NEW SQUARE

Fiona Sinclair QC

Education

M.A. (Cantab) LL.M. (Cantab)

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Year of Call: 1989
Year of Silk: 2013

Languages
Italian

Profile

"Combining high intellect and commercial mindedness", "utterly fantastic in the defence of substantial claims" and "well known for her expertise in really complex points", Fiona Sinclair QC is praised for her "splendid courtroom performances" and "superb advocacy based on strong analysis". She "meets with universal acclaim" for the "excellent quality of her work", is "a standout practitioner" who is "charmingly brilliant with clients" and "her drafting is second to none" (Chambers & Partners 2013).

"Truly first-rate" and ***"a joy to behold on paper" (Legal 500 2014).***

"A dream to work with – she's committed, gets her hands dirty, is not afraid of detail and is very well liked by clients" and "Judges listen to everything she says" (Chambers & Partners 2014).

Fiona is among the select number of UK barristers who are ranked as international leaders in their field. She has *"a wealth of experience in professional liability matters." (Chambers Global 2010-2014: Construction).*

Before taking silk in 2013, Fiona was awarded Chambers & Partners Construction Junior of the Year 2012. In the same year, she was also shortlisted for Professional Negligence Junior of the Year.

Fiona's practice focusses on commerce and construction. She brings excellent advocacy, impeccable paperwork and strategic insight to disputes concerning (1) construction and civil engineering, including transport, (2) professional liability and (3) insurance/reinsurance. Her advocacy and team-management skills have been honed in domestic and international arbitrations, trial and appellate courts, adjudication and mediation.

Fiona enjoys any case with a significant technical content (whether the technicality is financial, scientific or legal) and which involves working as a team with solicitors, experts and lay clients. She relishes the challenge of choosing and using different dispute resolution strategies to achieve the best result for her clients. She has particular experience in managing large, multi-party disputes.

Before taking silk, Fiona was consistently ranked as a leading junior in her specialist fields by both Chambers UK and The Legal 500.In Chambers UK (2013) she was '*recognised as one of 4 New Square's top juniors*' who '*meets with universal acclaim''*. Described as *"the whole package - she is charmingly brilliant with clients, and her drafting is second to none*'. In Chambers UK (2012) solicitors reported that she provides "*superb advocacy based on strong analysis*", is "*down to earth, reasonable and tough when necessary*" and "*excellent at professional negligence generally*". Chambers UK (2011) noted that clients admire her "*deep knowledge of the law*", her "*pleasant and persuasive advocacy*", her "*ability to analyse facts quickly and efficiently*" and "*the ease with which she deals with complex counterfactual scenarios*", so that she was "*hugely in demand*". Chambers Global (2011) reported that she is "*highly impressive in court, with excellent skills of judgment*." Chambers UK (2010) described her as "*tough, charming and intelligent*", "*gutsy and fearless*" and "*a force to be reckoned with*". While describing Four New Square as "*without doubt the top set in the field of professional negligence*", the Legal 500 (2010) described Fiona as "*particularly good*" and (2011) as a "*standout junior*". In 2009, she was described in the Legal 500 as "*fantastic, especially on paper. Her written arguments always look right.*" In earlier editions of the directories, Fiona was described as "*fearless in the courtroom and a wonderful orator*"; "*exceptionally bright and pragmatic*"; "*tough and very popular*"; having "*real presence in court*" and "*an impressive ability to handle difficult judges*"; "*an excellent advocate*".

Fiona appears regularly in the TCC and in the Commercial Court, on appeal, and in arbitrations and mediations. She acts as early neutral evaluator and as arbitrator, and is a TECBAR-accredited adjudicator.

Fiona has been an Editor of *Jackson and Powell on Professional Liability* since 1992 (she writes the chapter on Construction Professionals). She is a Committee Member of TECBAR.

International Arbitration

Fiona accepts instructions as an arbitrator, particularly in arbitrations concerning professional indemnity insurance. Her clerk, Alex Dolby, will be pleased to supply a copy of Fiona's terms of appointment.

As Counsel, Fiona has extensive experience of arbitrations, including:

- reinsurance and insurance arbitrations
- construction and engineering arbitrations
- commercial arbitrations

Recent and current examples of Fiona's work in this area include:

- Acting for professional indemnity insurers in a high-value dispute with other insurers as to the correct allocation of multiple professional negligence claims against solicitors arising out of buy-to-let development fraud
- Acting for a US main contractor in a dispute arising out of the construction of a Caribbean town on FIDIC (4th edn) terms.
- Acting for the main contractor in a dispute concerning the collapse of concrete sewage tanks constructed using pre-tensioned steel cables
- Acting for surveyors in an arbitration concerning high value investment properties in Berlin
- Acting for a metro-train manufacturer in an £11 million international conciliation and arbitration relating to the upgrading of the London Underground. The dispute involved unusually high levels of legal and technical complexity; cutting-edge scientific developments occurred in its investigation and presentation
- Acting for insurers in a dispute concerning the correct allocation of claims against accountants and tax consultants arising out of investment in Enterprise Zones
- Acting on a sub-contractor's claim for payment under contracts for the construction of a bioethanol power plant
- Acting on a contractor's payment claim in relation to the refurbishment of a well-known London hotel

Acting for a multi-disciplinary construction professional firm on claim arising from overspend on a construction project.

Commercial Dispute Resolution

Fiona undertakes a wide range of commercial work, including sale of goods, corporate and personal insolvency, share warranty and other contractual claims and domestic banking. She regularly appears in the Commercial Court, the Chancery Division and the TCC on commercial disputes. Recent examples include:

- Defending a horticultural products supplier against claims by nurseries arising from the supply of a disinfectant system, and making claims on along the contractual supply chain.
- Advising an international aviation company on disputes arising from component supply contracts.
- Acting for investment management professionals on claims (total value £20 million) relating to split capital investment trusts. Included the successful defence of an application for a Group Litigation Order.
- Acting for investment management professionals in £multi-million claims arising out of investments on AIM, the FTSE Fledgling market and in non-listed companies.
- *Markel Capital Ltd v Gothaer Allgemeine Versicherung AG* [2008] EWHC 2517 (Comm): Acting for reinsurance brokers in a tripartite dispute with reinsured and reinsurers which involved policy construction and notification issues
- *Kajima UK Engineering v The Underwriter* [2008] EWHC 83 (TCC): Until listing difficulties prevented her appearance at trial, Fiona acted for a contractors' all risks insurer in the successful defence of a £6 million claim arising out of the failure of innovative Leeds apartment block. The principal issue was the scope of a notification under the policy
- *Haydon-Baillie and Ors v Bank Julius Baer* [2007] EWHC 1609 (Ch) and [2007] EWHC 3247 (Ch). Acting for solicitors in multi-party litigation concerning the title to the UK's largest stately home and its contents. This case involved issues of conversion and of a mortgagee's duty to the mortgagor
- Acting for tax advisers in £15 million film finance litigation.
- *Easier Ltd v Deloitte Touche* LLP [2004] EWHC 3263 (Ch): acting for auditors defending a company's challenge to

their resignation under Companies Act 1985 s.394(6).
- Acting for a large group of pension policyholders on claims arising from pension transfers and opt-outs.
- Acting for a record producer in a £3 million claim against accountants relating to tax avoidance advice.
- Acting for architects of the Canary Riverside development in London's Docklands on a claim for a declaration of cover under their professional indemnity policy. Issues included (fraudulent) non-disclosure, misrepresentation, failure to notify and breach of warranty. This case involved numerous lengthy and complex interlocutory battles.
- Acting for solicitors defending a £ multi-million fraud claim. The action was eventually discontinued against Fiona's clients with indemnity costs in their favour.
- Acting for solicitors on a claim arising out of the activities of an international fraudster. Fiona's clients successfully defended the claim that they were implicated in the grant of a fraudulent guarantee.
- Acting for a manufacturer in a dispute concerning the development and sale of printed circuit board technology.
- Acting in disputes concerning the sale and development of mobile telephone technology and of industrial plant.

Fiona is a member of the Commercial Bar Association and the Chancery Bar Association.

Construction & Engineering

Chambers & Partners Bar Awards 2012: Construction Junior of the Year.

"Truly first-rate" and ***"a joy to behold on paper"*** *(Legal 500 2014).*

"A dream to work with – she's committed, gets her hands dirty, is not afraid of detail and is very well liked by clients" *(Chambers & Partners 2014 – Construction)*

"Judges listen to everything she says and she commands a lot of respect" *(Chambers & Partners 2014 – Professional Negligence Technology and Construction).*

Fiona has extensive experience of very substantial construction and engineering disputes, often with international aspects and typically involving complex technical evidence.

Her recent and current cases in this area include:

- Defending asbestos surveyors in landmark litigation concerning the interface between construction adjudication under HCGRA and the law of limitation. Fiona's clients won a landmark decision in *Aspect Contracts (Asbestos) Ltd v Higgins Construction plc* [2013] EWHC 1322 (TCC) and [2013] EWCA Civ 1541. Fiona's opponents have a pending application for permission to appeal to the Supreme Court.
- Acting for a US building contractor in an international arbitration concerning the redevelopment of a Caribbean island.
- Acting for an M&E main contractor with claims on against professionals and sub-contractors (6 parties) following catastrophic floods at a residential development at Greenwich procured in circumstances which the Judge described as "death by subcontracting": *Greenwich Millennium Village Ltd v Essex Services Group plc (and Others)* [2013] EWHC 3059 (TCC) and [2014] EWHC 1099 (TCC) *(Costs)*
- Acting for a main D&B contractor with claims on against professionals and sub-contractors in major litigation concerning the development of a warehouse/distribution centre: *Co-operative Group Ltd v Birse Developments Ltd (and Others)* [2012] EWHC 3060 (TCC), [2013] EWCA Civ 474, [2013] EWHC 1790 (TCC), [2013] EWHC 3100 (TCC), [2013] 3145 (TCC), [2013] 3352 (TCC). The case has just seen its 2nd visit to the Court of Appeal, and a 3rd is listed for June 2014.
- Defending multiple firms of solicitors in claims by multiple claimants alleging negligence in connection with the procurement of building warranty insurance for two residential developments. The claims are being tried together with claims under the Defective Premises Act against a design and build contractor. The multiplicity of parties on each side of the dispute created unusual procedural challenges.
- Acting for a main D&B contractor in a claim on against architects following a major fire at a designer shopping outlet: *BMG (Mansfield) Ltd v (1) Galliford Try Construction Ltd (2) Aedas Architects Ltd* [2013] EWHC 3183 (TCC) and [2013] EWHC 3468 (TCC)
- Advising a main D&B contractor on a claim against structural engineers following the collapse of a tower crane, causing extensive property damage.
- Acting for an international property developer/joint venturer in a £20M dispute concerning a major new London hotel.
- Defending structural engineers in a multi-party claim concerning a large industrial warehouse floor. Technical issues included the adequacy of piling; legal issues included a sub-contractor's duty of care to prevent economic loss (complex structure theory).
- Defending the main fit-out contractor against a £10+M claim arising from a diesel oil spill at Bankside, London SW1. The 10-party litigation (*Mayor & City of London v Lend Lease Construction (UK) Ltd and others*) involved Fiona's client in a complex web of claims and cross claims, and difficult issues of causation and responsibility.
- Acting for the main D&B contractor in £20M claims arising from the collapse of a tower crane.
- Defending the main contractor in an arbitration concerning the collapse of concrete sewage tanks constructed

using pre-tensioned steel cables.

- Defending services engineers in a complex dispute relating to the construction of a “luxury-plus” residential development in London.
- Acting for a metro-train manufacturer in an £11 million international conciliation and arbitration relating to the upgrading of the London Underground. The dispute involved unusually high levels of legal and technical complexity; cutting-edge scientific developments occurred in its investigation and presentation.
- Acting on a sub-contractor’s claims for payment under contracts for the construction of a bioethanol power plant.
- Defending a plant hire contractor against multiple claims following the collapse of a tower crane at Canary Wharf, and making a claim on against the crane manufacturer. A related jurisdictional issue was decided at Hewden Tower Cranes Ltd v Wolffkran GMbh [
- *The Magna Park litigation*: a £150 million claim arising from flood and fire at Magna Park, the largest business park in Europe. The litigation involved eight parties making complex cross- and contribution claims.
- Acting for quantity surveyors/cost consultants in £11 million claim arising from the development of a best-in-class luxury hotel.
- Advising multi-disciplinary construction professional firm on £8 million claim arising out of the refurbishment of a leisure centre.
- Acting for fire protection main contractor in £5.5 million claim following fire at aluminium strip rolling mill fitted with CO2 fire extinguishant system.
- Acting for main contractor in £3.5 million flood claims by developer and tenant of £37 million head office of City solicitors.
- *The M6 Thelwall Viaduct* litigation: Acted for materials consultants in £35 million claim by Secretary of State for Transport arising out of failure of motorway viaduct (roller bearings). Extremely complex technical issues involving 8-10 expert disciplines.
- Acting for multi-disciplinary construction professionals in £9 million claim for alleged overspend on regeneration of a West London housing estate.
- Acting for plant hire contractor in litigation arising out of tower crane collapse at Canary Wharf in 2001. Defending claim of £1.2 million by developers; making claim of £10 million against German crane manufacturer (which involved a preliminary issue on jurisdiction: see *Hewden Tower Cranes Ltd v Wolffkran GmbH* [2007] 6 BLR 273).
- Acting for a services maintenance contractor in a £9 million claim by interdealer broker arising out of electrical fire at international headquarters.
- Advising on a claim against mechanical and electrical engineers in relation to £20 million claim brought by the developer of major City hotel. This case involved difficult issues as to the construction of collateral warranties.
- Acting for structural engineers in multi-party litigation on a £20 million claim relating to ground investigation and foundations design for a warehouse.
- Acting for a mechanical & electrical sub-contractor in an £8 million claim brought by the owner of a prestigious West End hotel.
- Acting for the main contractor in multi-party litigation arising from a £5 million claim following the collapse of the facade of a building in London, W1.
- Acting for the main contractor in a £1.5 million claim arising out of the design and construction of a flagship Midlands office building. This claim involved unusual measure of damages and costs issues.
- Acting for water treatment consultants in a claim relating to corrosion in a chilled water system.
- Advising the main contractor in relation to a claim for damage to underground cables during piling works.
- Acting for a specialist flooring sub-contractor in £2.5 million claim arising out of design and construction of warehouse floor.
- Advising plant hire contractor in relation to tower crane collapse in Liverpool in 2007.

Earlier cases include:

- Acting for refrigeration engineers in multi-party litigation arising out of frost heave at a food storage and distribution facility.
- Acting for plant design and supply sub-contractor on a substantial contribution claim relating to fire at a German chocolate factory (self heating of cocoa nibs).
- Acting for main contractor in a claim arising out of a hot works fire damaging contract works (and in the contractor’s Part 20 claim against its insurance brokers).
- Acting for architects in a claim arising from planning difficulties with a flagship office building: see *J Jarvis & Sons Ltd v. (1) Castle* Wharf *Developments Ltd (2) Gleeds Management Services Ltd (3) Franklin Ellis Architects Ltd* [2001] EWCA Civ 19.
- Acting in a claim against structural engineers arising out of piling design. This case involved difficult issues as to the identification of and responsibility for temporary works.
- Acting for architects on a £2 million claim arising out of the redevelopment of commercial premises in London W1.
- Advising a developer as to status and effect of an Employer’s Agent’s instruction issued under a design and build contract.
- Acting for structural engineers in a £2 million claim arising out of the collapse of a 200-year old retaining wall during groundworks.
- Acting for structural engineers in a claim by the MoD following from the detachment in high wind of the roof of an historic shipbuilding slip: *Ministry of Defence v. Scott Wilson Kirkpatrick & Ors (TCC, 1997).*

Fiona's interest in construction and engineering disputes originated with her extensive practice in construction professional liability. She writes the chapter on Construction Professionals in *Jackson & Powell on Professional Liability* (Sweet & Maxwell, 7th edition, 2012).

She is a Member of the Committee of the Technology and Construction Court Bar Association (TECBAR) and a member of the Society of Construction Law (SCL).

Fiona has a particular interest in adjudication under the Housing Grants, Construction and Regeneration Act 1996. She has been instructed in the preparation of construction contract disputes (including claims against construction professionals) for adjudication. In court, she has appeared on successful pre-emptive challenges to the jurisdiction of adjudicators. The chapter on construction professionals which she writes for *Jackson & Powell on Professional Liability* includes a consideration of adjudication as it impacts on claims against architects, engineers, surveyors and project managers. As well as acting for parties to disputes which are submitted for adjudication, and writing about adjudication, Fiona is herself a trained adjudicator, accredited by the Technology and Construction Court Bar Association. For details and information on arranging the appointment of an adjudicator, go to the Association's website at www.tecbar.org.uk.

Insurance & Reinsurance

Disputes as to coverage and the construction of policies of insurance and reinsurance are a major part of Fiona's practice. She has had notable successes on behalf of her clients in arbitrations between insurers. She is often brought in as an insurance specialist to provide advice on the insurance aspects of disputes, especially in relation to liability and property insurances. Fiona understands that insurance is the force which shapes much major litigation.

Fiona's work in this area includes:

- Advising primary layer insurers on policy coverage (allocation) issues relating to a £250 million claim in connection with a major UK construction project.
- Advising on insurance issues in connection with the construction of a flagship cultural building.
- Advising the liability insurers of a contractor which designed and built a waste management facility, following the collapse of massive specialist machinery.
- Advising the primary layer liability insurers of a civil engineering and building contractor in connection with the design and construction of a major new transport hub.
- Acting for professional indemnity insurers in a dispute concerning the correct allocation between successive policies of claims against accountants and tax consultants arising out of investment in Enterprise Zones.
- Acting for professional indemnity insurers in a high-value dispute with other insurers as to the correct allocation of professional negligence claims against solicitors.
- Advising an insured property developer in respect of a claim under construction warranty insurance.
- Advising surveyors' and valuers' professional indemnity insurers on issues of law arising in relation to negligent overvaluation claims by mortgage lenders, especially questions regarding contribution between defendants which remain unresolved by authority.
- *Markel Capital Ltd v Gothaer Allgemeine Versicherung AG* [2008] EWHC 2517 (Comm): Acting for reinsurance brokers in a tripartite dispute with reinsured and reinsurers which involved policy construction and notification issues.
- *Kajima UK Engineering v The Underwriter* [2008] EWHC 83 (TCC): Until listing difficulties prevented her appearance at trial, Fiona acted for a contractors' all risks insurer in the successful defence of a £6 million claim arising out of the failure of innovative Leeds apartment block. The principal issue was the scope of a notification under the policy.
- Advising insurers on allocation and other coverage disputes arising out of block notifications by valuers, solicitors and financial advisers.
- Acting for architects of the Docklands Canary Riverside development on a claim for a declaration of professional indemnity cover. Issues included fraudulent non-disclosure, misrepresentation, failure to notify and breach of warranty. The case involved numerous lengthy and complex interlocutory battles.
- Acting for insured on insurer's claim for declaration as to cover under a property damage policy.
- Acting in £1.5 million claim against insurance brokers concerning alleged failure to arrange insurance for property developer.
- Acting for insurance brokers in claim alleging failure to arrange business interruption insurance.

Fiona is a member of both the Commercial Bar Association and the Chancery Bar Association.

Professional Liability

"Truly first-rate" (Legal 500, 2014 – Professional Negligence)

"A dream to work with because she's not afraid of detail or of getting her hands dirty." "She talks very well on her feet, judges listen to everything she says and she commands a lot of respect." (Chambers & Partners 2014 - Professional Negligence)

"She has a great reputation for her construction-related professional negligence work and is many solicitors' first choice for cases in that area." (Chambers & Partners 2014 - Professional Negligence, Technology and Construction)

Fiona has been an Editor of *Jackson & Powell on Professional Liability* (Sweet & Maxwell, 7th edition, 2012) since the 3rd edition (1992).

Accountants, Auditors & Actuaries

Fiona is regularly instructed in claims for and against accountants and auditors (firms large and small) in disputes concerning audit and accounts preparation, tax advice and investment advice. She lectures on recent developments in accountants' negligence law.

Fiona's past and current cases in this area include:

- Acting for a pop music impresario against Big Four accountants in a claim relating to tax avoidance advice and the conduct of a Special Office investigation, and against solicitors in a related "lost litigation" claim.
- Acting for a high-net-worth individual and his family company in a claim against accountants/tax advisers for negligent corporate restructuring and tax mitigation advice given over many years.
- Defending accountants and tax advisers in £15 million film finance litigation.
- Defending his former accountants against a claim brought by a well known football chairman.
- Defending accountants in a claim concerning advice given for the acquisition of a hotel business.
- Advising accountants in a negligence claim being tried in Cyprus, including giving detailed direction and advice for the conduct of pre-trial proceedings and the trial in Cyprus by the Cypriot advocate.
- Acting for a record producer in a claim against his accountants relating to tax avoidance advice and the conduct of a Special Office investigation.
- Acting in a claim by 4 high-net-worth individuals and their spouses against one of the Big Four accountants, arising out of advice on the tax-efficient disposal of shareholdings.
- Acting for accountants on a claim concerning advice given in relation to CGT roll-over relief upon the acquisition of a holiday village.
- Acting for accountants on a claim for negligent advice concerning CGT roll-over relief upon the acquisition of a hotel.
- *Easier Ltd v Deloitte Touche LLP* [2004] EWHC 3263 (Ch): acting for auditors successfully defending a company's challenge to their resignation under Companies Act 1985 s.394(6).

Fiona is a member of both the Commercial Bar Association and the Chancery Bar Association.

Construction Professionals

"She has a great reputation for her construction-related professional negligence work and is many solicitors' first choice for cases in that area." (Chambers & Partners 2014)

Fiona has extensive experience of construction-related professional liability claims both in the UK and abroad. She has been consistently ranked by Chambers & Partners (including Chambers Global) and by the Legal 500 as a leader in this field.

Fiona's successful practice in this area has included claims touching on every aspect of the services provided by construction professionals (feasibility, procurement and cost consultancy, design, contract administration, project management etc) across a wide range of specialisms (eg. building services including industrial refrigeration, geotechnical engineering, mining, etc.) and on a wide variety of projects (eg. process plant, energy generating plant, waste recycling plant, leisure centres and sports stadia, a dry ski-slope, warehouse/distribution centres, retail centres, hotels and general commercial, industrial and residential developments).

Her notable past and current cases include:

- Acting on a contractor's successful claim (as part of 6-party litigation) against building services engineers following catastrophic floods from a BMCWS at a residential development at Greenwich procured in circumstances which the Judge described as "death by subcontracting": *Greenwich Millennium Village Ltd v Essex Services Group plc (and Others)* [2013] EWHC 3059 (TCC) and [2014] EWHC 1099 (TCC) (Costs)
- Acting for a main contractor in a claim on against civil and structural engineers concerning the development of a warehouse/distribution centre with serious alleged defects: *Co-operative Group Ltd v Birse Developments Ltd*

(and Others) [2012] EWHC 3060 (TCC), [2013] EWCA Civ 474, [2013] EWHC 1790 (TCC), [2013] EWHC 3100 (TCC), [2013] 3145 (TCC)

- Acting for a main D&B contractor in a claim on against architects following a major fire at a designer shopping outlet: *BMG (Mansfield) Ltd v (1) Galliford Try Construction Ltd (2) Aedas Architects Ltd* [2013] EWHC 3183 (TCC) and [2013] EWHC 3468 (TCC)
- Defending asbestos surveyors in landmark litigation concerning the interface between construction adjudication under HGCRA and limitation: *Aspect Contracts (Asbestos) Ltd v Higgins Construction plc* [2013] EWHC 1322 (TCC) and [2013] EWCA Civ 1541
- Advising a main D&B contractor on a claim against structural engineers following the collapse of a tower crane, causing extensive property damage and personal injury.
- Defending a novel claim against party wall surveyors in multi-party litigation arising from the construction of a basement floor at commercial premises in London.
- Defending specialist construction law solicitors against a claim by the developers of three residential estates in the UK. Difficult issues of duty, breach, causation and loss.
- Defending the health & safety consultants in a claim on by a building contractor following serious personal injury on a construction site.
- Defending structural engineers in a multi-party claim concerning a large industrial warehouse floor. Technical issues included the adequacy of piling; legal issues included a sub-contractor's duty of care to prevent economic loss (complex structure theory).
- Defending building services engineers in a complex dispute relating to the construction of a "luxury-plus" residential development in London (*Walter Lilly v DMV Developments*) .
- Defending quantity surveyors/cost consultants in £11 million claim arising from development of best-in-class luxury hotel.
- Defending structural engineers in multi-party litigation on a £20 million claim relating to ground investigation and foundations design for a warehouse.
- Defending a multi-disciplinary construction professional firm on an £8 million claim arising out of the refurbishment of a leisure centre.
- The *M6 Thelwall Viaduct* litigation: defending materials consultants in £35 million claim arising out of failure of motorway viaduct (roller bearings). Extremely complex technical issues involving 8-10 expert disciplines.
- Defending a multi-disciplinary firm of construction professionals in £9 million claim for alleged overspend on regeneration of a West London housing estate.
- Advising on a claim against mechanical and electrical engineers in relation to £20 million claim brought by developer of major City hotel. This case involved difficult issues as to the construction of collateral warranties.
- Acting for water treatment consultants in a claim relating to corrosion in a chilled water system.
- Acting for refrigeration engineers in multi-party litigation arising out of frost heave at a food storage and distribution facility.
- Defending a claim against structural engineers arising out of the piling design for a basement car park in Guernsey. The case involved difficult issues as to the identification of and responsibility for temporary works.
- Acting for architects on a £2 million claim arising out of the redevelopment of commercial premises in London W1.
- Defending structural engineers in a £2 million claim arising out of the collapse of a 200-year old retaining wall during groundworks.
- Acting for offshore trust on a succcessful claim against structural surveyors concerning dry rot in a large country house (*Republic International Trust c v Fletcher Ramos*).
- *Jarvis v. Castle Wharf* Development *Limited* [2001] Lloyd's Rep PN 308: Acting for architects in claim concerning planning difficulties at a landmark office and leisure development in Nottingham.
- *Hoadley v. JR Edwards* [2001] PNLR 41: Acting for building surveyors in an action concerning the structural stability of a half-timbered property of unusual design.
- *Capital & Counties and Digital v. John D Laing & Ors* (1997): Acting for architects in £25 million claim concerning a design and build contract for an office development which was destroyed by fire.

Fiona writes Chapter 9, "Construction Professionals" in *Jackson & Powell on Professional Liability* (Sweet & Maxwell, 7th edition, 2012). She is a Committee Member of the Technology and Construction Court Bar Association (TECBAR) and a member of the Society for Construction Law (SCL).

Financial Services Professionals

Fiona's postgraduate thesis (awarded First Class) considered the regulation of financial services in the UK by comparison with securities regulation in the USA. Fiona's practice reflects her continued her interest in this fast-developing area of the law.

Her recent cases include:

- Defending SIPP trustees against a claim by investors to recover £6M losses suffered in connection with the collapse of an offshore land development. Fiona's success in a series of interlocutory battles (including disputes over legal privilege) forced the Claimants to discontinue their claims against Fiona's clients.
- Acting for a family trust alleging successive negligent mismanagement of its investment portfolio by two asset

management houses. Interesting issues of causation as to the effect of each defendant's breach of duty and the foreseeability/proper management of the 2008 banking crisis.
- Acting for tax advisers in £15 million film finance litigation.
- The SPLITS Litigation: Acting for investment management professionals on claims (total value £20 million) relating to split capital investment trusts. Included the successful defence of an application for a Group Litigation Order.
- Acting for investment management professionals in various £multi-million claims arising out of investments on AIM, the FTSE Fledgling market and in non-listed companies.
- Acting for a large group of pension policyholders on claims arising from pension transfers and opt-outs.

Fiona regularly advises professional indemnity insurers in relation to block notifications of possible claims by independent financial advisers and others in relation to the mis-selling of endowment policies, FSAVCs and other financial products.

Fiona is a member of both the Commercial Bar Association and the Chancery Bar Association.

Insurance Brokers & Agents

Fiona is regularly instructed to act for and against insurance and reinsurance brokers. Notable examples of her work in this area include:

- Acting for an insured against insurance brokers following fires at a vacant commercial building and repudiation of liability by building insurers. Issues of alleged misrepresentation, breach of warranty and breach of condition.
- *Markel Capital Ltd v Gothaer Allgemeine Versicherung AG* [2008] EWHC 2517 (Comm): Acting for reinsurance brokers in a tripartite dispute with reinsured and reinsurers which involved policy construction and notification issues.
- Acting for main contractor in a Part 20 claim against CAR insurance brokers arising out of a hot works fire which damaged contract works.
- Acting for insurance brokers in a claim arising out of advice relating to declared value and average provisions.
- Acting in a claim against insurance brokers arising from the lack of effective and suitable public liability insurance for the proprietor of an outdoor activity centre.
- Acting for excess layer insurers claiming contribution from insurance brokers who had failed to communicate the insured's notification of circumstances to the primary layer.

Fiona is a member of both the Commercial Bar Association and the Chancery Bar Association.

Lawyers

Professional indemnity work concerning lawyers (both solicitors and barristers) forms a substantial part of Fiona's practice. Notable examples include:

- In the *Concord Street Litigation*, multiple purchasers allege negligence in relation to building insurance against multiple firms of solicitors and claim under the Defective Premises Act against the design and build contractor of a residential development. Fiona acts (leading Katie Powell of 4 New Square) for the largest group of solicitor defendants. It is unusual for there to be such a large number of parties on both sides of a case: it poses significant case management and procedural challenges.
- In the *Lovell House Litigation*, the same legal teams act for claimants making similar allegations in relation to another residential development. Again, Fiona acts for the largest group of solicitor defendants.
- Fiona defended specialist construction law solicitors against a claim by the developers of three residential estates in the UK.
- Fiona defended solicitors against a claim by an offshore property company which purchased a highly prestigious London residential property; and in related contribution proceedings. Difficult issues as to scope of duty, causation and assessment of damages
- Acting for solicitors in a claim concerning the introduction of a client to an overseas investment opportunity. It culminated in the solicitors taking over the client's action against two overseas insurance companies, which defended the action (unsuccessfully) on the grounds of fraud by the solicitors.
- Acting for solicitors in a £multi-million fraud claim; ultimately discontinued against Fiona's clients with indemnity costs.
- *Haydon-Baillie and Ors v Bank Julius Baer* [2007] EWHC 1609 (Ch) and [2007] EWHC 3247 (Ch). Acting for solicitors in multi-party litigation concerning the title to the UK's largest stately home and its contents. This case involved issues of conversion law and of a mortgagee's duty to the mortgagor.
- *NM Rothschild & Sons Ltd v. Berenson* [1997] NPC 15 (CA), a claim against solicitors concerning a line of credit for property finance.

Fiona is a member of both the Commercial Bar Association and the Chancery Bar Association.

Surveyors & Valuers

Fiona acts for surveyors and valuers in a wide variety of claims brought by lenders, purchasers and receivers. She was heavily involved in the "wave" of litigation brought by lenders against property professionals in the 1990s and is now busy with the current resurgence of claims against valuers and surveyors. Notable cases include:

- Acting on the instructions of the RICS Members' Support Service in a series of claims by property purchasers alleging personal duties of care owed by employed surveyors of insolvent and uninsured firms. In an uncertain area of the law, Fiona has secured summary judgment on such claims for her clients.
- Defending surveyors on claim by property investors concerning high-value investment property in Berlin.
- Advising surveyors' and valuers' professional indemnity insurers on issues of law arising in relation to negligent overvaluation claims by mortgage lenders, especially questions regarding contribution between defendants which remain unresolved by authority.
- Defending monitoring surveyors and valuers on a claim by mezzanine funders concerning an 'executive housing' development.
- Defending valuers on a lender's claim concerning the £5M valuation of two commercial properties near Heathrow.
- Acting for valuers in a £4.5 million lender's claim arising out of the valuation of commercial property, in which fraud is alleged.
- *Banque Bruxelles Lambert v. Eagle Star Insurance Co Ltd* [1995] 2 All ER 769. Fiona appeared in *BNP Mortgages Ltd v. Goadsby & Harding* [1994] 2 EGLR 169, one of the cases in the BBL appeals.
- Acting for offshore trust in a successful claim against structural surveyors concerning dry rot in large country property.
- *Hoadley v. JR* Edwards [2001] PNLR 41: Acting for building surveyors in claim concerning the structural stability of a half-timbered property of unusual design.
- *Candle Corporation v. Warren Reid Meadowcroft* [1995] NPC 9, concerning the liability of surveyors for advice on the rental values of commercial properties.

Fiona has been instructed in a wide spectrum of valuation cases: residential, commercial and mineral valuations. She also acts for and against surveyors in non-valuation contexts, e.g. land contamination (methane), structural surveys, certification of payment to contractors and advice to receivers.

Property Damage

Fiona's principal areas of expertise are construction law, professional liability and insurance law, so it is not surprising that she is heavily in demand for high-value property damage disputes. Fiona relishes the technical and legal complexities of property damage disputes and enjoys the challenges of leading a team of experts to a successful outcome for the client. She has particular experience in managing the multi-party disputes which major property damage typically generates: she is thoroughly comfortable conducting the defence of a major action while at the same time running several recovery claims on against other parties.

Her notable past and current cases in this area include:

- Acting for an M&E main contractor with claims on against professionals and sub-contractors (6 parties in all) following catastrophic floods at a residential development at Greenwich which was procured in circumstances which the Judge described as "death by subcontracting": *Greenwich Millennium Village Ltd v Essex Services Group plc (and Others)* [2013] EWHC 3059 (TCC) and [2014] EWHC 1099 (TCC) *(Costs)*
- Defending a main D&B contractor (and making a claim on against architects following a major fire at a designer shopping outlet: *BMG (Mansfield) Ltd v (1) Galliford Try Construction Ltd (2) Aedas Architects* Ltd [2013] EWHC 3183 (TCC) and [2013] EWHC 3468 (TCC)
- Defending a main D&B contractor against multiple claims (and making a claim on against structural engineers) following the collapse of a tower crane which causing extensive property damage and serious personal injury.
- Defending an M&E subcontractor against claims arising from a fire at an electronic systems distribution and repair centre (and making claims on against others).
- Acting for an international property developer/joint venturer in a £20M dispute concerning a fire at a major new London hotel.
- Defending the main fit-out contractor against a £10+M claim arising from a diesel oil spill at Bankside, London SW1. The 10-party litigation (*Mayor & City of London v Lend Lease Construction (UK) Ltd and others*) involved Fiona's client in a complex web of claims and cross claims, and difficult issues of causation and responsibility.
- Advising a haulage/storage company facing claims from the owners of goods stored at a warehouse which was destroyed by fire.
- *The Magna Park litigation*: a £150 million claim arising from flood and fire at Magna Park, the largest business park in Europe. The litigation involved eight parties making complex cross- and contribution claims.
- Acting for fire protection main contractor in £5.5 million claim following fire at aluminium strip rolling mill fitted with CO2 fire extinguishant system.
- Acting for main contractor in £3.5 million flood claims by developer and tenant of £37 million head office of City solicitors.
- Acting for a services maintenance contractor in a £9 million claim by interdealer broker arising out of electrical fire at international headquarters

- Acting for plant design and supply sub-contractor on a substantial contribution claim relating to fire at a German chocolate factory (self heating of cocoa nibs).
- Acting for main contractor in a claim arising out of a hot works fire damaging contract works (and in the contractor's Part 20 claim against its insurance brokers).
- Acting for structural engineers in a claim arising out of the collapse of a 200-year old retaining wall during groundworks.
- Acting for structural engineers in a claim by the MoD following from the detachment in high wind of the roof of an historic shipbuilding slip: *Ministry of Defence v. Scott Wilson Kirkpatrick & Ors (TCC, 1997).*
- Acting for the main contractor in a dispute concerning the collapse of concrete sewage tanks constructed using pre-tensioned steel cables
- Defending a plant hire contractor against multiple claims following the collapse of a tower crane at Canary Wharf, and making a claim on against the crane manufacturer (*Hewden Tower Cranes Ltd v Wolffkran GmbH, 2007)*.
- Acting for owners of a cold storage and distribution centre destroyed by fire in claims against a D&B contractor and architects (*Mersey Docks Property Holdings v Birse Construction Ltd* (2004) 99 Con LR 122; *Mersey Docks Property Holdings Ltd v Kilgour* [2004] BLR 412).