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CHAMBERS

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## TOM OWEN

Call: 2011

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### Areas of Practice

- Construction & Engineering
- Professional Negligence
- Arbitration
- Energy & Natural Resources
- Infrastructure & Utilities
- Offshore Construction & Marine Engineering
- PFI/PPP
- Property
- IT & Technology

### Clerks' Details

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### Practice Overview

Tom Owen is recognised as one of the leading juniors at the construction and energy Bar.

Tom is widely-acclaimed in the legal directories, recognised as "one of the most promising juniors at the Bar". Legal Week's 'Stars at the Bar' say "he has everything you would want of Counsel". Tom has been nominated for Construction Junior of the Year in 2021 at the Chambers and Partners Bar Awards.

Tom is known particularly for his advocacy and trial work.

Tom regularly appears as advocate in the High Court and arbitration. Tom has appeared, as Junior Counsel, in the Court of Appeal.

Recent recommendations:

'Stars at the Bar':

- Of Tom's cross-examination: "he destroyed the other party's case – such that they withdrew their claim before a decision was reached."
- "he doesn't back down when challenged by a judge and continues to fight his corner even in the face of adversity."
- "he has everything you would want of Counsel."

Chambers and Partners:

- "widely acclaimed up-and-coming junior who regularly appears as sole counsel before the

TCC.”

- “His written court work is outstanding”.
- “His work is meticulous and of a very high standard.”

Who’s Who Legal:

- “Tom is mature beyond his years; he’s incredibly thorough in his preparation and sees points in a claim that others might overlook.”
- “one of the most promising young juniors at the Bar.”
- “by a long way the best junior counsel I have instructed in over 20 years of practice.”
- “His written work is exemplary and his court presence is very impressive for someone of his year of call”.

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## Recent Cases

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### Advocacy

Trials:

- 3 week trial (London TCC): termination and delay dispute against a subcontractor concerning a power plant in Wales.
- 2 week trial (London TCC): defects dispute concerning a football stadium.
- 1 week trial (London TCC): high net worth individual central London property dispute. Judgment with costs and dismissal of the counterclaim. The case required careful cross-examination by Tom of the factual witnesses and experts, and submissions on the law of repudiation, notices making time of the essence, delay, the prevention principle and recovery of payments in restitution.
- 3 day trial (London TCC): developer defending a claim for breach of contract the Defective Premises Act 1972 concerning defects in common parts of a development of residential apartments. The trial ultimately turned on whether a lease between a developer and management company contained implied terms as to the standard of construction of the development. Tom successfully argued that there were no implied terms.

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“His written work is as incredible as his courtroom manner and advocacy.” “His written work pleadings and advice are clear and top quality, and his oral advocacy is outstanding.”

Chambers & Partners UK Bar 2022

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- 2 day trial (Leeds TCC): developer defending a claim concerning compliance with Building Regulations and the correct measure of damages. The case required robust cross-examination of the engineering expert and witnesses.
- 1 day Part 8 trial (London TCC): the requirements of a payment notice in a hybrid contract.
- Criminal prosecution: defending a national housebuilder for health and safety charges on a construction site in Manchester. Tom’s client was acquitted.

Adjudication enforcements: various, seeking and resisting enforcement.

- London TCC: resisting enforcement fraud in procuring the decision – not enforced.
- London TCC: resisting enforcement by section 105(2)(c) where the primary activity on site was power generation (fluidised-bed gasification power plant) – not enforced.
- London TCC: seeking a stay of execution concerning a biomass power plant – stay obtained for c£4.5m, approximately half judgment sum.
- Manchester TCC: resisting enforcement – wrong party (no jurisdiction), decision out of time (no jurisdiction), errors in appointment (jurisdiction), and breach of natural justice – not enforced.

#### Arbitration hearings:

- 5 day liability trial – Counsel for the Claimant in a substantial M&E dispute concerning refrigeration equipment at a food production facility. Judgment for the Claimant.
- 2 day fraud trial – Counsel for the Claimant against Leading Counsel. Judgment for the Claimant.

#### Appeals:

- Court of Appeal – Junior Counsel, led by Simon Hargreaves QC. In a hybrid contract, for the purpose of section 111 of the Housing Grants, Construction and Regeneration Act 1996 must a payment notice identify the sum due in respect of construction operations separately from any non-construction or excluded operations.
- Court of Appeal – Junior Counsel, led by Steven Walker QC, concerning whether a CPR Part 15 Defence is required to resist enforcement proceedings by summary judgment under CPR Part 24 for fraud.
- Court of Appeal – Junior Counsel, led by Marcus Taverner QC, concerning the meaning of an exemption clause “liability for any claim in relation to asbestos is excluded”.
- Court of Appeal – Junior Counsel, led by Simon Hughes QC, concerning amendments after expiry of the limitation period. Whether they were a “new claim” under section 35 of the Limitation Act 1980 and rule 17.4 of the Civil Procedure Rules.

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“His tenacious ability to deal with difficult cross-examinations and the talent of having just about every single fact to hand. Whilst very polite and easy to get on with, a real steel fist in a velvet glove “

Legal 500 UK Bar 2022

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#### Case Management Conferences (CMC):

- Construction dispute (London TCC) – approval of the client’s budget, and reduction by 10% of the opposition’s budget.
- Professional negligence dispute (Manchester TCC) – reduction of 15% in the opposition’s budget.
- Engineering dispute (Bristol TCC) – successful application to amend and summary judgment.
- Commercial dispute (Leeds TCC) – reduction of 25% in the opposition’s budget.

#### Pre-trial Reviews (PTR):

- Energy dispute (London TCC) – successful application to add Third Party under CPR Part 20 and to amend.
- Professional negligence dispute (Leeds TCC) – successfully resisted an application by the Defendant to amend its counterclaim.
- Construction dispute (Bristol TCC) – successful application to vacate the trial.

#### Applications:

- Specific disclosure (London QBD) – successfully obtained specific disclosure in a commercial dispute.
- Strike out (London TCC) – successfully resisted strike out of claims for loss of future business and profits, concerning assignments, contractual construction and remoteness of damage.
- Summary judgment (London TCC) – whether an agreement was ‘subject to contract’ and conditional upon formal execution.
- Summary judgment and strike out (Manchester TCC) – successfully resisted strike out concerning allegations of no-loss and invalid assignments.
- Relief from sanctions (High Court, Chester District Registry) – 1 day hearing involving live evidence and cross-examination.

- Section 9 Arbitration Act stay (Bristol TCC).
- Part 18 requests for further information (TCC) – various, seeking and resisting applications.
- Amendments – various, seeking and resisting.

#### Adjudication hearings:

- Counsel – defending a claim for rectification and fraud. Tom cross-examined the referring party's principal factual witness. Following the hearing, the Referring Party discontinued the adjudication.
- Counsel – defending claims under a £84m fit-out and refurbishment contract. Following cross-examination of the delay expert and submissions, no order for payment was made against the client

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“Very user-friendly and totally committed to the task. He delves into the details in incredible depth, so you know he'll be utterly prepared for every eventuality.”

Chambers UK Bar, 2018

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#### Construction & Engineering

- Counsel in a football stadium defects dispute.
- Counsel in a delay and payment dispute concerning Heathrow airport.
- Counsel for funders and developers concerning fit-out of a central London hotel.
- Advises frequently on termination.
- Counsel in fraud proceedings concerning central London developments.

#### Commercial

- Counsel in a claim in the Commercial Court under a guarantee.
- Counsel for a football club in a commercial dispute involving allegations of defamation.
- Counsel in a shipping dispute concerning a termination clause under a charterparty and the BIMCO Barecon 2001 form.
- Advised on economic torts, including conspiracy to injure, unlawful means conspiracy and malicious falsehood in relation to an international exclusive distribution agreement.
- Advised on service of documents out of the jurisdiction under Part 6 of the Civil Procedure Rules and under the Hague Convention.

#### Professional Negligence

- Counsel for the Employer in proceedings (TCC) concerning the design and installation of ground source heat energy pump systems.
- Counsel for the developer in proceedings (TCC) against consulting engineers concerning ground contamination.
- Counsel in proceedings (TCC) against M&E consultants concerning design and review of air conditioning systems.
- Counsel in proceedings (TCC) against geotechnical engineers concerning landslips at a housing development.
- Counsel in disputes (arbitration) against specialist cladding, window and door designers and contractors.

#### Arbitration

- Junior Counsel in an ICC Arbitration concerning a residential, office and hotel project in Dubai.
- Junior Counsel in an ICC Arbitration concerning an offshore wind farm.

- Counsel in a claim concerning earthworks at a University campus.
- Counsel for an insurer seeking enforcement of arbitral award.
- Advised on the effectiveness of an arbitration clause in a consumer contract and the effect of the Unfair Terms in Consumer Contracts Regulations 1999.

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“An extremely hard-working and thorough junior. He is very responsive and accommodating to requests even when busy. He is bright and happy to help - a pleasure to work with.”

Chambers UK Bar, 2019

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#### Energy & Natural Resources

- Counsel for the Main Contractor in termination disputes (TCC) concerning a biomass fired energy plant.
- Counsel for the Contractor in claims (arbitration) concerning a substantial African gas pipeline.
- Counsel for the Employer in payment disputes (adjudication and TCC) concerning a gas-fired power station.
- Counsel in biological treatment (TCC) and energy from waste (advisory) projects.
- Counsel on offshore windfarm disputes (arbitration).

#### Infrastructure & Utilities

- Counsel in a dispute concerning works to flight training facilities at Heathrow Airport.
- Advised on motorway road maintenance contracts.
- Advocate in disputes concerning damage to apparatus owned by utility companies, in negligence and under the New Roads and Street Works Act 1991.
- Counsel for a contractor concerning flood defence systems along the River Thames.
- Counsel in claim concerning fire damage and remedial works to a hospital.

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“The ability to combine a fastidious attention to detail and prodigious memory for every fact combined with a genuine team spirit and client-friendly approach to the role.”

Legal 500 UK Bar 2022

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#### Offshore Construction & Marine Engineering

- Counsel in a claim concerning bridge linked platforms between oil drilling rigs.
- Counsel in a dispute concerning one of the UK's largest commercial ports.
- Advised on non-assignment provisions under an Engineer-Procure-Construct contract for an offshore drilling rig.
- Junior Counsel in a dispute concerning offshore heavy lifting vessels.
- Claim by an oil major against a global offshore contractor in respect of defective installation of a subsea

dynamic umbilical cable at a floating production storage and offloading vessel (FPSO).

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“By a long way the best junior counsel I have instructed in over 20 years of practice. His written work is exemplary and his court presence is very impressive for someone of his year of call.”

Who's Who Legal UK Bar, 2016

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#### PFI/PPP

- Counsel for the Contractor in defects disputes concerning PFI BSF projects.
- Counsel for NHS Trusts in defects and payment disputes concerning Use, Accessibility, Safety, Unavailability and Clinical Interdependency.
- Counsel in fire stopping, fire compartmentation and fire defects disputes.
- Counsel for local authorities under project agreements concerning the interpretation of payment mechanisms on utilities payment disputes.
- Counsel for Project Co in respect of availability at a leisure complex.

#### Property

- Counsel in a claim concerning remedies for specific performance, rescission and damages relating to the conveyance of residential properties.
- Counsel in a claim concerning private nuisance and trespass to subterranean works.
- Advised on easements (rights of way and parking).
- Counsel in a claim concerning defective title to residential premises.
- Counsel in a dispute between a property management company and developers relating to common parts of a development.

#### IT & Technology

- Counsel in a dispute concerning the updating of the website of a leading advertising agency.
  - Counsel in a commercial broadband and telecommunications dispute, raising issues of loss of profit, loss of reputation and exclusion clauses.
  - Counsel in a dispute concerning the supply and transport of high voltage switchgear electronics.
  - Advised in relation to GPS tracking technology.
  - Advised in relation to distribution agreements for satellite antennae.
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“He delves into the details in incredible depth, so you know he’ll be utterly prepared for every eventuality.”

Chambers UK Bar, 2018

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## Insurance

- Counsel in a claim against insurers under a defective title property policy.
- Advised on the recoverability under an insurance policy for subsidence damage.
- Advised on the subrogated rights of an insured as against a co-insured of a joint names insurance policy on a dispute concerning damage to a hospital.
- Drafted statements of case and advised on coverage under NHBC and related insurance policies and their legal effect upon independent liability under construction contracts, leases, guarantees and the Defective Premises Act 1972.
- Advised on remedies concerning insurance disputes through the Financial Ombudsman, under the ICOBS rules and the Financial Services and Markets Act 2000.

## Selected Reported Cases

- PBS Energo A.S. v Bester Generacion UK Ltd [2020] EWCA Civ 404
- C Spencer Limited v MW High Tech Projects UK Limited [2020] EWCA Civ 331
- Engie Fabricom UK Ltd v MW High Tech Projects UK Ltd [2019] EWHC 1876 (TCC)
- PBS Energo A.S. v Bester Generacion UK Ltd [2019] EWHC 996 (TCC)
- Midal Cables Ltd v AMEC Foster Wheeler Group Ltd [2019] EWHC 1155 (TCC)
- Swansea Stadium Management Company v Swansea and Interserve [2019] EWHC 989 (TCC)
- Swansea Stadium Management Company v Swansea and Interserve [2018] EWHC 2192 (TCC) and EWHC 2210 (TCC)
- Dixon v Radley House Partnership and Mr Christopher Reading and Others [2016] EWHC 2511 (TCC).
- Persimmon Homes Ltd & Others v Ove Arup & Partners Ltd & Another [2015] EWHC 3573 (TCC)
- Seeney v Gleeson Developments Ltd [2015] EWHC 3244 (TCC)
- Errington v David Brown Gear Systems Ltd [2014] EWHC 4255 (TCC)
- Co-operative Group Ltd v Birse Developments Ltd and Others [2013] B.L.R. 383, [2013] EWCA Civ 474

## Education & Professional Career

Appointed to the CEDR Solve Adjudicator Panel	2013
TECBAR-accredited Adjudicator	2013
Tenant, Keating Chambers	2012
Pupil, Keating Chambers	2011-2012
Bar Professional Training Course, Nottingham Law School - ranked top in the year	2010-2011
MA (Hons) Law, University of Cambridge, Downing College	2007-2010
Loughborough Grammar School, Head Boy (2006/07)	2000-2007

## Awards & Scholarships

The Baron Dr Ver Heyden De Lancey Prize, ranked top Middle Templar on the BPTC	2012
Certificate of Honour, Middle Temple	2011
Lord Taylor Prize, ranked top in the year at Nottingham Law School BPTC	2011
The Advocacy Prize, Nottingham Law School BPTC	2011
Winner of the Nottingham Law School Ropewalk Mooting Competition	2011
Queen Mother Scholarship, Middle Temple	2010

Finalist, University of Cambridge De Smith Mooting Competition	2010
Sporting Colours, Downing College	2010
Downing College Lovells Prize	2008
Finalist, representing the University of Cambridge at the International Roman Law Moot Conference	2008

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## Memberships

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Middle Temple

Society of Construction Law (SCL)

TECBAR

COMBAR

LCLCBA

TECBAR - accredited Adjudicator and, by invitation, a Member of the CEDR Solve Adjudicator Panel.

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## Seminars, Publications & Papers

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- Article: "How to get costs on the indemnity basis"
- Article: "Court fees in civil litigation: practical guidance"
- By invitation of King's College London, Tom is a lecturer and examiner on the MSc Construction Law & Dispute Resolution course.
- Tom lectures on all aspects of Civil Procedure and Civil Litigation.
- Article: "Late amendments and amendments after the expiry of the limitation period"
- Article: "Practical Guidance on Relief From Sanctions after Denton – July 2014"
- Article: "Construction Adjudication Enforcement"
- Article: "Liquidated damage: are they penal?"
- Article: "Who is the contract with: the director or his company?"
- Article: "Silence: unreasonable refusal of ADR."
- Article: "Liability for natural nuisances."
- Article: "Tree roots: causation in natural nuisance cases."
- Article: "Practical guidance on relief from sanctions after Mitchell and Durrant - January 2014."
- Co-Author of the 5th Edition of Halsbury's Laws of England: Income Taxation – Sub-contractors in the Construction Industry.
- Author of iSurv: Payment under Construction Contracts.
- "Amendments after limitation: limiting the amendments", KC Construction Update, Summer 2013 (pp.12-13).
- Sweet & Maxwell webinar Masterclass from Tom Owen: "Nuisance and Rylands v Fletcher: recent developments".
- Sweet & Maxwell webinar Masterclass from Tom Owen: "Commercial Property – pre-contractual representations, agents' duties and guarantees".
- By invitation of legal publishers, Sweet & Maxwell, Tom Owen is the author of "Defective Premises" and "Lis Alibi Pendens" for Westlaw UK Insight.
- Further, by invitation, Tom Owen is the author of: "Construction Adjudication: Enforcement" and "Construction Adjudication: Overview" for Westlaw UK Insight.



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## Languages

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English (native)  
French (professional working proficiency)  
German (professional working proficiency)

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## Additional Information

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Tom is a keen sportsman. He enjoys playing and watching football, rugby and cricket.