of a major London airport in relation to a payment dispute concerning the contractor's procurement of a sub-contractor's warranty, including in adjudication enforcement proceedings and a CPR Part 8 claim for declarations in respect of the relevant construction contract.

Acting as sole counsel on behalf of a construction contractor in TCC litigation involving the substantial conversion of a large house in north London. The case settled shortly before trial, with significant costs being awarded in favour of the contractor, including at a hearing before Fraser J in February 2020.

Advising a residents' association on potential claims in respect of cladding on several buildings in a development in Limehouse, London.

Advising a cladding sub-contractor on potential claims in respect of ACM cladding on a number of tall buildings across the country, including in Blackwall, London.

Acting as junior Counsel in TCC proceedings relating to damage caused by an allegedly defective fire suppression system at a factory in Warrington. The case involved questions of reasonableness of an exclusion clause under the Unfair Contract Terms Act 1977, which were considered by the Court of Appeal; the case was reported as *Goodlife Foods Ltd v. Hall Fire Protection Ltd* [2018] EWCA Civ 1371; [2018] BLR 491.

Advising and acting as sole counsel for a major contractor in international arbitration proceedings relating to the construction and fit-out of a large hotel and office complex in Astana, Kazakhstan.

Acting as sole counsel in several sets of adjudication proceedings on behalf of a major UK telecommunications company in connection with a nationwide broadband infrastructure project.

Acting as sole counsel in adjudication proceedings brought in connection with the design and construction of four luxury, semi-detached houses in Richmond, London.

Acting in numerous other adjudications, including in relation to unpaid fees due to a specialist sub-contractor in a canal re-development project (and subsequently enforcing the successful decision using the TCC's expedited procedure); and a sub-contract to fit out parts of an Oxford Street department store (the dispute involved a jurisdictional challenge, which was subsequently upheld by the TCC).

Drafting defences to allegations of negligence against structural engineers (in relation to a home conversion project) and surveyors (in relation to a mortgage survey and valuation); and appearing on behalf of a surveyor in relation to allegations of breach of copyright (in architectural plans) and professional negligence.

Acting on behalf of a major contractor in multiple claims arising from redevelopment of a large commercial property near King's Cross, London.

Acting as sole counsel in multi-track trials concerning water ingress at a domestic property, which required the cross-examination of experts, and an architect's design of a large domestic property.

Instructed as junior counsel for the Secretary of State for Defence in arbitration proceedings relating to a multi-million pound construction dispute involving complex delay and disruption claims.

Advising on and acting in construction claims on behalf of legal expenses insurers, including claims in respect of negligent design and defective building work.

Professional Negligence

Martyn has substantial experience of negligence claims against professionals, particularly those working in the construction, technology and insurance industries.

Featured Professional Negligence cases

Advising and defending insurance brokers against negligence actions in respect of inadequate coverage, underinsurance and other such claims.

Acting on behalf of clients in a claim for professional negligence against their former conveyancing solicitors.

Advising and appearing on behalf of a range of construction professionals, including architects, surveyors and engineers.

Regularly advising, pleading and appearing in professional negligence actions both for and against solicitors.

Advising a major international insurance firm on coverage issues under professional indemnity policies, including cover for solicitors under the SRA's Minimum Terms. Martyn has recently been instructed in relation to arbitration proceedings in this respect, and is familiar with the issues normally involved with such policies (including notification, successor practice and coverage disputes).

Technology & Telecoms

Martyn has also been instructed in a wide range of technology-related disputes.

Featured Technology & Telecoms cases

Acting as sole counsel for an international hotel chain in proceedings issued in the Chancery Division and involving a payment dispute with an IT services provider.

Acting on behalf of one of the largest telecommunications providers in the UK in respect of an alleged repudiatory breach / termination dispute; work included preparing and appearing at the (successful) interim injunction hearing in the TCC and drafting the formal Particulars of Claim.

Advising and drafting a Defence and Counterclaim in relation to an allegedly defective IT system for a healthcare equipment supplier.

Acting for a large UK telecommunications supplier on a number of different matters, including in relation to an alleged breach of a business broadband contract and to an international contract for the supply of VoIP services.

Successfully defending a website developer against allegations of poor design and undue delay.

Acting for a leading international technology and telecoms firm in arbitration proceedings concerning a high-value UK-wide maintenance contract.

Commercial Litigation

Martyn has been involved in a wide range of general commercial matters.

Featured Commercial Litigation cases

Advising and regularly appearing in court on behalf of a leading insurance firm in relation to a long-running and complicated dispute involving the payment of commission to insurance brokers.

Drafting witness statements and advising the in-house legal team of a large civil engineering firm in relation to a potential claim against one of their major service providers.

Assisting with a three-week LMAA arbitration relating to the construction of a large chemical tanker.

Advising on the interpretation of charterparties and contracts of affreightment.

Involvement in all forms of ADR, including drafting Mediation Statements for a major insurer and in a large technology / telecoms-related arbitration dispute, as well as attending a successful mediation on behalf of a leading insurance company.

Instructed as junior counsel in a dispute between MTV and its Turkish licensee over the broadcasting of television channels (including MTV and Nickelodeon), which was heard in the Chancery Division.

Considering the validity of exclusion clauses in a contract for broadband services, and whether they met the requirements of the Unfair Contract Terms Act 1977.

Advising on a property owner's liability for trespass and nuisance in respect of damage caused to neighbouring trees (in addition to numerous tree root damage cases).

Successfully distinguishing *Office of Fair Trading v. Foxtons* regarding the enforceability of terms in a letting agreement requiring payment of renewal commission.

Applying (successfully) to strike out a long-running claim in a landlord and tenant dispute for undue delay, want of prosecution and abuse of process.

Publications

- “3 reasons for insurers to be cheerful this Christmas: *Versloot, Ted Baker and XYZ*”, Lexology (2014) with Sean Brannigan QC and James Purchas.

- “*The defences of set-off and abatement*”, Construction Law Journal (2014).
- “*The Law Commissions’ insurance law reform project: future developments*”, Insurance Day (May 2012) with Aidan Christie QC.

Education

- MA (Jesus College, Cambridge) Law with European Legal Studies
- LLM (Berkeley Law School) Law