



Simon Tolson

Senior Consultant

stolson@fenwickelliott.com

Solicitor, Chartered Arbitrator, Registered Adjudicator, CEDR trained Mediator. Honorary President of the Technology and Construction Solicitors' Association; Honorary Secretary and Treasurer of the Society of Construction Arbitrators.

Simon is a solicitor with an Honours degree in Law (University of Hertfordshire), completing his studies at the College of Law Guildford. Before qualifying, Simon spent some time working on construction sites in the industry. Simon has specialised in construction and engineering law and the disputes generated by the industry all his professional career. He is also a chartered arbitrator and an adjudicator.

Simon specialises in all major forms of dispute resolution in construction and engineering disputes including litigation, arbitration, adjudication and mediation.

With over 37 years' post-qualification experience, Simon is ranked amongst the top construction solicitors in *Who's Who Legal*, *The Legal 500 UK* and the *Legal Experts* guides.

Simon is also classed in the top league in *Chambers and Partners UK* which deems him to be a widely respected practitioner in the field, both for his legal ability and for his commitment and knowledge of the construction industry as a whole. Comments include that Simon is "extremely good", "absolutely excellent – such a hard worker and hugely dedicated", and he can be relied upon to be "right on the money" and is "a big hitter". His peers admire his "brilliant grasp of the technical and the tactical" and his real ability to "lead from the front", whilst to clients "he is a real gentleman" in domestic adjudication matters. In *Chambers and Partners UK*, one client says, "he's super-fast, I've never seen anyone so quick and efficient".

Simon has extensive experience in various forms of dispute resolution, including arbitration, court litigation, adjudication, and other alternative methods. He specialises in construction and engineering, as well as projects in process, oil and gas, mining, and energy. Over the course of his career, Simon has represented clients at every stage of the construction process, from contract documentation and risk management strategies to providing project counsel and handling dispute resolution.

Simon is experienced in all main industry contracts such as JCT, NEC, IChemE, ICE, FIDIC, FCEC and GC/Works, MPTC (Maximum Price Target Cost) as well as other and numerous bespoke forms based on derivatives of the aforementioned.

Specialist expertise

Simon is a recognised authority on dispute resolution within the industry and has prepared and conducted many cases at senior level for well over 37 years in the Technology and Construction Court (including numerous major reported decisions) and before international arbitration tribunals. He has acted in over 200 adjudications over the last 25 years, 9 of which have been reported at enforcement stage. Simon is an accredited adjudicator with the TECSA and RICS panels and actively involved with training and policy within TECSA.

Examples of Simon's expertise include:

Dispute avoidance and management advice to major corporations on construction projects all over the world (Libya, India, Kazakhstan, Azerbaijan, Dubai, Japan, Korea, Denmark, Austria, Germany) including acting in:

- money and overrun cases;
- Royal Navy/nuclear-implicated projects;
- disputes over fluidised bed industrial gas boilers used for commercial incineration;
- disputes over large-sized gas-fired combined cycle power stations;
- waste-to-energy plant disputes and claims;
- acting for joint ventures and consortia in their project disputes and claims;
- acting for owners of large raised reservoirs (Reservoir Act 1975) concerning various failed reservoirs, man-made lakes and dams;
- disputes over procurement and management of a major city centre hotel project;
- disputes on façade/curtain walls, glazing and cladding;
- disputes concerning many types of process plants;
- disputes over performance and termination (many and under a variety of standard form contracts);
- acting for international airport authorities on major terminal buildings;
- acting for new build and refurbishment of major art gallery projects;
- acting for hedge funds in their commercial property disputes with landlords over MEP systems;
- adjudicator in disputes for onshore wind projects;
- acting in arbitration as party representative on Jordanian wind farm disputes;
- acting for Chinese consortia on PV panel failure on a large solar farm in Jordan;
- disputes over failed contiguous piling on major London site;
- pipeline contract disputes in Kazakhstan;
- gas treatment plant disputes in Kazakhstan;
- gas pumping station disputes in Kazakhstan;
- disputes over functional performance of attenuation and rainwater holding tanks in a teaching hospital;
- disputes over deep basement tanking failures (numerous);
- frequent tender disputes;
- acting on highway disputes both for contractors and highway agencies over time and performance specification issues and time share arrangements;
- disputes over bonds (demand and performance), guarantees and collateral securities on construction works;
- delay, disruption and prolongation disputes;

- disputes over leisure and health farm business projects;
- disputes over collapse of massive, suspended lay-in-grid ceiling at a casino;
- structural collapse cases, e.g. concert halls;
- temporary works disputes over liability;
- acting for university trusts in property disputes with contractors and professionals;
- disputes concerning teaching hospitals and breach of Health Building Notes (HBNs) and Health Technical Memoranda (HTMs);
- disputes concerning swimming pools and their MEP systems;
- adjoining owner and boundary disputes on congested London projects;
- injunctive work in construction cases over materials in docks and laydown yards;
- fatal accidents on construction sites from trench collapse and scaffolding;
- waste-to-energy plan contractual disputes (numerous)
- high voltage transformer disputes and technical issues with construction of data centres;
- disputes over interconnector substations;
- HV cabling disputes over quality control with interconnector projects (numerous);
- major PFI disputes over SPV management in the UK health care sector;
- disputes over construction of schools using modern methods of construction;
- contentious property disputes involving HVAC and MEP systems; and
- disputes involving misrepresentation and negligent misstatement.

Reported cases

Besides his arbitration cases Simon has led a number of important reported cases in his career to date, including:

- *Stanor Electric Ltd v R Mansell Ltd* (1987)
- *West Faulkner Associates v London Borough of Newham* (1993) CA
- *Team Services v Kier Management and Design Ltd* (1993) CA
- *Russell Brothers (Paddington) Ltd v John Lelliott Management Ltd* (1995)
- *Birse Construction Ltd v Haiste Ltd and Newton* (1996) CA
- *Blaenau Gwent Borough Council v Robinson Jones Design Partnership and Lock CE Ltd* (1997)
- *Hershel Engineering Ltd v Breen Property Ltd No 1* (2000)
- *KNS Industrial Services (Birmingham) Ltd v Sindall Ltd* (2001)
- *Sindall Ltd v Solland Interiors Ltd* (2001)
- *Taylor Woodrow Holdings Limited and George Wimpey (Southern) Limited v Barnes & Elliott Limited* (2004)
- *Connex South Eastern Ltd v MJ Building Services* (2004) CA
- *Allan Wilson Builders & Shopfitters v Anthony Buckingham* (2005)
- *Great Eastern Hotel Co Ltd v John Laing Co Ltd* [2005]
- *Taylor Woodrow and another v Barnes & Elliott* (2006)
- *Multiplex Constructions (UK) Limited v Honeywell Control Systems Limited (No. 2)* (2007)
- *Vitpol Building Limited v Michael Samen* (2008)
- *Primus Build Limited v (1) Pompey Centre Limited (2) Slidesilver Limited* (2009)
- *Simon Carves Limited v Ensus UK Limited* (2011)
- *SABIC UK v Punj Lloyd and Simon Carves* (2013)
- *W Ltd v M SDN BHD* [2016] *Lloyd's Rep*

- *National Infrastructure Development v Banco Santander* (2017) CA [2017] EWCA Civ 27
- *Axis M&E UK Ltd & Anor v Multiplex Construction Europe Ltd* [2019] EWHC 169 (TCC)

Other activities:

Simon is past chairman of the Technology and Construction Solicitors' Association (TECSA), a role he held for five years, and is now the Honorary President. TECSA is the leading organisation for solicitors practising construction and information technology law in England and Wales. In that time he championed the TECSA eDisclosure Protocol (in collaboration with TECBAR and the Society of Computers and the Law) and its first revision in January 2015.

In 2015 Simon also led TECSA's research and thorough review of the Construction and Engineering Pre-Action Protocol (PAP) and the views of those using PAP, including solicitors, consultants, contractors, employers and specialist subcontractors. Working with the services of Acuigen he investigated the ways in which PAP was and was not working, and produced recommendations for its amendment. It was the first time the views of those using PAP and the Technology and Construction Court (TCC) had been subject to a detailed independent survey. It resulted in TECSA and TECBAR drafting a revised version of the PAP (in which Simon was heavily involved) reflecting the study outputs, which was added to the White Book in late 2016.

Simon is also actively involved with the training and policy of construction solicitors and TECSA adjudicators. He is also a Visiting Lecturer at King's College London on their MSc in Construction Law and Dispute Resolution. He has lectured and chaired extensively for most of the major conference symposia as well as at many other universities, the RICS, Arbrix, SCL, ICES and the Chartered Institute of Arbitrators, and legal education networks. He has also chaired and taken part in numerous webinars on construction law issues for two publishing houses. Simon wrote the contract module for King's College's Construction Law, Litigation and Regulation distance learning course.

He co-authored *Avoiding Contractors' Claims* with Mark Hackett, then partner in Davis Langdon & Everest.

He has an occasional column in *Building* magazine and has contributed to numerous other legal and construction journals. He is also a past member of the editorial board for the CLT journal, *The Engineering and Construction Law Journal*.

Between 1998 and 1999, Simon was also on the Faculty Training Board of the CIOB training adjudicators. He also presents many webinars and has a close interest in the Building Safety Act 2022.

Simon's memberships/positions include:

- Honorary President of TECSA;
- President of the Society of Construction Arbitrators;
- fellow of the Chartered Institute of Arbitrators 1995;
- member of the Society of Construction Law;
- member of the Society of Computers and the Law;
- member of the Adjudication Society;
- fellow of the Faculty of Building/Forum for the Built Environment, which in 1995 awarded him the Gordon Tomalin prize;
- member of the Dispute Resolution Board Foundation;
- member of LCIA;
- liveryman of the Worshipful Company of Arbitrators;
- CEDR trained mediator.

Simon's interests outside the law include cars and motorcycles, buildings (restoring them) and modern methods of construction, power generation and architecture. He is also interested in generative AI and the legal use case development of construction technology. Simon loves travel, off-roading and his family.