

Paul Cowan

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Someone who properly understands client relationships and can go well beyond legality into practicalities.

- Chambers & Partners

Paul Cowan is recognised as a leading practitioner in construction matters. He has over 20 years of experience in national and international construction practice, advising on many of the world's largest and highest-profile projects.

In terms of his international experience, Paul has advised and represented clients in relation to projects all over the world, with extensive experience in civil law jurisdictions. Alongside this, Paul retains a high profile in relation to UK construction law practice.

In 2020, Paul was appointed to the Attorney General's A Panel of civil counsel to the UK Government.

Shortlisted for the 'Construction Junior of the Year' (2018) award by Chambers & Partners UK.

- *"By far the best in his class and our absolute go-to. I cannot speak highly enough of Paul." - Legal 500, 2021*
- *"He is innovative and knowledgeable and always a pleasure to work with as someone who understands client relationships." "He not only gets into the details, he thinks outside of the box and comes up with lines of arguments others simply fail to spot or engage with." - Chambers & Partners, 2021*
- *"Outstanding technically, extremely good on the case law and equally as good on his feet." "Intelligent, personable and persuasive. He'll know the right answer before you've asked the question." - Chambers Global, 2020*
- *"He is an excellent and task-devoted construction lawyer capable of handling large international construction disputes." - Legal 500, 2019*
- *"Easy to work with and knows our industry very well." - Chambers & Partners UK & Global, 2019*
- *"The standout junior for me at present". He is noted as "clever, responsive, good with clients and a strong advocate". - Who's Who Legal, 2018*
- *"An impressive advocate, both oral and written. He formulates persuasive reasonings, works well with instructing solicitors and is extremely well prepared." "Thorough and hard-working." Chambers & Partners, 2018*
- *"Pragmatic, commercial and razor-sharp." Legal 500, 2017*
- *"Very practical and pragmatic", with clients praising his ability to "really understand the nuts and bolts of the construction*

sector”, *Who’s Who Legal*, 2017

- “Someone who properly understands client relationships and can go well beyond legality into practicalities.” *A very strong draftsman and powerful in the courtroom.* *Chambers & Partners*, 2017
- “He gets into the detail in a way few other counsel can.” *Legal 500*, 2016
- “Impressive technical knowledge and a very skilful advocate.” *Legal 500*, 2015

Originally qualified as a barrister, Paul also qualified as a solicitor and practised (as a partner) in the Construction and International Arbitration practices of White & Case LLP.

Paul also sits as an arbitrator, including current major ICC proceedings in international construction and power sector disputes around the world.

Construction disputes: Paul’s primary experience is in relation to construction disputes and claims, in which he is a career-long specialist. Paul has successfully advised upon and represented clients (including employers, main contractors and specialist sub-contractors) in numerous complex delay / disruption claims, as well as defects claims in design and / or workmanship disputes, and other construction-related disputes. Paul has a practical ‘hands on’ approach, engaging with the project personnel and documentation, understanding the technical issues involved and the key details from the project documentation, from which he has prepared detailed claim and / or defence documents and written submissions and provided a strong basis for the cross-examination of the relevant witnesses.

Paul has also made extensive use of preliminary issues and / or bifurcated issues on liability, causation and quantum in order to get to the heart of complex disputes more quickly than would otherwise be the case. In particular, reflecting his long experience and specialism in delay claims, Paul was lead counsel responsible for identifying key issues for early determination and succeeding in using them to establish new principles for how extensions of time should operate in construction contracts subject to English law before the High Court and Court of Appeal in England in recent litigation concerning the delays and defects in the design and construction of the Rolls Building of the High Court in London (*Carillion v EMCOR*).

In recent years, Paul has been active in and out of Court, including advising and representing clients in defence of multiple major claims under the Defective Premises Act, as well as contractual claims relating to allegedly defective cladding systems, following up on his successful representation of clients in post-Grenfell claims in 2018 and 2019 (e.g. obtaining early dismissal of a major claim in *Portsmouth CC v Prater*). In addition, Paul appeared before the TCC in significant reported cases concerning important legal issues, including how contractual limitation clauses can impact on tortious duties of care assumed by professionals (*RSK v Hexagon*), and obtaining stays and security for costs, and enforcing a sale order against Grade 1 list residential property where a claimant sought to re-litigate matters already decided in a construction adjudication (*Kew Holdings v Donald Insall Associates*).

Alongside this, Paul has successfully advised and represented clients utilizing the Part 8 procedure in the TCC in order to obtain quick determination of issues that had been wrongly decided in adjudication, and thereby prevent enforcement against them (*Willow Corp Sarl v MTD Contractors Ltd*).

In addition to his work as counsel, Paul also sits as an arbitrator, including current appointments to ICC tribunals relating to power projects. For example, during 2020, Paul concluded a major ICC arbitration (sitting as arbitrator within a panel of three) with the issue of an award in respect of claims concerning the delayed construction of a hydro-power project in South America.

Paul is a member of the JCT Council and the Chairman of the JCT’s Construction Dispute Resolution Group in the UK. At his initiative, and with his close involvement, the JCT has developed dispute board procedures for UK construction disputes which will import international best practice into domestic construction dispute resolution (publication expected 2021, jointly between the JCT and Chartered Institute of Arbitrators).

Paul is also a long-standing member of the City of London Law Society’s Construction Committee (in which he co-authored the standard form of novation agreement and associated guidance notes).

Main forms of contract: Paul has long experience advising on the principal standard forms of construction contracts used in national and international projects, notably the JCT suite of standard forms used in the UK (in respect of which, Paul has been a member of the JCT Council for approximately 15 years), the NEC forms, and the FIDIC forms of contract, as well as numerous bespoke contracts and construction agreements relating to all forms of construction procurement (from turnkey EPC, design and build, traditional procurement, through to construction management forms), as well as associated bonds and guarantees.

Sector experience: Paul has advised on projects across many different sectors of industrial and commercial activity, with a strong emphasis on major delay and design / workmanship disputes arising from large infrastructure projects, such as new-build nuclear power plants, hydro-power projects, large-scale oil & gas projects in the Middle East and North Africa, plus other large infrastructure projects. He has also advised on many high-profile public projects, including acting as project and disputes counsel during the redevelopment of the Royal Opera House in London, the construction of a Home Office immigration detention centre (and its subsequent destruction by fire), as well as defence-related projects, hotel projects and other commercial construction developments.

International Arbitration: In addition to his long experience in UK construction disputes, he has over 18 years of experience in international construction practice, advising on disputes arising from many of the world's largest and highest-profile projects in many countries around the world, with extensive experience in civil law jurisdictions.

Paul has wide experience representing clients and appearing as counsel in international arbitration hearings, including in ICC, LCIA, UNCITRAL and ad hoc arbitrations, with seats of arbitration in London, Paris, Stockholm, Miami and elsewhere and around the world.

Paul is also active among the community of international arbitration and construction practitioners, including organizing and participating in major international arbitration symposia for the ICC in London in 2009 and 2013, as well as regularly attending and speaking on specialist construction law topics at the annual International Bar Association conferences (including in Tokyo in October 2014, Vienna in October 2015, Washington DC in September 2016, Sydney in October 2017, and Rome in October 2018).

Major Projects: Paul is known for his long-term and detailed involvement in major projects and disputes, developing strong relationships with the parties, and deep understanding of the technical issues and subject-matter which has been key in their successful resolution. For example, over the last ten years, Paul has had a central role advising (in detail and on a day-to-day basis) the Finnish owner-utility company, TVO, in respect of one of the world's largest disputes arising from very large delays and cost overruns on the Olkiluoto 3 nuclear power plant in Finland.

With few new-build nuclear projects actually under construction, from his uniquely close involvement in this project, Paul has deep personal experience in the design, regulation and construction processes (and their inter-relationships) in respect of new-build Generation III projects and the lessons to be learned from the problems that have occurred during the course of the project. Paul has helped other clients to recognize and apply these lessons in respect of the planning and early implementation of new-build nuclear projects.

Professional / industry activity: Paul is actively engaged in relation to numerous industrial and / or legal organizations and societies. For many years, Paul has been a member of the JCT Council and Chair of its Construction Dispute Resolution Group, and has been a member of the Construction Committee of the City of London Law Society (in which he co-authored the standard form of novation agreement and accompanying guidance note. Paul is also a member of the Society of Construction Law and TECBAR.

In relation to international construction, Paul has arranged and participated in several ICC international symposia on a variety of subjects: for example, in 2013, Paul organized an ICC symposium on the use of Dispute Boards in international construction projects, sharing the platform with well-known figures such as Chris Seppälä, Prof. Antonio Crivellaro, and Sir Vivian Ramsey. Paul also attends and speaks at International Bar Association conferences in relation to international construction law and has also actively participated in conferences of the International Nuclear Law Association and given seminars for the Society of Construction Law (in the UK and the Gulf).

Particular experience includes:

- Uniquely extensive and detailed experience advising in respect of the design and construction of ‘new-build’ nuclear power stations, and leading the advocacy in the ICC arbitration proceedings in respect thereof (appearing opposite some of the world’s leading international arbitration practitioners);
- Appearing as counsel in various Court proceedings successfully utilizing CPR Part 8 procedure to obtain quick determination of key issues that were wrongly decided by an adjudicator, and thereby preventing enforcement of adjudicators’ decisions.
- Advising and appearing as counsel for consulting engineers in TCC proceedings in relation to allegations of defective ground improvement works (vibro stone columns) claimed to have caused subsidence, raising numerous novel issues including the actual scope of services agreed and performed *vs. ex post facto* deed of appointment, involving substantial claims and numerous other parties.
- Appearing as counsel in Court proceedings to ensure due enforcement of significant adjudication decisions, including securing a stay of litigation proceedings that sought to re-litigate the dispute before payment was made, as well as obtaining orders for security for costs, as well as for obtaining and enforcing judgment against a sale order over a Grade 1 listed residential property.
- Acting as Counsel in UNCITRAL arbitration proceedings in respect of disputes arising from the construction of a hydroelectric power plant in South America (including advocate in all procedural and substantive hearings);
- Sitting as arbitrator in ICC arbitration proceedings relating to the construction of a hydroelectric power plant in South America.
- Lead counsel (appearing opposite multiple QCs for the claimant and other parties) in *Carillion v EMCOR*, English litigation featuring rulings from the Technology & Construction Court (2016) and Court of Appeal (2017) on the correct operation of extensions of time in delay disputes, including in multi-party disputes.
- Counsel in multiple post-Grenfell cladding defects claims, including successfully representing the defendant contractor to have the claim dismissed by the TCC in *Portsmouth City Council v Prater* (2018), as well as successfully defending design & build contractors against very substantial claims relating to alleged defects in the cladding of high-rise residential properties. Numerous such claims involving issues arising from the Defective Premises Act 1972.
- Providing advice and conducting UK arbitration proceedings in respect of design and workmanship defects disputes arising from the construction of a new government agency headquarters in Bristol;
- Providing advice and conducting multiple adjudications in respect of disputes concerning the design and construction of a new UK government immigration detention centre and its subsequent destruction by fire;
- Advising in respect of disputes arising from the redevelopment of the Royal Opera House, and the renovation works at the Royal Albert Hall;
- Advising on forms of contract and drafting, and providing project execution advice on problems, disputes and claims arising from the construction of an oil & gas production facility in Algeria, as well as the formulation of an alternative dispute resolution mechanism to facilitate faster commercial settlement of claim issues;
- Advising and adjudicating in a dispute arising from the construction of luxury residential property in West London;
- Advising and adjudicating in multiple disputes arising from the renovation and hotel conversion of a UK country manor house;
- Advising and adjudicating in a dispute arising from the design and construction of a new golf course and club house in the UK;
- Providing pre-arbitration advice in relation to disputes arising from the construction of a gas production facility in North

Africa;

- Acting as Counsel in ICC arbitration proceedings in respect of disputes arising from land remediation works in Lebanon;
- Advising on disputes arising from the construction of a phosphoric / sulphuric acid plant in Jordan;
- Providing advice and conducting ICC arbitration proceedings in respect of disputes arising from the construction of a high speed railway in Taiwan; and
- Advising in respect of disputes arising from the construction of a new concert hall in Suffolk, UK.

In addition to disputes advice, Paul also has extensive experience advising on project development, contract drafting, and dispute avoidance including the following:

- Leading the JCT's drafting of dispute board procedures as a new standard form model of dispute avoidance and resolution for the UK construction industry (being published 2021);
- Advising on contract drafting and risk allocation relation to the Hinkley Point nuclear power plant project in the UK;
- Advising on contract drafting and dispute avoidance in respect of a major extension to a LNG terminal in the UK;
- Leading the drafting and negotiation of a major new bridge crossing over the Niger delta, Nigeria;
- Negotiating component contracts in respect of an international gas pipeline project across northern Europe;
- Advising, negotiating and drafting in relation to the redevelopment of the Royal Opera House, Covent Garden;
- Negotiating and drafting building contracts and appointments for various office developments in the City of London, including utilizing two-stage tendering design and build contracting, guaranteed maximum price mechanisms and profit-sharing procedures;
- Negotiating, drafting and advising in respect of a new company headquarters building in Folkestone, UK.

Speaking Engagements:

Speaking engagements include:

Speaking on the subject of tortious claims in a contractual environment, TECBAR annual conference March 2021.

Presenting a seminar on hot topics in international arbitration, LCIA conference in Seoul, November 2018.

Chairing a seminar on project completion issues at the International Bar Association's Annual conference, Rome, October 2018.

Presenting a seminar on nuclear new build claims management, International Nuclear Law Association, Manchester, UK, in June 2018.

Presenting a seminar on projects under pressure and legal options for material change of circumstances at the International Bar Association's Annual Conference, Sydney, October 2017.

Speaker at CDR's Autumn 2015 and Spring 2017 Arbitration Symposia, addressing the case management of large and complex construction disputes.



Keynote speaker at Kluwer's 4th Annual International Arbitration Summit, addressing recent developments affecting global international arbitration.

Presenting a seminar on the particular issues arising from contractual remedies and limitations on 'disaster' EPC projects at the International Bar Association's Annual Conference, Washington DC, September 2016.

Presenting a seminar on issues in construction practice using EPCM contracts at the International Bar Association's Annual Conference, Vienna, October 2015.

Presenting a seminar on "*guerrilla tactics in MENA region arbitrations*" for the Arab Arbitration Forum, Vienna, October 2015.

Presenting a seminar on the Enforcement of Dispute Board Decisions for the Chartered Institute of Arbitrators' 2014 Dispute Advisory Service Convention, London, November 2014.

Presenting a seminar on the interpretation of international construction contracts, comparing approaches in common law and civil law jurisdictions at the International Bar Association's Annual Conference, Tokyo, October 2014.

Presenting a seminar on new English case-law relating to the interpretation of commercial contracts and related exceptions to "without prejudice" privilege (*Oceanbulk Shipping v TMT Asia*), London, June 2011.

Presenting a seminar on "*Drafting Nuclear Construction Contracts*" at the 2nd Annual C5 European Nuclear Power Conference in Paris, October 2010.

Presenting seminars for the Society of Construction Law on the subject of "Advising on International Construction Contracts Subject to Civil Law" (in London in June 2010, and in the Gulf in November 2010).

Lecture on risk allocation in nuclear new-build contracts at the International Nuclear Law Association's 2009 Congress in Toronto, Canada

Paul also co-authored the standard form of novation agreement and guidance note for construction projects published by City of London Law Society (Construction Committee).

Privacy Policy

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Areas of Expertise

International Arbitration

Paul has great experience representing clients and appearing as counsel in international arbitration hearings, including in ICC, LCIA, UNCITRAL and ad hoc arbitrations, with seats of arbitration in London and around the world, in relation to contracts governed by law from jurisdictions around the world (including extensive experience working in civil law jurisdictions).

Recent and / or current representation includes:

- Advising in respect of the design and construction of nuclear power stations, including related long-standing representation in one of the world's largest ICC arbitrations;
- UNCITRAL arbitration proceedings in respect of disputes arising from the construction of a hydroelectric power plant in South America (including advocate in all procedural and substantive hearings);



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- ICC arbitration proceedings in respect of disputes arising from land remediation works in Lebanon;
- ICC arbitration proceedings in respect of disputes arising from the construction of a high speed railway in Taiwan;
- Advising on disputes and claims arising from the construction of an oil & gas production facility in Algeria subject to ICC arbitration;
- Advising on disputes arising from the construction of a gas production facility in North Africa subject to ICC arbitration;

Paul is also very active in the international arbitration community, including organizing and participating in major international arbitration symposia for the ICC in London in 2009 and 2013, as well as the International Bar Association. This was reflected in Global Arbitration Review's coverage of Paul's move in May 2014 from White & Case LLP to 4 New Square.

Qualifications & Memberships

- Member of JCT Council (representing construction clients)
- Chairman of JCT Construction Dispute Resolution Group
- Member of CIMAR Review Body
- Member of City of London Law Society Construction Committee
- Member of Society of Construction Law
- Member of the International Bar Association
- Member of International Nuclear Law Association
- Member of Nuclear Industry Association

Major Scholarship – Inner Temple, 1995/1996, LLB (Hons), University College, University of Durham, 1995

Insights

Successful Part 8 Challenge of Adjudication Decision

24 July 2019

On 25 June 2019, Pepperall J. in the TCC handed down an important judgment upholding a Part 8 challenge relating to a major part of an adjudicator's decision, and preventing enforcement of that part as a result. It is the first known example of such a challenge succeeding following the judgment of Coulson J. (as he then was) in *Hutton Construction Limited v Wilson Properties (London) Limited* [2017] EWHC 517 (TCC), as subsequently followed by O'Farrell J. in *Actavo UK Limited v Babcock Doosan Limited* [2017] EWHC 2849 (TCC). Paul Cowan acted as counsel for Willow, the successful Part 8 Claimant, instructed by Berwin Leighton Bryan Cave (Caroline Pope and Daniel Gilberthorpe).

Common law 'time at large' arguments in a civil law context

Cracking the atom

1 June 2009

The credit crunch and construction projects – employers' liability if funding collapses?

1 December 2008

Arbitration Costs - As Considered in the ICC International Arbitration Practitioners' Symposium

1 July 2009

Jivraj v. Hashwani – England's Highest Court Supports Autonomy and Flexibility in



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Arbitration

27 July 2011

Modern Approaches to Dispute Resolution in International Projects

1 June 2003