

Simon Henderson

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Simon Henderson has a wide ranging commercial practice.

He has particular expertise and extensive experience in:

- Technology & Telecommunications
- Construction, Energy & Adjudication
- Commercial
- Professional Negligence
- Mediation & Arbitration

Technology & Telecommunications

Simon has extensive experience of advising and representing hardware and software developers and users in a variety of claims and across a wide range of industries. Clients have included: IBM; Fujitsu; BT and Nokia.

His work prior to the Bar with Andersen Consulting (now Accenture) as a computer programmer and designer gives him first hand understanding of large scale IT projects and the challenges faced by both providers and customers.

Simon is a member of the adjudication panel for the Society for Computers and the Law Adjudication Scheme.

Recent directory comments include: *"What he brings is a real forensic knowledge of technology and IT systems and how they work and how you go about presenting complex technical evidence to a judge"* and *'He is highly experienced, has good judgement, is quick on the ball, and is very agreeable to work with. It is always reassuring to have him on the team.'*

As well as acting in court and assisting with all aspects of formal dispute resolution, Simon is also used to advising at all stages of the process, including: in ongoing situations as difficulties arise on live projects; at the pre-action stage; mediation and in full-blown court proceedings or arbitration.

Simon has a wide experience of all methods of ADR. He is a CEDR accredited mediator and as well as accepting appointments as a mediator, is able to assist clients at all stages of the mediation process.

Simon also accepts appointments as arbitrator and completed an LCIA arbitration as one of a panel of 3 arbitrators on a

case arising out of the development of a computer game.

Featured Technology & Telecommunications cases

Acted for **Post Office Limited** in a group claim by over 500 current and former sub-postmasters who allege amongst other things that there were defects in Post Office's Horizon computer system. Simon was part of the team acting for Post Office on the trial of the Horizon Issues which took place between March and July 2019: [2019] EWHC 3408 (QB).

Hitachi v RPS Group: acting for RPS Group in a case arising out of an agreement to implement an Enterprise Resource Planning system using Microsoft's Dynamics 365 software

Acting in an International Arbitration in a dispute arising out of an agreement to provide banking software

TNTG Ltd v Tokio Marine Kiln Insurance Services Ltd: Acted for Tokio Marine in an action arising out of the provision of IT services.

National Trust v IBM UK Ltd: Acted for IBM in a case arising out of IBM's role in the provision of certain services relating to the National Trust's Customer Relationship Management System.

Acted in an LCIA arbitration for a manufacturer and distributor, based in Moscow, in a case against the designer and installer of an automated warehouse system.

Acting for a major IT services provider in a dispute with a national organization arising out of alleged failures in a new computer system.

Tryzens Ltd v Equestrian Clearance Warehouse Ltd: Acted for the IT services provider in a dispute with a former client.

Advising a major multinational IT services provider providing services to a UK government department in a dispute with a sub-contractor.

In Practice Systems Ltd v EMC Computer Systems (UK) Ltd: Acted for EMC in a dispute arising out of the design of a storage solution for use in conjunction with INPS's Vision software, used in GPs' practices.

Ericsson AB v EADS Defence & Security Systems Ltd [2009] EWHC 2598 (TCC): Acted for main contractor in a dispute with a sub-contractor arising out of the FiReControl project – a project to provide an emergency communications system to the Fire and Rescue Service in England.

Acted for a leading multinational IT contractor in connection with a significant dispute with a UK government department following termination of a major contract.

Acted for a leading multinational IT delivery company in a dispute with a UK County Council relating to the termination of a wide ranging IT Partnership Agreement.

Acted in a LCIA arbitration for a major US-domiciled software provider in a dispute arising out of a contract to provide software services to a Swiss-based provider of plastic solutions to the infrastructure, automotive and advanced packing markets.

Acted for a leading IT contractor in relation to disputes arising out of termination of a contract with a leading UK supermarket chain.

Acted for a period of many years for a leading multinational IT contractor in connection with a variety of substantial disputes arising from the NHS computerisation project.

Represented a leading IT services company in connection with a multi £million IT dispute. The dispute related to a contract entered into under the PFI scheme and involved complex legal and technical issues. Near-continuous involvement in the dispute for over a year.

Imagination Ltd v Agresso Ltd: Acted for a software supplier specializing in the development and distribution of integrated business information and management systems in a dispute which arose following termination of a contract.

Acted for a manufacturer in a dispute with its IT supplier. Termination of contract led to licensing disputes and a need to preserve data and systems to ensure continuity of service pending provision of alternative arrangements.

Acted for a leading publisher against a materials handling company in arbitration proceedings relating to the provision of hardware and software for the publisher's material handling systems.

Acted for a leading distributor of heating and plumbing components against a software company relating to the provision of an enterprise resource planning system.

Acting for a major provider of services to the insurance industry in claim against former provider of IT services

Southern Rock & Eldon v Open GI: acted for Open GI, provider of IT solutions to the insurance industry, in an action arising out of the provision of software.

SSP Group v Swinton Group Ltd: acted for SSP Group, provider of IT solutions to the insurance industry, in an action arising out of Swinton's decision to change software platform.

Acted for several years for a major Far East client in relation to a series of multi-million pound disputes which have arisen with the client's provider of infrastructure and related services.

Acted for a major software and outsourcing business in a dispute arising out of the provision of case and custody software to a UK police force.

AstraZeneca UK Ltd v IBM: Reported at [2011] EWHC 306 (TCC): Acted for IBM in dispute arising out of termination of a global outsourcing agreement. Issues included scope and duration of exit obligations during lengthy Exit Period.

British Telecommunications PLC v Liberata UK Ltd: Acted for BT in a major dispute arising out of BT's termination for convenience of a contract with Liberata who BT had appointed as a sub-contractor to fulfil various local government functions for Sandwell Borough Council. The dispute centres on what if any payment is due to Liberata.

Imagination Ltd v Agresso Ltd: Acted for a software supplier specializing in the development and distribution of integrated business information and management systems in a dispute which arose following termination of a contract.

Acted for an NHS Trust in relation to a claim against provider of IT and telecommunications services

Crown Bidco Ltd v Vertu Holdings OY & Nokia Corporation: Acted for Nokia in a case arising out of Nokia's sale of Vertu – manufacturer of luxury mobile phones. Allegations arise relating to the separation of Vertu's computer systems from Nokia's.

Advising a major software house in a licensing dispute with a government department.

Advising a software house in a licensing dispute with a major UK bank.

Advising multinational telecoms company in dispute with a major mobile phone operator following termination of information and telecommunications agreement.

T-Mobile International v Logica CMG & Volantis Systems: Acted for a software supplier in connection with a major dispute concerning provision of services for use by a major mobile phone operator.

Ardentia Ltd v British Telecommunications Plc reported at [2008] EWHC 2111; 119 Con LR 50: Acting for BT in a case brought by a sub-contractor appointed by BT to carry out elements of BT's work on the provision of information technology services to the NHS.

British Telecommunications Plc v SAE Group Inc reported at [2009] BLR 231: Acted for BT in a case against a former supplier of services, seeking declarations from the Court as to the validity of purported arbitration proceedings commenced by the supplier.

Fujitsu v CSC: Acted for Fujitsu in a dispute concerning the provision of telecommunications network services.

Acted for a software supplier in connection with the provision of a software integrated communications control system for Lancashire Constabulary which was alleged to have caused acoustic shocks.

Ghostlight v Kuju: Acted for a computer games developer in dispute with game publishers which arose following termination of the development agreement.

Kuju v Codemasters: Acted for a computer games developer in dispute with game publishers which arose following termination of the development agreement.

Acted in an LCIA arbitration for a media services company arising out of the company's provision of pay per click and display advertising services for a travel company.

Acting as one of three arbitrators in an LCIA arbitration concerning a computer game.

Acted in a Danish arbitration for a UK based software supplier in a dispute with a Sweden based mail order company.

Construction, Energy & Adjudication

Simon is frequently instructed in a range of construction and energy disputes in which he acts both for and against employers, main contractors, sub contractors, and professionals. He has extensive experience of adjudication, arbitration and cases in the TCC.

Construction & Construction Professional Negligence

Simon has wide experience of all aspects of construction law and is regularly instructed by main contractors, sub-contractors, construction professionals and insurers.

Recent directory comments include: "Provides clear, firm advice, has good judgement and is strong at getting through the nitty-gritty points that turn on technical issues" and 'He is exceptional on complex professional negligence disputes.'

He is regularly instructed in relation to all the common forms of standard building contracts including: the many versions of the JCT Standard forms; DOM/1 and DOM/2; NEC/3; and MF/1.

Featured Construction & Construction Professional Negligence cases

Acted for main contractor in a substantial ICC arbitration against designer arising out of major infrastructure project in the Middle East

Extensive experience of a wide range of cases in the rail industry including several appearances before tribunals formed under the Access Dispute Resolution Rules

Jarvis Contracting v Warren House Ltd & Ors: Acted for contractor in complex multi-party proceedings concerning appearance of a sinkhole in a housing development. Consolidated proceedings which variously involve architect, engineers and geotechnical consultants.

Barnsley College v WYG Engineering & Galliford Try: Acted for M&E engineer in a case brought by Barnsley College relating to allegations that there was insufficient mechanical cooling installed in the new college building.

PM Project Services Ltd v Dairy Crest Ltd: Acted for Dairy Crest successfully resisting an application for summary judgment in respect of a fees claim. Reported at [2016] EWHC 1235 (TCC).

YJL Ltd v McClaren Construction Ltd; Crossfield Consulting Ltd (Third Party): Currently acting for Crossfield, geotechnical consultants, in a multi-party case arising out of the development of an industrial site.

Advised a London theatre in relation to a final account dispute with contractor following renovation works.

Acted for a major UK windfarm operator in an LCIA arbitration against their main contractor. Final account dispute and defects allegations.

Cleveland Bridge UK Ltd v Severfield-Rowen Structures Ltd reported at [2012] EWHC 3652 (TCC): Acted for Cleveland Bridge in a claim arising out of construction of the Shard in London. A dispute between the steelwork sub-contractor and the sub-sub-contractor: issues of which contract terms applied, delay and defects were tried in a 3-week trial in the TCC before Akenhead J.

Sainsbury's Supermarkets Ltd v Interserve PLC; Interserve PLC v Twintec Ltd; Geofirma Soils Engineering Ltd; and Burks Green & Partners Ltd: Acted for Interserve in this 5-party dispute which arose out of the failure of a slab at a major distribution centre. Interserve had been appointed on the basis of a design and build contract and so was defendant in the main action and claimant in actions down the line to the sub-contractors involved.

Liberty Mercian Ltd v Dean & Dyball reported at [2009] B.L.R. 29: Effect of sectional completion agreement and how liquidated and ascertained damages were to be applied on subsequent sections.

Royal Bank of Scotland v Thames Water Utilities (2009): Acted for Thames Water in a dispute concerning an escape of water and a claim under the Water Industries Act 1991. Simon has acted in several similar disputes.

Heifer International v Christiansen & ors: reported at [2007] EWHC 3015 (TCC); [2008] 2 All E.R. (Comm) 831; [2008] Bus. L.R. D49: A BVI-domiciled claimant brought proceedings against a Danish architect and contractors who had all been engaged for the purposes of constructing a very substantial domestic residence in the UK for occupation by the Russian owners of the claimant. Simon acted for the Third to Fifth Defendants who sought and obtained a stay of proceedings to Danish arbitration proceedings pursuant to an arbitration clause. Issues raised included: the incorporation of arbitration clauses; the Unfair Terms in Consumer Contracts Regulations 1999; and the potential unfairness of the arbitration

clause.

British Nuclear Group Sellafield Ltd v Kernkraftwerk Brokdorf GMBH: reported at [2007] EWHC 2245 (Ch): Acted for BNGS in major contractual dispute concerning the reprocessing of nuclear waste. The case related to service agreements (supplemented by side letters for a nuclear fuel reprocessing service) whereby BNGS agreed to reprocess spent uranium fuel for the German defendants who operated nuclear power stations in Germany. The agreements dated back to the early 1980s and the side letter to 1989. Issues arose as to the construction, validity and enforceability of the side agreements and as to whether BNGS had failed to prioritise the reprocessing works in accordance with the agreements. There were complex technical issues relating to process of reprocessing nuclear waste and the science of stochastic modelling. Matters were complicated by the fact that many of the relevant events had taken place over 20 years ago. Issues of misrepresentation and rescission were central.

Kershaw v Kendrick Construction: Reported at [2006] EWHC 727 (TCC); [2006] 4 All E.R. 79; [2006] 2 All E.R. (Comm) 81; 109 Con. L.R. 42; [2006] C.I.L.L. 2359: Acted for main contractor against mechanical and electrical sub-contractor in 3 week arbitration concerning construction of 2 new blocks of wards at the Heartland Hospital, Birmingham. The parties contracted on the JCT DOM/2 1981 form of contract but agreed a “qualification” thereto. Issues on the appeal included: the material which the Court can look at on an appeal from an arbitration; proper approach to questions of law in the appeal; and the Court’s approach in reading the arbitrator’s Award.

Thomas Vale Construction v Brookside Syston Ltd: reported at [2006] EWHC 3637 (TCC); (2009) 25 Const. L.J. 675: Parties contracted on JCT Standard Form of Building Contract With Contractor’s Design 1998 edition incorporating amendments 1-5. Differences arose as to the parties rights and obligations following various adjudications. Simon acted for the developer employer. HHJ Frances Kirkham held that the developer was entitled to issue a withholding notice.

Department for Transport v Owen Williams Ltd & Ringway Highway Services Ltd: Acted on behalf of highways maintenance authority in dispute arising out of a major road traffic accident. A serious accident left the claimant with severe multiple injuries. The accident was alleged to have been caused by surface water on the highway. Issues concerned: whether the accident had been so caused and what was responsible for water on highway.

Embankment Place Hotels (Blackfriars) Ltd v Blackfriars Hotels Ltd: Instructed on behalf of the developer in relation to a series of disputes arising out of the construction of the Crowne Plaza hotel in the City of London. Issue between the developer and the owners was as to whether the hotel was operable within the meaning of the development agreement. Reported decision related to the validity of certain written notices.

Derwentside College v Project Genesis & Shepherd Construction: Acted for the claimant further education college in relation to a claim for defects following construction of the college.

Gleeson v Artisan (UK) Developments; Artisan v Peter Dann: Acted for structural engineers engaged to provide services for a development of new housing in Cambridge.

Hills Residential v ADP Ltd: Acted for defendant architect in case concerning alleged defects in new construction of social housing.

Robinson v Minoli: Acted for defendant architect in case concerning alleged defects in construction of substantial new domestic dwelling.

Taylor Woodrow v Pick Everard: Acted for defendant structural engineer in case relating to settlement of a large concrete tank at sewage works in Halifax.

Co-operative Retail Services v Taylor Young and Others: reported at [2002] 1 WLR 1419. Successful at first instance and appeal dismissed by both the Court of Appeal and the House of Lords. Issues related to the Civil Liability (Contribution)

Act 1978 and insurance obligations under the JCT Contracts. The House of Lords held that the contractual scheme in place in large construction projects such as this one, was such that all the parties to the various JCT contracts knew where the insurance risk of certain Specified Perils lay. As such the Defendant professionals could not bring Third Party proceedings against the contractors since the contractors had no liability to the employer.

UIPL v McAlpine: Acted as Junior Counsel for UIPL in the substantive dispute following the Panatown case in the House of Lords. The case concerned the design and construction of an office building in Cambridge. A multi-party action settled after 3 months of trial.

Alstom UK & Alstom Automation v British Airways PLC: Acted for British Airways as Junior Counsel in relation to construction of British Airways World Cargo Centre at Heathrow Airport. Issues included mechanical and software defects. Case settled after a hearing lasting several months.

Department of National Heritage v Steensen Varming Mulcahy: Instructed by insurers acting for Department of National Heritage in case brought against consulting engineers arising out of the construction of the British Library.

Balfour Beatty & Costain v Technical & General Guarantee Co Ltd: Acted for two major UK building and civil engineering companies in summary judgment application in relation to an “on demand” performance bond.

Mellowes Archital v Bell Projects Ltd: Acted for main contractors against sub-contractors. Issue arose as to right of set-off. Nature of abatement and rights of equitable set-off.

Acting for **structural engineer** engaged to carry out structural work for a new shopping centre in the south of England.

Advising **employers** in relation to claims on on-demand performance bonds.

Acting for **engineer** in a claim brought in relation to the design and construction of sea wall works.

Acting for **structural engineer** engaged to carry out structural work for a new shopping centre in the south of England.

Acting for **main contractor** in disputes arising out of the final account in a major construction project.

Acting for a **major national building contractor** in disputes with a sub-contractor which arose out of refurbishment of military barracks throughout the country.

Acting for **heating engineer** against employer in arbitration concerning dispute over contractual price review mechanism. The employer was a major grower and distributor of peppers. The engineer supplied combined heat and power plant which provided energy to the employer’s plant. Payment to the engineer varied according to the efficiency of certain boilers. The parties could not agree how the efficiency measurements were to be arrived at.

Acting for **international housing and development group** in relation to an arbitration arising out of their construction of a major office building in the 1980s.

Adjudication

Simon has an extensive and wide ranging adjudication practice which encompasses both substantive proceedings and enforcement. He is involved at all stages:

- drafting Referral Notices and Responses

- appearing at adjudication hearings
- advising on all aspects of adjudication including questions of jurisdiction
- hearings for enforcement of adjudication decisions
- advising solicitors who have conduct of an adjudication and who want to discuss particular issues or tactics at short notice.

Featured Adjudication cases

Sindall v Solland: An early decision on the proper scope of the adjudicator's jurisdiction and the extent to which issues have necessarily been referred to the adjudicator.

Dean & Dyball v Kenneth Grubb Associates: When does a dispute crystallise?; consideration of natural justice considerations.

A C Yule v Speedwell Roofing: Need for the decision to be reached in strict accordance with the timetable; extent to which one party can acquiesce to a request for more time for the decision.

Centre for Alternative Technology v Frank Galliers Ltd (2010) HHJ Kirkham: Enforcement of an adjudication decision and cross application for declarations.

Energy

Simon is instructed in a variety of contractual and technical disputes arising out of various aspects of the energy industry.

Featured Energy cases

Acting for employer against contractor in an ICE Arbitration relating to the provision of goods and services in the oil industry

Acting for a major player in the nuclear industry in relation to a commercial dispute

British Nuclear Group Sellafield Ltd v Kernkraftwerk Brokdorf GMBH: Acting for BNGS in major contractual dispute concerning the reprocessing of nuclear waste. The case related to service agreements (supplemented by side letters for a nuclear fuel reprocessing service) whereby BNGS agreed to reprocess spent uranium fuel for the German defendants who operated nuclear power stations in Germany. The agreements dated back to the early 1980s and the side letter to 1989. Issues arose as to the construction, validity and enforceability of the side agreements and as to whether BNGS had failed to prioritise the reprocessing works in accordance with the agreements. There were complex technical issues relating to process of reprocessing nuclear waste and the science of stochastic modelling. Matters were complicated by the fact that many of the relevant events had taken place over 20 years ago. Issues of misrepresentation and rescission were central.

Acted in a major case arising out of the design and construction of an off-shore vessel for use in the oil industry.

Acted in a case involving the combined heat and power plant for use in a major London hospital on a PFI project.

Instructed in an arbitration in which he acted successfully for an engineer in relation to a combined heat and power

plant.

Instructed in a multi-national ICC arbitration involving the piping for a desalination plant.

Commercial

Simon's practice encompasses all aspects of contract law.

Featured Commercial cases

Extensive experience of rail work including commercially significant timetabling disputes involving multiple Train Operating Companies and Freight Operating Companies and other hearings before the Access Disputes Panels.

Dispute between substantial airport retailer and Eurotunnel involving a claim for rescission of a 15 year concession of the passenger terminal buildings and a claim for damages amounting to £150 million.

Acting for British Nuclear Group Sellafield Ltd in major contractual dispute with overseas customers concerning the reprocessing of their spent nuclear fuel and the treatment of the resulting nuclear waste.

Various disputes relating to the leasing of aircraft and their component parts.

Acting in various disputes for major water supplier; contractual disputes with suppliers of equipment; cases arising out of the escape of water and consequent damage; cases arising out of the water authority's duties under the Water Industry Act 1991.

Professional Negligence

Simon has extensive experience of professional negligence work in particular disputes involving construction industry professionals, lawyers, accountants, valuers, surveyors and architects.

Featured Professional Negligence cases

Acting in a number of cases involving allegation of architects' negligence including acting on behalf of architects in a case arising out of the construction of a private residence.

Acting on various high value disputes for structural engineers in actions brought by main contractors and employers.

Acting for CGNU on a range of engineers' negligence cases.

Acting for solicitors who had advised a property developer in relation to the termination of the main contract on a construction project.

Smith v Peter North & Partners: Appeared as Respondent in the Court of Appeal in a surveyor's negligence case where the Court of Appeal considered whether the cost of repairs could be recoverable.

Mediation & Arbitration

Simon is a CEDR-accredited mediator.

He is also on the panel for Mediation for Construction and Insurance.

Simon has experience of mediating a wide range of disputes and he brings his extensive experience of construction and IT disputes to his growing mediation practice. He has an informal and pragmatic style and is keenly aware of the commercial realities faced by the parties. He is not afraid to press the parties where necessary and his extensive first-hand experience of all types of construction and IT dispute resolution (including court proceedings, arbitration, adjudication and all forms of ADR) enable him to engage in serious reality testing if required.

Simon is happy to carry out mediations either in-person or remotely.

Simon also accepts appointments as an arbitrator. He was one of a panel of three arbitrators in an LCIA arbitration concerning a computer game which went to a full hearing and resulted in an Award being handed down.

Appointments

- CEDR accredited mediator
- Panel Member of Mediation for Construction & Insurance ([M4CI](#))
- Panel Member of the Society for Computers and Law Adjudication Scheme

Memberships

- LCIA

Education

- DIP Law (City)
- BA (Durham) Philosophy 1st Class

Recommendations

Simon Henderson has been recommended for many years as a leading junior in Legal 500 and Chambers & Partners and has previously been short-listed by Chambers & Partners both as IT/IP Junior of the year and as Construction Junior of the year.

Comments have included:

- a superb tactician and trial advocate
- What he brings is a real forensic knowledge of technology and IT systems and how they work, and how you go about presenting complex technical evidence to a judge
- Provides clear, firm advice, has good judgement and is strong at the getting through the nitty-gritty points that turn on technical issues.
- One of the best senior juniors around, he's very hands-on, very calm on his feet and very good with clients
- he has a good tactical approach and is an impressive advocate
- a class act, who is calm under pressure and always looking for another angle
- very practical and down to earth, he is willing to roll his sleeves up and is very engaging
- his advocacy is smooth and he gets on top of the information in a case very quickly
- client-friendly manner, clear thinking and unparalleled technical industry knowledge
- able to fiddle with the nuts and bolts of a case as if he's tuning a radio
- broad-shouldered approach to weighty commercial disputes
- admired as an advocate who puts his points across fairly and quickly without any grandstanding