



Ben Smith

Partner

bsmith@fenwickelliott.com

Ben is a technically strong construction disputes lawyer and adept problem solver with a particular interest in project advisory and risk management in the context of large-scale, complex disputes.

Ben has acted for main contractors, specialist subcontractors, consultants, owners and employers on a wide range of construction-related disputes, relating to, for example, contract formation, delay and disruption, payment, variations, defects, retention and termination.

He has experience of a number of different dispute resolution forums, including the Technology and Construction Court, County Court, the First-tier Tribunal (Property Chamber), arbitration, expert determination, mediation and adjudication.

Ben has a particular interest in building/fire safety and regularly advises clients, including contractors, landlords/freeholders and suppliers on contentious and non-contentious building/fire safety issues, including defects claims, remedial works and design, construction and procurement of new projects. Ben has also represented clients in the First-tier Tribunal (Property Chamber).

In terms of thought leadership, Ben regularly speaks at UK Construction Week (London and Birmingham), London Build and the Installer Show on building safety issues. Ben has contributed to industry white papers on building safety for the National Building Specification and *Building Magazine*, and has been invited to speak to industry bodies including CI Arb, Arbrix and LexisNexis. Ben also regularly writes articles on building safety and has been published in *The Law Society Gazette*. Ben also regularly give webinars and bespoke training to clients.

Ben spent a year with a FTSE 100-listed main contractor which gives him an appreciation of how his clients' businesses work and what informs the commercial decision-making process.

He also spent a year in Qatar embedded with a client advising on a number of high-value claims.

Specialist expertise

Ben specialises in advising on how to resolve or avoid construction disputes. He is familiar with the JCT, NEC, FIDIC standard form contracts and has advised on a large variety of disputes of differing complexity and value.

Examples of Ben's expertise include:

- acting for a main contractor in respect of a building safety defects claim in the First-tier Tribunal;
- acting for a private landlord in respect of a building safety defects claim in the First-tier Tribunal;
- acting for a supplier in relation to claims regarding defects in insulation;
- acting for a main contractor/developer in respect of a number of building/fire safety defect claims;
- advising a major developer on the Building Safety Act and Responsible Actor Scheme obligations;
- acting for a subcontractor in relation to TCC proceedings arising out of a building safety defects claim;
- acting for a large UK contractor in relation to TCC proceedings arising out of a defects claim;
- acting for a large UK contractor on a series of adjudications in respect of extension of time and variation claims;
- acting for a large UK contractor in respect of a final account dispute and negotiating a settlement;
- acting for a Jamaican employer in relation to claims for force majeure and other extensions of time raised by the EPC contractor on an oil and gas-fired power station;
- acting for a UK employer in relation to TCC proceedings arising out of the termination of the EPC contractor on an energy-from-waste plant;
- acting for a large UK contractor in defending an adjudication brought by a subcontractor in relation to a disputed compensation event;
- acting for a large Italian oil and gas contractor on an arbitration in excess of US\$1 billion in relation to the design, engineering and construction of an early production facility, pipelines, molten sulphur handling facilities and a sulphur granulation unit in Kuwait;
- acting for the wholly owned subsidiary of a large Italian oil and gas contractor in an arbitration to enforce a parent company guarantee against a Kazakh company;
- advising a large UK main contractor on a multi-million pound final account and design defects dispute in relation to a prestigious London hotel development;
- assisting with and advising a large UK main contractor on defending various design and construction defect claims in excess of £1 million relating to, in particular, cladding, fire stopping, roofing/drainage, water ingress and nickel sulphide inclusions;

- assisting with and advising a large UK main contractor on negotiating a £500,000 settlement agreement for a live airport project;
- advising a large UK main contractor in relation to a number of subcontractor and supply chain disputes, relating to, in particular, payment, retention and termination;
- advising a large UK main contractor on its entitlement to £1 million plus worth of compensation events under the NEC3 form of contract;
- acting for a large South African solar power company in an expert determination regarding the fitness for purpose and efficacy of the lightning protection system installed at two large solar power plants in South Africa;
- acting for a Nigerian company (one of Africa's largest conglomerates) on a multi-million US\$ arbitration relating to the supply of equipment and materials for the construction of a new process plant;
- assisting with and advising on the termination of an operation and maintenance (O&M) contract in Senegal due to performance-related issues with the O&M contractor and subsequent advice on the resolution of the following dispute between the parties;
- advising a Japanese/Turkish main contractor JV in relation to variation claims in excess of US\$1 billion arising out of a large infrastructure project in Qatar;
- advising a London-based contractor on a live and highly distressed, multi-million pound mixed residential/commercial development, in relation to exposure to liquidated damages, groundworks issues and compliance with technical and legal contractual requirements;
- advising a UK/Spanish contractor JV (acting as the main design and build contractor) in relation to a distressed ongoing PFI contract for a waste-to-energy plant; and
- advising on payment provisions and entitlement to additional time and money under both the JCT and NEC forms of contract.