

Nick Kaplan

Call 2013



Nick Kaplan specialises in commercial and contractual disputes, with a particular emphasis on construction and engineering.

Nick is regularly instructed as sole or junior counsel in litigation (both in the High Court and County Court), arbitration and adjudication. His experience includes: payment disputes, delay and disruption claims, claims for defective works (in particular cladding and fire safety disputes), claims arising from defective construction materials and associated product liability, construction professional negligence, enforcement of adjudicators' decisions and recovery of adjudicators' fees and expenses.

Prior to coming to the Bar, Nick worked in the Construction and Engineering Department of a leading City law firm. His work was particularly focused on advising and preparing submissions in relation to complex and high-value construction adjudications. In that capacity Nick also gained experience defending clients in a number of Health and Safety prosecutions by the HSE, and is familiar with the range of health and safety challenges that those in the construction sector face.

More recently, Nick has been involved in a number of the leading adjudication enforcement cases, and as junior Counsel in the leading construction termination case *Providence Building Services Ltd v Hexagon Housing Association* [2023] EWHC 2965 & [2024] EWCA Civ 962, which is due to be heard, on appeal by Hexagon, in the Supreme Court later this year.

Nick Kaplan is qualified to accept instructions directly from members of the public and professional clients under the Direct Public Access scheme.

Construction & Engineering

Nick has wide ranging experience of construction disputes and is familiar with all standard forms of construction contract. Nick regularly advises and acts for employers/developers, contractors, subcontractors and professional consultants. Nick also has extensive experience advising clients in relation to large-scale maintenance and supply contracts, particularly in the social housing sector.

Nick is highly regarded for his experience in, and detailed knowledge of, payment disputes having acted as sole Counsel in a number of the leading authorities in this area including: *Bexheat Ltd v Essex Services Group Ltd* [2022] EWHC 936

(TCC), *Bellway Homes Ltd v Surgo Construction Ltd* [2024] EWHC 10 (TCC) and *Bellway Homes Ltd v Surgo Construction Ltd* [2024] EWHC 269 (TCC).

Nick has particular expertise running, and drafting submissions in, construction adjudications ranging from low-value to multi-million pound disputes. Nick both brings and defends adjudications and is well versed in the particular strategic and legal challenges that the adjudication process gives rise to. He has both brought and defended a number of challenges to adjudicators' decisions in the courts (see e.g. *Wordsworth Construction Management Ltd v Invios Ltd* [2024] EWHC 617 (TCC)). He also regularly acts in Part 8 claims in relation to jurisdictional issues and other issues arising from contest adjudications, for example Nick acted as sole Counsel in *Hog Construction Ltd & Hog Group Ltd v Langridge* [2018] EWHC 2289 (TCC) and in *Bellway Homes Ltd v Surgo Construction Ltd* [2024] EWHC 269 (TCC).

Nick regularly advises parties in relation to disputes arising from the termination of construction contracts. Nick frequently appears in Court, in Arbitrations or acts in Adjudications arising from contentious terminations and disputed termination accounts. Nick is presently instructed as junior Counsel in the leading authority in this area: *Providence Building Services Ltd v Hexagon Housing Association* [2023] EWHC 2965 & [2024] EWCA Civ 962, which is soon due to be heard in the Supreme Court.

Nick is also regularly instructed as sole or junior Counsel in defect disputes, in particular those involving cladding and fire-safety issues. Nick has acted at all levels of the contractual chain in relation to such disputes both in an advisory capacity and in Court.

Finally, Nick has advised and acted for a large number of well-known adjudicators looking to recover their unpaid fees, see e.g. *The Vinden Partnership Ltd v Orca LGS Solutions Ltd and Anor* [2017] EWHC B24 (TCC) and *Ribbands v S&T (UK) Ltd & Vibe Construction* [2019] (unreported).

Featured Construction & Engineering cases

In *Providence Building Services Ltd v Hexagon Housing Association* [2023] EWHC 2965 & [2024] EWCA Civ 962, Nick acted as sole Counsel for Hexagon in Hexagon's initial termination claim in the adjudication between the Parties. Nick has subsequently acted as junior Counsel defending Hexagon Part 8 proceedings, and in the consequent appeal in the Court of Appeal. Nick remains instructed as junior Counsel for Hexagon in its forthcoming appeal to the Supreme Court.

In *Wordsworth Construction Management Ltd v Invios Ltd* [2024] EWHC 617 (TCC), Nick acted a sole Counsel in the complex adjudication enforcement proceedings in which both parties sought to enforce decisions in their favour while resisting enforcement of the decision in favour of the other party.

In *Bellway Homes Ltd v Surgo Construction Ltd* [2024] EWHC 269 (TCC), Nick acted successfully on behalf of Bellway in enforcing an Adjudicator's decision concerning re-payment of sums which Bellway had overpaid due to an earlier 'smash & grab' claim. Nick also successfully defend the conjoined Part 8 claim brought by Surgo. The Judgment deals with a number of complex issues concerning: (i) the effect of amendments to the standard JCT adjudication provisions; (ii) the procedure for the appointment of adjudicators; and (iii) the timing of true value adjudications.

In *Bellway Homes Ltd v Surgo Construction Ltd* [2024] EWHC 10 (TCC), Nick successfully enforced an adjudicator's decision in proceedings which established, for the first time, that a referring party may bring a payment claim on both a 'true value' and a 'smash & grab' basis, simultaneously in a single notice.

In *Bexheat Ltd v Essex Services Group Ltd* [2022] EWHC 936 (TCC), Nick acted for the successful Claimant seeking to enforce an adjudicator's decision in its favour. The case is one of the most cited authorities on payment disputes in adjudication.

In *Hog Construction Ltd and Hog Group Limited v Michael Paul Langridge* [2018] EWHC 2889 (TCC) Nick successfully acted for the claimants in a Part 8 claim seeking declarations that the defendant was not entitled to adjudicate against either of the two claimants.

In *The Vinden Partnership Ltd v Orca LGS Solutions Ltd and Anor* [2017] EWHC B24 (TCC) and *Ribbands v S&T (UK) Ltd & Vibe Construction* [2019] (unreported), Nick successfully acted for two well-known adjudicators looking to recover their unpaid fees, together with payment for their additional time incurred in pursuing the proceedings.

Nick is currently instructed by a Caribbean Government in a high value arbitration concerning allegations of repudiatory breach of a construction contract, associated claims and counterclaims in the termination account.

Nick is presently acting for a main contractor in a professional negligence claim against the quantity surveyor that priced its tender for works to fit-out a restaurant in a well-known venue.

Nick is currently instructed in a number of disputes arising from defective cladding and fire safety issues.

Nick recently acted for a well-known contractor in a complex loss and expense/EoT adjudication, in which the contractor was seeking to recover circa £7.5 million.

Nick recently acted for a Housing Association responding to a multi-million pound final account claim in a complex adjudication arising out of a large multi-year repair and maintenance contract.

Nick acted for an employer against a well-known contractor, in an adjudication arising from the contractor's application for a 700+ day extension of time. Nick successfully argued that on proper assessment of the EOT claim the contractor was entitled to no extension of time.

Nick was involved with the preliminary 'desk-top' investigations into the fire at Grenfell, consequently he is familiar with the particular challenges faced by building owners and contractors in relation to fire-safety regulations, cladding and construction defects.

Nick successfully defended a client in a prolonged £12 million adjudication arising under a large maintenance and supply contract which covered thousands of properties across the country. After several rounds of submissions, the Referring Party was awarded just 5% of the sums it had claimed. Nick subsequently advised on the settlement negotiations between the parties.

Commercial

Nick's commercial practice focuses on complex contractual disputes and payment claims, the supply of goods and services, product liability and professional negligence. He also has experience with matters which raise questions of conflicts between international jurisdictions.

Nick regularly acts for clients at both interlocutory and final hearings and his experience at a law firm prior to coming to the Bar, ensures that he has a strong client- focused approach, with a ready grasp of the wider strategic objectives that drive commercial disputes. In each of his practice areas he represents parties in arbitration, the High Court, and the County Court.

Featured Commercial cases

Microlise Limited v (1) James Kemball Limited (2) Uniserve Holdings Limited [2023] EWHC 579 KB – Nick acted in the High Court dispute between a Transport Logistics group of companies and the supplier of transport telemetry devices fitted into cabs of lorries raising several issues as to (i) contract formation; (ii) incorporation of terms; (iii) allegations of breach and misrepresentation; (iv) causation and quantification of loss. The Case also raised issues of what is necessary in terms of a clause to exclude the statutory implied terms of “fit for purpose” and “satisfactory quality” from the transactions. Nick advised at an early stage and was led by David Parratt KC in a preliminary issues hearing, in which Nick’s client was successful on all points decided.

Nick acted in the High Court (KBD) in a dispute involving the purchase of 1930s Italian Racing car at auction for the then record price for a car of its kind of c.£1,200,000. The case raised several issues including (i) precontractual representations and contractual warranties; (ii) provenance; and (iii) value. The proceedings settled on favourable terms.

LMAA Arbitration proceedings in 3 inter-related disputes concerning the supply of security systems and devices on four Yachts. Nick was Instructed by the Claimants in a Claim for c.£1,000,000 in outstanding fees owing under the contract. The case raised several issues including various setoffs allegedly due under other contracts. Nick was engaged at pleading stage, and after raising various ‘requests for further information’ arising from the Defendant’s pleadings, the claims settled on favourable terms.

Acting for the Claimant in a claim against multinational logistics company for alleged overpayments made under a Contract for services where charges had been applied on the wrong basis. The case raised several issues as to the meaning and effect of various clauses, in particular the pricing mechanism and various limitation and exclusion clauses. Settled at mediation.

Instructed on behalf of the Defendant in a dispute between a well-known supplier of coaches (and associated financing as well as repair and maintenance services) on hire purchase terms (the Claimant) and its customer (the Defendant), following termination of the hire-purchase agreement. Both parties alleged that the other was in repudiatory breach. There are substantial disputes as to (among other things) the meaning and effect of various contractual documents and provisions, including what (if any) terms are implied and what entitlement (if any) the Defendant had to make time of the essence under the contract.

Nick successfully resisted an application to set aside a statutory demand arising out of a c.£10,000,000 commercial fraud claim.

Medsted Associates Ltd v Canaccord Genuity Wealth (International) Ltd [2017] EWHC 1815 High Court (Comm) dispute between a Broker and Investors relating to fiduciary duties owed. Nick acted in a junior capacity on behalf of the Defendant, which successfully avoided an award of substantial damages against it.

Publications

- Nick Kaplan reviews the decision in *Grove Developments*: for the Adjudication Society in an article called “Unloosening or tightening the Construction Act’s Gordian Knot?” In *Grove Developments*, two of the construction world’s most esteemed Judges have, in their departing decisions before moving on to pastures new, now attempted to unloosen the Gordian Knot created by the amended Construction Act and Edwards-Stuart J’s decision in *ISG*.

This article seeks to assess the degree to which the decisions in Grove have unloosened that knot, or merely entangled us in other, related, difficulties. Further, it looks briefly at the recent decision of Stuart-Smith J in Davenport Builders which may, to mix my classical metaphors, indicate a way to chart a course between the Scylla of ISG and the Charybdis of Grove.

[View Article](#)

- Nicholas Kaplan analyses the decision in Grove Developments v S&T: will Smash and Grab now Crash and Burn?

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Education

- The University of Oxford – Politics, Philosophy and Economics – First Class
- Graduate Diploma in Law – City Law School – Distinction
- BPTC – BPP – Very Competent
- Astbury Scholarship – Middle Temple
- Michell Scholarship – Queen’s College Oxford