



Fiona Sinclair QC

Education

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

NEW SQUARE



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Year of Call: 1989

Year of Silk: 2013

## Languages

Italian

## Profile



**Shortlisted: Construction and Energy Silk of the Year - Legal 500 UK 2017 Awards.**

*"She's excellent"...* *"Fiona is charm personified, judges love her"...* *"a real team player"...* *"provides pithy, down-to-earth advice"...* *"gets on top of the details quickly."* (Chambers & Partners 2017)

*"Focused in her analysis and accessible in her approach" ... "robust and commercial"* (Legal 500 2017)

*"She is able to change the way judges see the case", "a team player" who "has a very fine eye for detail and a very good legal brain", "her advocacy is pragmatic and persuasive."* (Chambers & Partners 2016 – Global and UK Bar)

*"Technically brilliant and a real star",* Fiona Sinclair QC provides *"excellent analysis of the issues"* as well as *"focus on the big picture"* (Legal 500 2015)

**Shortlisted: Chambers & Partners Construction Silk of the Year 2015.**

*"Very good at making complex issues understandable"* and *"very bright, very persuasive and very amiable"*, Fiona has *"notable expertise in financial and construction disputes"* and is *"controlled, thorough and resilient"* (Chambers & Partners 2015 – Global and UK Bar).

*"Judges listen to everything she says"* and *"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)

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

*"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 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)

Before taking silk in 2013, Fiona was awarded **Chambers & Partners Construction Junior of the Year 2012**. In a rare dual nomination success, she was also shortlisted for *Professional Negligence Junior of the Year 2012*.

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.

In early 2015, just two years into silk, Fiona led for the respondent in the Supreme Court in *Aspect Contracts v Higgins Construction plc*, a landmark case in which the Court addressed for the first time the interactions between

construction adjudication, limitation, negative declarations and unjust enrichment. As she had in the Court of Appeal, Fiona succeeded for her clients on all issues in the Supreme Court and the appeal was dismissed.

In short, 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 (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).

#### **Memberships**

TECBAR (Committee Member), SCL, Combar, PNBA, ChBA, ICC, LCIA, Arbitral Women, Scottish Arbitration Centre, The Adjudication Society.

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## **Professional Liability**

**"Technically brilliant and a real star"**, Fiona Sinclair QC provides **"excellent analysis of the issues"** as well as **"focus on the big picture"** (Legal 500 2015)

**"She has a good manner with the court, is well prepared and takes a calm and measured approach. Her advocacy is pragmatic and persuasive."** (Chambers & Partners 2016)

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

**"Very good at making complex issues understandable"**, **"very bright, very persuasive and very amiable"**, Fiona has **"notable expertise in financial and construction disputes"**, and is **"controlled, thorough and resilient"** (Chambers & Partners 2015)

**"Judges listen to everything she says"**, **"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 **"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 **"a wealth of experience in professional liability matters"** (Chambers Global 2015)

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

## **Accountants, Auditors & Actuaries**

**"Very good at making complex issues understandable"** and **"very bright, very persuasive and very amiable"**, Fiona has **"notable expertise in financial and construction disputes"** and is **"controlled, thorough and resilient"** (Chambers & Partners 2015)

Fiona's postgraduate thesis (First Class) considered UK regulation of financial services by comparison with other jurisdictions. Fiona's practice reflects her continued interest in the liability of financial professionals generally. She is

regularly instructed to act for and against accountants, corporate finance advisers, tax planning consultants, investment or asset managers and other financial professionals in high-value disputes concerning accounts preparation, corporate reorganisations, tax advice and investment advice.

Some recent examples of Fiona's work in this field:

- Acting for Big Four accountants in a claim relating to their performance as administrative receivers and in related insolvency proceedings
- Defending SIPP trustees against a claim by investors to recover substantial losses suffered in connection with the collapse of an offshore land development. Fiona's success in a series of interlocutory battles forced the Claimants to discontinue their claims.
- Acting for a high-net-worth individual and a corporate group in a claim against a major firm of accountants relating to complex corporate restructuring and tax mitigation advice
- Acting for a well-known music impresario on a claim against a Big 4 firm relating to tax avoidance advice and the conduct of a prolonged and complex HMRC investigation
- Advising a group of LLPs on a claim against a Big 4 firm for negligent tax advice and media management
- Defending his former accountants against a claim brought by a well-known UK football club chairman
- Defending accountants and tax advisers in £15M multiparty film finance litigation
- Defending corporate finance professionals in multiparty litigation concerning the acquisition of a hotel business
- Defending investment management professionals on claims (total £20M) 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
- Advising accountants defending a negligence claim tried in Cyprus, including the provision of detailed directions and advice to the Cypriot advocate for the conduct of pre-trial proceedings and the trial in Cyprus
- Acting for a record producer in a claim against a major firm of accountants relating to tax avoidance advice and the conduct of a Special Office investigation.
- Acting for a group of high-net-worth individuals against a Big 4 firm in a claim arising out of tax advice relating to a corporate reorganisation
- Defending a major firm of accountants against a claim concerning advice given in relation to the acquisition of a holiday village
- *Easier Ltd v Deloitte Touche LLP* [2004] EWHC 3263 (Ch): defending auditors against a company's challenge to their resignation under CA85 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).

Fiona has extensive experience of very substantial construction and engineering disputes, often with international aspects and typically involving complex technical evidence. In the last 2 years, in addition to her heavyweight advisory,

arbitration and adjudication practice, Fiona has appeared on no fewer than 14 significant decisions in the Technology & Construction Court, on 4 appeals to the Court of Appeal and led for the respondents in the first ever case on construction adjudication to reach the Supreme Court.

Fiona is particularly praised for her work in heavyweight, multiparty construction disputes involving construction professionals. She is an expert on the complex issues of contribution, costs and liability insurance which such disputes engender.

Her notable past and current cases include:

- Defending a globally renowned design and build contractor in adjudication of a claim relating to innovative cladding on a flagship commercial building
- Defending architects on a £130M claim brought by a design and build contractor in connection with an ultra-high end residential development
- Acting for water waste water treatment systems contractor on claims under an IChemE contract
- Acting for an international leisure group on a claim against architects in connection with the design and inspection of a hotel development
- Acting for an international civil engineering contractor in adjudication of a claim relating to motorways construction
- Acting for a design and build contractor defending a claim relating to warehouse concrete slab floors, and claiming on against structural engineers
- Defending architects on a claim by a PFI developer in relation to education buildings
- Acting for a design and build contractor on a claim against architects in relation to education buildings
- Advising a water utility company on the Water Industry Act 1991 and the New Roads and Street Works Act 1990
- Defending cladding engineers on a claim in connection with Bloomberg's flagship new building in London. In the face of a contractual provision stating that proceedings must not be brought more than 12 years after practical completion, Fiona persuaded the Court that section 1(3) of the Civil Liability (Contribution) Act 1978 meant that contribution claims made later could still succeed: *Bloomberg LP v Sandberg LLP & Buro Happold LLP* [2016] 1 BLR 72.
- Defending asbestos surveyors in landmark litigation concerning the interface between construction adjudication under HGCRA and limitation: *Aspect Contracts (Asbestos) Ltd v Higgins Construction plc* [2015] UKSC 15. Fiona won victory for her clients in both the Court of Appeal and in the Supreme Court.
- Acting for the architects in major litigation concerning the Broadway Plaza leisure, commercial and residential development. The litigation is listed for trial in January 2016 but has already given rise to three important decisions on costs management and amendment of pleadings: *CIP Properties (AIP) Ltd v Galliford Try Infrastructure Ltd & Ors* [2014] EWHC 3546 (TCC), [2015] EWHC 481 (TCC) and [2015] EWHC 1345 (TCC).
- 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). The aftermath included the resolution of complex issues of principle on costs and Part 36 offers: [2014] EWHC 1099 (TCC).
- 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)
- 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 successful 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).

#### Memberships

TECBAR (Committee Member)  
 SCL  
 ICC  
 LCIA  
 Arbitral Women  
 Scottish Arbitration Centre  
 The Adjudication Society

#### Financial Services Professionals

**"Very good at making complex issues understandable"** and **"very bright, very persuasive and very amiable"**, Fiona has **"notable expertise in financial and construction disputes"** and is **"controlled, thorough and resilient"** (Chambers & Partners 2015)

Fiona's postgraduate thesis (First Class) considered UK regulation of financial services by comparison with other jurisdictions. Fiona's practice reflects her continued interest in the liability of financial professionals generally. She is regularly instructed to act for and against accountants, corporate finance advisers, tax planning consultants, investment or asset managers and other financial professionals in high-value disputes concerning accounts preparation, corporate reorganisations, tax advice and investment advice.

In addition, Fiona is frequently instructed to advise professional indemnity insurers regarding coverage issues arising in this area (eg. block notifications of circumstances relating to mis-selling financial products, mitigation costs cover, etc.)

Some recent examples of Fiona's work in the field of financial professionals' liability:

- Defending SIPP trustees against a claim by investors to recover substantial losses suffered in connection with the collapse of an offshore land development. Fiona's success in a series of interlocutory battles forced the Claimants to discontinue their claims
- 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 a high-net-worth individual and a corporate group in a claim against a major firm of accountants relating to complex corporate restructuring and tax mitigation advice
- Acting for a well-known music impresario on a claim against a Big 4 firm relating to tax avoidance advice and the conduct of a prolonged and complex HMRC investigation

- Defending accountants and tax advisers in £15M multiparty film finance litigation
- Defending IFAs in multiparty film finance litigation
- Advising a group of LLPs on a claim against a Big 4 firm for negligent tax advice and media management
- Acting for a large group of pension policyholders on claims arising from pension transfers and opt-outs
- Defending corporate finance professionals in multiparty litigation concerning the acquisition of a hotel business
- The SPLITS litigation: defending investment management professionals on claims (total £20M) 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
- Advising accountants defending a negligence claim tried in Cyprus, including the provision of detailed directions and advice to the Cypriot advocate for the conduct of pre-trial proceedings and the trial in Cyprus
- Acting for a record producer in a claim against a major firm of accountants relating to tax avoidance advice and the conduct of a Special Office investigation.
- Acting for a group of high-net-worth individuals against a Big 4 firm in a claim arising out of tax advice relating to a corporate reorganisation
- Defending a major firm of accountants against a claim concerning advice given in relation to the acquisition of a holiday village
- *Easier Ltd v Deloitte Touche LLP* [2004] EWHC 3263 (Ch): defending auditors against a company's challenge to their resignation under CA85 s.394(6)

Fiona is a member of 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 professional indemnity insurance brokers in defence of a claim relating to the procurement and availability of cover for an M&E services contractor facing a claim by a major construction and civil engineering group
- 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:

- Advising solicitors on a claim by professional indemnity insurers relating to the conduct of the defence of a claim against the insured
- Advising the SRA's Assigned Risks Pool on the defence of claims relating to a multi-occupancy buy-to-let development
- 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 for valuers in defence of a substantial claim relating to permissible assumptions in the valuation of commercial developments.
- [replace existing first bullet point with:] Acting on the instructions of the RICS Members' Support Service in the defence of 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 secured a landmark summary judgment for her clients: *Summit Advances Ltd v Bush* [2015] PNLR 18.
- 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.

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## International Arbitration

As Counsel, Fiona has extensive experience of international as well as domestic arbitration, particularly in the fields of:

- construction and engineering
- insurance and reinsurance
- commercial disputes

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

- Advising international investors on arbitration in SE Asia arising out of a major civil engineering programme
- Advising an EPC contractor in a dispute arising out of the development of a water-treatment facility in the UK
- 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.

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.

#### Memberships

ICC  
 LCIA  
 Arbitral Women  
 Scottish Arbitration Centre

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## 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:

- Advising multinational industrial group on disputes concerning international supply and sale contracts relating to photovoltaic panels
- 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.

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## 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 liability insurers on mitigation cost cover relating to a £2.5bn oil field development in the Middle East.
- Advising professional indemnity insurers on complex insurance issues arising from a cascade of EPC contracts.
- 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.

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## Construction & Engineering

**Shortlisted for Construction and Energy Silk of the Year - Legal 500 UK 2017 Awards.**

**"Technically brilliant and a real star"**, Fiona Sinclair QC provides **"excellent analysis of the issues"** as well as **"focus on the big picture"** (Legal 500 2015)

**"She is able to change the way judges see the case." "She is a team player."** (Chambers & Partners 2016)

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

**"Judges listen to everything she says", "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 **"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)

**"Very good at making complex issues understandable"** and **"very bright, very persuasive and very amiable"**, Fiona has **"notable expertise in financial and construction disputes"**, and is **"controlled, thorough and resilient"** (Chambers & Partners 2015)

Fiona is among the select number of UK barristers who are ranked as international leaders in this field. She has **"a wealth of experience in professional liability matters"** (Chambers Global 2015: Construction)

Before taking silk in 2013, Fiona was awarded Chambers & Partners' **Construction Junior of the Year 2012**.

Fiona has extensive experience of very substantial construction and engineering disputes, often with international aspects and typically involving complex technical evidence. In the last 2 years, in addition to her heavyweight advisory, arbitration and adjudication practice, Fiona has appeared on no fewer than 14 significant decisions in the Technology & Construction Court, on 4 appeals to the Court of Appeal and led for the respondents in the first ever case on construction adjudication to reach the Supreme Court.

Her recent and current cases in this area include:

- Defending a globally renowned design and build contractor in adjudication of a claim relating to innovative cladding on a flagship commercial building
- Defending architects on a £130M claim brought by a design and build contractor in connection with an ultra-high end residential development
- Acting for water waste water treatment systems contractor on claims under an IChemE contract
- Acting for an international leisure group on a claim against architects in connection with the design and inspection of a hotel development
- Acting for an international civil engineering contractor in adjudication of a claim relating to motorways construction
- Acting for a design and build contractor defending a claim relating to warehouse concrete slab floors, and claiming on against structural engineers
- Defending architects on a claim by a PFI developer in relation to education buildings
- Acting for a design and build contractor on a claim against architects in relation to education buildings
- Advising a water utility company on the Water Industry Act 1991 and the New Roads and Street Works Act 1990
- Defending cladding engineers on a claim in connection with Bloomberg's flagship new building in London. In the face of a contractual provision stating that proceedings must not be brought more than 12 years after practical completion, Fiona persuaded the Court that section 1(3) of the Civil Liability (Contribution) Act 1978 meant that contribution claims made later could still succeed: *Bloomberg LP v Sandberg LLP & Buro Happold LLP* [2016] 1 BLR 72.
- Defending asbestos surveyors in landmark litigation concerning the interface between construction adjudication under HCGRA and the law of limitation. Fiona won victory for her clients in the Court of Appeal in *Aspect Contracts (Asbestos) Ltd v Higgins Construction plc* [2013] EWCA Civ 1541. In early 2015, Fiona defended the Court of Appeal's decision in the Supreme Court. Her clients succeeded on all issues and the appeal was dismissed: *Aspect Contracts (Asbestos) Ltd v Higgins Construction plc* [2015] UKSC 38.
- Advising international investors in connection with a SE Asian bridge-building programme.
- Advising the EPC contractor in a dispute concerning the development of an oil field in Abu Dhabi.
- Advising an EPC contractor in a dispute arising out of the development of a water-treatment facility in the UK.
- Acting for a US building contractor in an international arbitration concerning the redevelopment of a Caribbean island.
- Acting for the architects in major litigation concerning the Broadway Plaza leisure, commercial and residential development. The litigation is listed for trial in January 2016 but has already given rise to three important decisions on costs management and amendment of pleadings: *CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd & Ors* [2014] EWHC 3546 (TCC), [2015] EWHC 481 (TCC) and [2015] EWHC 1345 (TCC).
- Acting in litigation then adjudication for the claimant city council in a dispute concerning feed-in tariffs and the installation of a solar energy plant. The dispute led to the definitive judgment on the interpretation of the dispute resolution procedures in FIDIC contracts: *Peterborough City Council v Enterprise Managed Services Ltd* [2014] EWHC 3193 (TCC).
- Acting for solicitors in multi-claimant, multi-defendant litigation arising out of defects in three apartment blocks: *Rendlesham Estates Plc v Barr Ltd* [2014] EWHC 3968 (TCC). The multiplicity of parties on each side of the dispute created unusual procedural challenges.
- 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). The aftermath included the resolution of complex issues of principle on costs and Part 36 offers: [2014] EWHC 1099 (TCC).
- 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 2<sup>nd</sup> visit to the Court of Appeal, and a 3<sup>rd</sup> is listed for June 2014.
- 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.
  - *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 has a particular interest in adjudication under the Housing Grants, Construction and Regeneration Act 1996. She frequently acts in construction contract disputes (including claims against construction professionals) in adjudication. In court, she has appeared on successful pre-emptive challenges to the jurisdiction of adjudicators and, most notably, in *Aspect v Higgins*, the first case on construction adjudication to reach the Supreme Court. Fiona is herself a trained adjudicator, accredited by the Technology and Construction Court Bar Association.

Fiona's interest in construction and engineering disputes originated with her extensive practice in construction professionals' liability. She writes the chapter on 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 of Construction Law (SCL) and the British Insurance Law Association (BILA).

She is also a member of the ICC, LCIA, Arbitral Women, Scottish Arbitration Centre and the Adjudication Society.

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## Property Damage

**"Works with the team and has a very fine eye for detail and a very good legal brain."** - *Chambers & Partners 2016*

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*).
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