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## FIONNUALA McCREDIE QC

Call: 1992 / Silk: 2013

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### Areas of Practice

- Construction & Engineering
- EU Procurement
- Energy & Natural Resources
- PFI & PPP
- Mediation
- Professional Negligence
- Property

### Clerks' Details

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### Practice Overview

Fionnuala McCredie was called to the Bar in 1992 and specialises in the fields of construction and engineering, public procurement, energy, environment and professional negligence related claims and insurance disputes.

Fionnuala's practice covers a wide range of advocacy, advisory and drafting for both domestic and international clients. Her advocacy expertise has led her to regularly act for clients in the High Court, especially the Technology and Construction Court, as well as the Court of Appeal and appear before arbitrators, adjudicators and other tribunals. She is a CEDR certified mediator and a very experienced mediation advocate. Her mediation experience extends to international mediations and she has recently conducted several mediations virtually.

"Held in high esteem for her busy procurement practice", Fionnuala acts for challengers, contracting authorities and successful tenderers in a wide range of procurement disputes. Significant cases in which she has appeared include the 2019 Rail Franchising Litigation (named by The Lawyer as one of its Top 20 Cases of 2020), in very substantial court challenges by Stagecoach, Virgin and Arriva to their disqualifications from rail franchising competitions, CAF v HS2, in a challenge against exclusion at qualification stage in the competition for the HS2 rolling stock, Cemex v Network Rail concerning the procurement for the design and build of a concrete sleeper manufacturing facility, and Marine Specialised Technology v the Secretary of State for Defence, Roche Diagnostics Ltd v The Mid Yorkshire Hospitals NHS Trust and Pearson Vue v Minister for the Cabinet Office on early and specific disclosure in procurement cases.

Fionnuala's construction practice has involved disputes related to commercial and domestic property, structural glass and cladding, railways, roads, mining, water, marine and aviation hardware disputes, dredging and marine engineering, process plants and IT disputes. Her key recent construction cases include the high profile case of Eurocom v Siemens where the court found a strong prima facie case of fraudulent misrepresentation in an adjudicator's appointment. She is also instructed in a large volume of PFI disputes in rail, healthcare and leisure sectors, including advising Greater Manchester Waste Disposal Authority on the termination of its Recycling and Waste Management PFI with Viridor Laing in 2017.

Clients credit Fionnuala for her dedication to achieving results and passion for protecting their interests. Her understating of their commercial objectives, coupled with her technical brilliance in even the most complex of cases mean "those who know her will not even consider using anyone else." She is recommended as a leading silk for procurement and construction in both the Chambers UK and Legal 500 UK Bar guides.

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## Recent Cases

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### Procurement & Competition

- 2019 Rail Franchise Litigation : [2020] EWHC 1568 (TCC) - Acted for the successful Department for Transport in respect of the procurement challenges commenced by Stagecoach, Virgin and Arriva following their disqualification from three rail franchise competitions. This was a very value, high profile expedited trial and the Judge rejected the Claimants' claims in their entirety.
- Acted for Live Nation Music Ltd who bid for the contract to run Hyde Park summer music festival tendered by The Royal Parks.
- Marine Specialised v Secretary of State for Defence [2019] EWHC 2727 (TCC) - Acted for the Claimant in a procurement dispute concerning marine equipment for the MOD.
- Circle Nottingham Ltd v NHS Rushcliffe CCG [2019] EWHC 1315 (TCC) - Acting on behalf of an incumbent challenger resisting the lift of an automatic suspension of contract award in their challenge of a procurement for the provision of medical services at the Nottingham Treatment Centre.
- CAF v HS2 [2018] EWHC 311 (TCC) - Acting in court challenge to a pre-qualification stage of the rolling stock procurement for HS2.
- Acted for PCM Rail.One, the Interested Party, in Cemex v Network Rail and PCM Rail.One [2017] EWHC 2392 (TCC) (the successful bidder in a case concerning a procurement exercise for the provision of logistic services for the NHS)
- Acted for the Defendant in a legal challenge arising out of the procurement of the new emergency services ("3Es") communication system.
- Advising a public authority on the procurement aspects of the potential for variation of, or termination of, a large and high profile P.F.I. contract.
- Acting for a challenger in respect of a procurement for development services for a local authority estate refurbishment project.
- Acted for the successful tender in a challenge to the award of a contract for haematology and coagulation services.
- Acting for Contracting Authority in the PFI procurement of a waste disposal service, including an EfW plant. Advising on all aspects of the procurement (a competitive dialogue).
- Roche Diagnostics Ltd v The Mid Yorkshire Hospitals NHS Trust [2013] EWHC 933 (TCC): Acted in this leading case concerning early disclosure in procurement cases.
- Liconic AG v UK Biocentre: defeated a claim for strike out/ summary judgment where pleadings disclosed an arguable case that the Defendant met the criteria for being a contracting authority.
- Pearson Driving Assessments Ltd v Minister for the Cabinet Acted for Pearson in a challenge to the award of a contract for administration of the driving theory test.
- Harry Yearsley Ltd v Secretary of State for Justice [2011] EWHC 1160 (TCC): successfully defended an attempted strike out in a procurement case involving the supply of food to prisons.
- Amaryllys Ltd v HM Treasury (sued as ogcbuying solutions) [2009] EWHC 1666 (TCC): Case concerned the procurement process involved the supply and installation of furniture for a variety of government departments.

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“She really gets behind the client and is very passionate about protecting their interests - clients feel like she will go in to bat for them at every turn. Those that know her will not even consider using anyone else.”

Chambers & Partners UK Bar 2018

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#### Construction & Engineering

- Advised on the issues in respect of performance of, and potential termination of, a large and very high profile Private Finance Initiative (“PFI”) contract.
- Acting for the supplier and designer of a bioreactor gas treatment system for a waste treatment plant. The dispute included liability for the cost of delays to the waste treatment plant completion and the efficacy of the gas treatment system. The case involved complex and interesting technical and legal issues around the operation of bioreactors and legal responsibility for variations in plant operation.
- Providing ongoing advice to a contractor on issues arising in the construction of a very large hospital P.F.I. contract, including unforeseen ground conditions, asbestos finds and the liability therefore and a professional negligence claim against advisors to the contractor.
- Eurocom v Siemens [2014] EWHC 3710 (TCC): Very high profile case uncovering a long standing practice by some adjudication practitioners of alleging conflicts of interest on the part of prospective adjudicators when there was no such conflict in order to avoid them being nominated by the RICS. The case has had significant consequences for adjudication in the construction industry in increasing the transparency of the process by which adjudicators are appointed.
- Working Environments Limited v Greencoat Construction Limited [2012] EWHC 1039 (TCC): Acted for the defendant in this case which was the first example of severance of part of an adjudicator’s decision.
- Carillion JM Ltd v Bath and North East Somerset Council: Acted for the contractor responsible for the construction of the new Bath Spa project.
- Acting for a leading international law firm in disputes arising out of the construction of a new headquarters building in the Caribbean. In what is her longest running case to date, Fionnuala advised on initial steps to rescue the building project and subsequently in a successful negligence claim against the design team for defects and the defence of a claim by the contractor for delay, disruption, loss and expense.

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“Endless enthusiasm and patience allied to a very keen commercial understanding of the industry and the legal challenges it faces.”

Chambers & Partners UK Bar 2019

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#### PFI & PPP

- Acting for Contracting Authority in the PFI procurement of a waste disposal service, including an EfW plant. Advising on all aspects of the procurement (a competitive dialogue).
- Advising Contracting Authority in the termination of a large operation PFI contract. Case involved the technical aspects of EfW plants, composting plants, anaerobic digesters and Mechanical Treatment plants, SOPC 3 and 4 drafting issues, rights of step-in, and duties to, and rights of, the senior lenders under a direct agreement.

- Acting for Contracting Authority in an adjudication over Performance Points and Performance deductions under the Paymech.
- Advising Contracting Authority on the procurement aspects of material changes to a large leisure PFI.
- Acting for the Facilities Management Contractor in an expert determination of a dispute about the re-basing of the FM services in a hospital PFI.
- Acting for the Facilities Management Contractor in a dispute about the standard of performance required, the meaning of the KPIs, the right to make performance deductions and Paymech provisions in a large hospital PFI (air-conditioning maintenance and cleaning, cleaning services generally).
- Acting for the Construction Contractor in multiple construction disputes in a PFI for the provision of court services.
- Acting for the Operating Contractor in multiple disputes arising from the Operating Contract and the Interface Agreement arising from an accommodation PFI (liability for replacement of public address system, MORE).
- Acting for the Construction Contractor in a dispute regarding the liability for asbestos finds in a schools PFI.
- Acting for the Construction Contractor in a dispute regarding the liability for asbestos finds existing buildings and in the ground in a hospital PFI.

### Energy & Natural Resources

- Acting for the designer and builder of an innovative Energy from Waste food waste anaerobic digestion plant.
- Acting for the designer and manufacturing of a biological odour control system in respect of an energy from waste facility in the South of England. The dispute included liability for the cost of delays to the waste treatment plant completion and the efficacy of the gas treatment system. The case involved complex and interesting technical and legal issues around the operation of bioreactors and legal responsibility for variations in plant operation.
- Acting for Greater Manchester Waste Development Authority in relation to the Greater Manchester Waste PFI contract.
- Acting for Merseyside Waste and Recycling Authority in the procurement of EfW facilities.

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“She offers pragmatic, down-to-earth advice, and is great at advising in straightforward terms.”

Chambers & Partners UK Bar 2019

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### Professional Negligence

- Experience in both construction related professional negligence (architects, engineers, contractor designed works, surveyors, valuers etc.) and solicitors negligence.
- Acted in a long running dispute for a building owner in claims against the designers and the contractor in respect of the construction of the head office of an international law firm in the Caribbean. Advised on remedial work necessary to enable occupation of the building, claims professional negligence claims against the designers, and claims against the contractor for defective workmanship.

### Mediation

Fionnuala has a busy mediation practice and is regularly instructed to mediate construction, IT and procurement-related disputes. Her recent appointments include:

- An international mediation conducted by the ICC concerning the supply/replacement/upgrade of gas turbines.
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- Sole mediator in a multi-day CEDR mediation concerning a long-running IT contract dispute between long term contracting partners.
- Sole mediator in a virtual mediation concerning a defective roof drainage system
- Sole mediator in a procurement dispute regarding a competition for health and social care services
- Sole mediator in a procurement dispute regarding the provision of infrastructure services

Fionnuala receives a great deal of praise from parties and recent mediation feedback is included below:

“Ms McCredie’s approach to the mediation was thorough, responsive and constructive. She was well briefed and showed an immediate understanding of the issues and the aims and expectations of the parties. She also showed a proactive and persuasive approach without pressure but with the right level of guidance to identify a route through to resolution. She also managed the technological challenges of the virtual mediation process and was always available or clear on her other commitments to manage a changing timetable, giving the parties time to consider whilst maintaining a momentum to the dialogue. My clients would be very happy to call upon her support again and found the mediation route a valuable one.” Instructing solicitor, 2020

“Fionnuala acted as a mediator for one of our recent procurement challenges. Right from the start of her instruction, during the preparatory calls and in the plenary session on the day, Fionnuala set clear objectives which really helped set the tone and focus the parties on resolution. She was extremely commercial and encouraged the parties to think outside of the box. Fionnuala was a fundamental part of the negotiation process and successfully facilitated a creative resolution to the satisfaction of both parties. I would highly recommend her to any colleagues or clients alike.” Instructing solicitor, 2020

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**“Thoughtful and reflective in style, and willing to commit time and effort to secure progress”.**

Mediators Legal 500 2022

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### Selected Reported Cases

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- DHL Supply Chain Limited v Secretary of State for Health and Social Care and Unipart Limited [2018] EWHC 2213 (TCC)
- Cemex UK Operations Ltd v Network Rail Infrastructure Ltd & PCM Rail.One AG [2018] PTSR 824, [2017] WLR(D) 637, [2017] EWHC 2392 (TCC) (8 September 2017)
- Eurocom Limited v Siemens Plc [2015] QBD (TCC) (12 February 2015)
- Eurocom Limited v Siemens Plc [2014] EWHC 3710 (TCC) (07 November 2014)
- Liconic AG v UK Biocentre Limited [2014]
- Pearson Driving Assessments Limited v The Minister for the Cabinet [2013] EWHC 2082 (TCC)
- Roche Diagnostics Limited v The Mid Yorkshire Hospitals NHS Trust [2013] EWHC 933 (TCC)
- Roche Diagnostics Ltd v The Mid Yorkshire Hospitals NHS Trust [2013] EWHC 933 (TCC)
- Working Environments Limited -vs- Greencoat Construction Limited [2012] EWHC 1039 (TCC)
- Harry Yearsley Ltd v Secretary of State for Justice [2011] EWHC 160
- Hyder Consulting (UK) Ltd v Carillion Construction Ltd [2011] EWHC 1810 (TCC)
- Amaryllyis Ltd v HM Treasury (sued as ogcbuying solutions) (No.2) [2009] EWHC 962 TCC, [2009] EWHC 1666 (TCC), (2009) 25 Const LJ 528, [2009] BLR 425 and [2010] Eu LR 152
- Carillion JM Ltd v Bath and North East Somerset Council [2009] EWHC 166 (TCC), [2009] TCLR 5 TCC
- Quartzelec Ltd v Honeywell Control Systems [2008] EWHC 331 (TCC); (2009) CILL 2665
- Cubitt Building & Interiors Ltd v Fleetglade Ltd [2006] 110 Con LR 36

- Tera Construction v Lam [2005] EWHC 3306 (TCC)
- Hotel Services Ltd v Hilton International Hotels (UK) Ltd [2000] BLR 235 CA
- Hotel Services Ltd v Hilton International Hotels (UK) Ltd [1997] EWCA Civ 1822
- Christiani & Nielsen Ltd v Birmingham City Council (1994) ; 52 Con. L.R. 56

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## Seminars, Publications & Papers

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- Eurocom v Siemens: as “strong prima facie” case of fraudulent misrepresentation, Practical Law Construction blog, 12 November 2014.
- Researcher, Keating on Construction Contract – Ninth Edition (2012).
- Using Part 8 to finally determine issues and enforce part only of an adjudicator’s decision Fionnuala McCredie QC and William Webb 3 February 2010.
- Lectures regularly at procurement industry events including White Paper conferences and Procurement Lawyers Association seminars.
- Recent White Paper Seminars
  - o What is a “Sufficiently Serious Breach” of the Procurement Regulations? May 2018
  - o Past Performance May 2017
  - o Freedom of Information Act Requests May 2016
- Provides training and CPD for solicitors on construction and procurement issues.

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## Education & Professional Career

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Manchester University - Bsc (Hons) Geography	1983 - 1986
Housing Association Development Officer	1986 - 1990
Brunel University - MA Public & Social Administration	1987 - 1990
Middlesex Polytechnic Business School - CPE	1990 - 1991
Called to the Bar (Middle Temple)	1992
3 Serjeants’ Inn	Up to 2008
Keating Chambers	2008
Bencher, Middle Temple	2010
Silk	2013
CEDR Accredited Mediator	2014

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## Memberships

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- Commercial Bar Association (COMBAR)
- Technology and Construction Bar Association (TECBAR)
- London Common Law and Commercial Bar Association
- Society of Construction Law

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## Additional Information

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Fionnuala enjoys skiing, rock climbing, running and family life with her children.