



Ted Lowery

Partner

tlowery@fenwickelliott.com

Ted joined Fenwick Elliott in 1991 as a paralegal. He qualified as a solicitor in 1997 and was made a partner in 2002. Since 1991 Ted has been involved in a wide range of construction, energy and PFI projects including housing, roads, hospitals, power stations, offshore structures, gas and oil pipelines, chemical process plants and leisure facilities. He has provided advice to an equally diverse range of clients including contractors, employers, local authorities, state corporations, project companies and project funders.

Specialist expertise

Ted has been involved in dispute resolution at all levels in the construction, energy and PFI sectors and has considerable experience of representing clients in arbitration, both domestic and international. He has also been extensively involved in litigation, conducting cases in the County and High Courts, in the Court of Appeal and in the Technology and Construction Court. Since 1999 he has been involved in over 60 adjudications and has participated in enforcement and Part 8 applications. He has represented clients in expert procedures and mediations.

Since 2010 Ted has increasingly focused on work in the PFI/PPP sector advising clients on common issues concerning payment mechanisms, fire safety, defects, deductions, unavailability, handback arrangements, credit agreement questions and termination risk. He has represented clients in numerous PFI disputes including bilateral and related disputes adjudications, arbitration and court proceedings. His experience embraces a wide range of PFI assets encompassing hospitals, schools, colleges, roads, rail, and water infrastructure facilities. He has frequently provided advice concerning the management and resolution of claims for deductions and service failure points in consequence of defects and service failures.

Ted has also worked closely with a number of national energy companies in the Caspian Sea region and has provided advice in relation to a diverse range of legal issues connected with the hydrocarbon industry, including gas field development, proprietary licensing and gas pricing disputes.

Examples of Ted's expertise include:

- Advising a PFI schools project concessionaire in relation to a dispute over certain discrete financial information that the Authority claimed ought to be provided under the concession agreement. Acting for the concessionaire in an adjudication and consequential court proceedings and advising in relation to how the information should be presented as part of a settlement process;
- Advising the services contractor in relation to a range of pass-through claims for asset non-compliances in a batch of secondary schools constructed under the Priority Schools Building Programme;
- Acting for several PFI hospital project companies in relation to fire-stopping and compartmentation defects and connected service failures. Advising on the assessment of FM services performance, the allocation and validity of deficiency points, cash deductions, reporting failures, warning notices and the risk of termination;
- Acting for a main contractor in a series of adjudications concerning time and money disputes with a glazing and façade subcontractor;
- Representing a PFI project company in arbitration proceedings concerning errors in contractual amendment and variation agreements for an educational institution. Advising and representing the project company in relation to consequential applications in the Commercial Court;
- Advising the concessionaire for a PFI motorways project in relation to the proper interpretation of the concession agreement mechanisms for handback including as to the required standards, the calculation of retention and the necessary scope of the rectification programme;
- Advising the PFI concession company in relation to disputes over the performance levels of two water treatment plants in Scotland. Representing the same company in an arbitration over the market value of the assets at the end of the concession period;
- Acting for a main contractor in adjudications and subsequent enforcement proceedings concerning claims brought by a labour, plant and materials supplier;
- Advising the PFI concessionaire for a light railway link in relation to the ownership of surplus land plots adjacent to the track. Acting for the concessionaire in a panel procedure that determined which plots were to be sold for the concessionaire's benefit in accordance with the terms of the concession agreement. Advising the concessionaire on handback issues and drafting full and final settlement terms following the expiry of the concession;
- Advising PFI project companies in relation to disputes with the irconstruction contractors and FM providers over corrosion in the LTHW heating system pipework in a school and a hospital. Advising on positional correspondence and representing the project companies in adjudications including in alliance with FM contractors and in related disputes tripartite processes and arbitration;
- Acting on behalf of the state gas company in connection with a proposed transnational gas pipeline project: negotiating the gas sales

agreements, advising in relation to the corporate structure of the proposed pipeline company and the investment arrangements and working with international funding bodies;

- Acting on behalf of a state gas company in negotiations concerning licenses for the use of proprietary technologies within a polyethylene and polypropylene plant, a gas to gasoline facility and a de-sulphurisation installation; and
- Advising the concessionaire for a PFI motorway project in relation to a dispute concerning defects in the asphalt pavement sections.

Other activities

Between 2009 and 2014 Ted was joint editor of the *Construction Industry Law Letter*. Between 2014 and 2016 he acted as general editor of Fenwick Elliott's bi-monthly *Case in Focus* feature for *Building* magazine's website. Since 2016 he has produced the monthly *Case in Focus* reports that appear in *Building* magazine and in the *Legal Briefing* newsletter on Fenwick Elliott's website.

Ted has lectured at seminars organised by Fenwick Elliott and by the Chartered Institute of Building Services Engineers. He has prepared and participated in in-house training seminars and webinars provided to clients. He has also appeared in the Television Education Network series of programmes and in LexisNexis events, speaking on construction-related topics.

Ted's memberships/positions include:

- member of the Technology and Construction Solicitors' Association;
- member of the Society of Construction Law.