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Harry Smith

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Areas of practice

- Construction & Engineering
- Professional Negligence
- Insurance
- Arbitration
- Adjudication
- Mediation
- Bonds & Guarantees
- Property

Clerks' Details

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Practice overview

Harry Smith specialises in construction and energy disputes. He is recognised by the Legal 500 as a 'Rising Star': "His written advice is stellar, matched by his skills in court. Would not hesitate to put Harry's intellect against any other more senior member of the Bar."

Reported examples of Harry's appearances for successful parties in the High Court include Aqua Leisure International Ltd v Benchmark Leisure Ltd [2021] BLR 150; Croudace Homes Ltd v PRB Wiring Solutions Ltd [2020] EWHC 2139 (TCC); Synergy Gas Services v Northern Gas Heating Ltd [2019] 1 BLR 132; and JonJohnstone Construction Ltd v Eagle Building Services Ltd [2017] EWHC 2225 (TCC).

Other recent highlights of Harry's practice include his appearance as junior counsel for the successful respondent in the Court of Appeal in Herons Court v NHBC Building Control Services Ltd [2019] EWCA Civ 1423, and his work as junior counsel in international arbitrations concerning, variously, projects in Qatar, Dubai, Bahrain, Saudi Arabia, South Africa and Kazakhstan.

Harry has experience of all major standard forms including the JCT, NEC and FIDIC, and is a contributor to the current edition of the loose-leaf Keating on JCT Contracts. He is also a contributor to the current edition of Keating on Construction Contracts. He publishes articles and gives talks on all aspects of construction law.

Recent Work

Construction & Engineering

Harry Harry's recent work includes:

- *Strathgarve Estates Ltd v Wiggins Lockett Thompson Ltd* (2021). Harry appeared for the successful defendant in a case concerning alleged professional negligence by a surveyor, obtaining an order that the claim be struck out on Pantelli grounds.
- *Hérons Court v NHBC Building Control Services Ltd* [2019] EWCA Civ 1423. Harry appeared as junior counsel (led by Sam Townend) for the successful Respondent in the Court of Appeal in a case concerning an attempt to extend s. 1 of the Defective Premises Act 1972 to approved inspectors.
- *Lion Homes v Brighton & Hove City Council* (2018). Harry appeared as sole counsel for the successful appellant in a case about the enforceability of a party wall award arising out of damage caused during the renovation of the Brighton Dome. Harry's submission that the award was made in excess of jurisdiction was accepted and the award set aside.
- Counsel for the homeowner of a substantial property in a claim against an architect relating to the negligent design and inspection during construction of roofing works.
- Counsel for the employer in a claim against an architect for negligent design of a substantial London home.
- Counsel for a building contractor in a claim against an architect for negligent design of a commercial complex.
- Counsel for a building contractor in a claim against a design professional for negligent design of the façade to commercial premises in a shopping centre.
- Counsel for a subcontractor in a claim against an M&E designer for negligent advice as to the heating load of a building.
- Counsel for a property developer in a claim against an asbestos surveying firm relating to negligently conducted surveys of commercial warehouses.
- Advising, and appearing for, the first defendant in a claim for water damage arising from the failure of a drainage system in exceptional storm conditions.
- Advising on the passing of property and risk in a complex dispute concerning the insolvency of a flooring supplier.
- Advising a London local authority as to the merits of a claim against a building contractor in the context of a project to construct a library.

Harry has been and is being led by silks on a large number of substantial international arbitrations concerning construction and energy disputes, including:

- Two very substantial disputes concerning delays and disruption to the erection of skyscrapers in Dubai.
- A dispute about an oil field in Kazakhstan.
- A dispute concerning a natural gas processing plant in Qatar.
- A dispute concerning a power plant in South Africa.
- A dispute concerning a new underground metro system in Saudi Arabia.
- A dispute over a micro-tunnelling project in the Middle East.

In addition, Harry frequently advises on and appears in construction adjudications and on enforcement. His recent work in these areas can be found under the "Adjudication" heading.

“His written advice is stellar, matched by his skills in court. Would not hesitate to put Harry’s intellect against any other more senior member of the Bar.”

Legal 500 UK Bar, 2021

Professional Negligence

Harry is frequently instructed to advise on claims against architects and other design professionals, and has particular experience of advising on limitation defences and the effect of contractual exclusion clauses. His recent work of this kind includes the following:

- Counsel for the homeowner of a substantial property in a claim against an architect relating to the negligent design and inspection during construction of roofing works.
- Counsel for the employer in a claim against an architect for negligent design of a substantial London home.
- Counsel for a building contractor in a claim against an architect for negligent design of a commercial complex.
- Counsel for a building contractor in a claim against a design professional for negligent design of the façade to commercial premises in a shopping centre.
- Counsel for a subcontractor in a claim against an M&E designer for negligent advice as to the heating load of a building.
- Counsel for a property developer in a claim against an asbestos surveying firm relating to negligently conducted surveys of commercial warehouses.

Insurance

- Junior counsel to Rebecca Sabben-Clare QC for an insurer in a £40 million professional negligence dispute (now settled).
- Advised a building contractor facing a substantial claim from an insurer as to how best to mount a challenge to the insurer’s standard terms of business.
- Advised an insurer as to the nature of a building contractor’s right to suspend work in the absence of a valid less notice under the provisions of the amended Housing Grants, Construction and Regeneration Act 1996.
- Represented an insurer in domestic arbitration proceedings concerning a claim for an indemnity in respect of defective work.
- Drafted submissions regarding the extent of the arbitrator’s jurisdiction in the context of an arbitration between an insurer and a firm of builders.
- Advised an insurer as to the potential impact of various statutory requirements on the scope of risks covered by the wording of its insurance policy.

International Arbitration

Harry has been and is being led by silks on a large number of substantial international arbitrations concerning construction and energy disputes:

- Junior counsel for main contractors in two very substantial disputes concerning delays and disruption to the erection of skyscrapers in Dubai.
- Junior counsel for the employer in a dispute about an oil field in Kazakhstan.
- Junior counsel for a subcontractor in a dispute concerning a natural gas processing plant in Qatar.

- Junior counsel for a subcontractor in a dispute concerning a power plant in South Africa.
- Junior counsel in a dispute concerning a new underground metro system in Saudi Arabia.
- Junior counsel for a large engineering firm in a dispute over a micro-tunnelling project in the Middle East.

Domestic Arbitration

- Counsel for the successful insurer claimant in domestic arbitration proceedings concerning a claim for an indemnity in respect of defective building work.
- Counsel for the successful claimant in a commercial refurbishment final account arbitration.

Adjudication

Harry has a particular interest in adjudication, and considerable experience of contested adjudication enforcement hearings. His recent work includes:

- Instructed to seek permission to appeal to the Court of Appeal in a case concerning the effect of *S&T v Grove* [2018] EWCA Civ 2448 on an employer's right to commence a final account adjudication.
- Adjudication enforcement hearings:
 - o *Aqua Leisure International Ltd v Benchmark Leisure Ltd* [2021] BLR 150. Harry appeared for the successful claimant in a case about whether an adjudicator's decision had ceased to become binding pursuant to s.108(3) of the HGCRA as a result of the parties having entered into an agreement "subject to contract".
 - o *Croudace Homes Ltd v PRB Wiring Solutions Ltd* [2020] EWHC 2139 (TCC). Harry appeared for the successful claimant in a case concerning a challenge to the reasonableness of an adjudicator's fees.
 - o *Synergy Gas Services v Northern Gas Heating Ltd* [2019] 1 BLR. The defendant resisted enforcement of an adjudicator's decision on grounds of alleged breaches of natural justice. Harry appeared for the successful claimant.
 - o *JonJohnstone Construction Ltd v Eagle Building Services Ltd* [2017] EWHC 2225 (TCC). The defendant resisted enforcement of an adjudicator's decision on the grounds that the decision was made in excess of jurisdiction. Harry appeared for the successful claimant.
 - o *Putensen Properties Ltd v Fry* (2020). An adjudication enforcement hearing. Harry appeared for the successful defendant, the judge accepting Harry's submission that the defendant had a real prospect of establishing at trial that the dispute to which it related arose under three separate contracts.
 - o *Yesero Ltd v Beaumont Morgan Developments Ltd* (2020). An adjudication enforcement hearing. Harry appeared for the successful claimant in a case concerning alleged breaches of natural justice and excesses of jurisdiction by an adjudicator.

In addition, Harry is frequently instructed to draft submissions and represent parties in adjudications. Recent examples include:

- Urgent advice on whether to resist enforcement on grounds of excess of jurisdiction.
- Urgent advice on whether to resist enforcement on grounds of breach of natural justice.
- Advice on the proper application of the slip rule.
- Drafting adjudication submissions on behalf of the referring party in a commercial fit-out final account dispute.
- Drafting adjudication submissions for a subcontractor in a substantial adjudication concerning claims for measured work, variations, and loss and expense arising from delay, and involving detailed submissions on the scope of the adjudicator's jurisdiction.
- Drafting adjudication submissions and appearing for responding party at a contested hearing before the adjudicator in a steelwork final account dispute.
- Acting (as junior counsel to Alexander Nissen QC) in an adjudication concerning the main contractor's entitlement to an extension of time in a dispute concerning a substantial central London development.
- Acting (as junior counsel to Sarah Hannaford QC) in adjudication proceedings concerning the proper construction of a PFI contract relating to waste

Mediation

Harry has acted numerous mediations concerning, amongst other things, the collapse of the frontage of a large residential property; cracking to a substantial extension arising from defective foundations; a dispute over fees payable in respect of interior design services; and the final account due in respect of construction and landscaping services.

Bonds & Guarantees

- Acting (as junior counsel to David Thomas QC) in a dispute concerning the enforcement of a performance bond in circumstances of the contractor's insolvency.
- Drafted Particulars of Claim seeking enforcement of a performance bond as security against a building contractor's impending insolvency.
- Advised on the enforceability of certain bonds in the context of a large waste management construction project.

Property

- Counsel for the successful appellant in a case about the enforceability of a party wall award concerning damage caused during the renovation of the Brighton Dome. Harry's submission that the award was made in excess of jurisdiction was accepted and the award set aside.
- Counsel for leaseholders in a 2-day trial in the Birmingham First-Tier Property Tribunal concerning a service charge dispute involving complex limitation issues.
- Advised a leaseholder as to the merits of a claim arising from the alleged unfitness for habitation of the leased property.
- Advised a management company as to its prospects of successfully defending a complex claim arising pursuant to a determination given by the First-Tier Property Tribunal regarding the reasonableness of the service charges it had levied in previous years.

Reported Cases

Aqua Leisure International Ltd v Benchmark Leisure Ltd [2020] EWHC 3511 (TCC)

Croudace Homes Ltd v PRB Wiring Solutions Ltd [2020] EWHC 2139 (TCC)

The Lessees and Management Company of Herons Court v NHBC Building Control Services Ltd [2019] EWCA Civ 1423

Synergy Gas Services v Northern Gas Heating Ltd [2019] 1 BLR 132

JonJohnstone Construction Ltd v Eagle Building Services Ltd [2017] EWHC 2225 (TCC)

Heron's Court v NHBC Building Control Services Ltd [2018] EWHC 3309 (TCC)

Education & Professional Career

Law LLB, University of Warwick (First Class)	2009 – 2013
City University, Bar Professional Training Course	2013 – 2014
Called to the Bar, Inner Temple	2014
Pupil, Keating Chambers	2014 – 2015
Tenant, Keating Chambers	2011

Awards & Scholarships

Worshipful Company of Arbitrators
Arbitration Weekend 2015, Best Individual Advocate

City University

Evan Ashfield Memorial Prize (highest mark in the Free Representation Unit module)

Inner Temple

Major Scholarship

University of Warwick

Giving to Warwick (outstanding contribution to pro bono work)

Master of the Moots (2012-2013)

Publications, Seminar & Papers

- Keating on JCT Contracts, loose-leaf.
- Keating on Construction Contracts, 10th Edition (and all supplements), contributor.
- 'Don't wind me up', Practical Law, June 2018.
- 'An erosion of the Fiona Trust "one-stop shop" presumption?', Practical Law, February 2018.
- 'Employer couldn't recover overpayments made to contractor', Practical Law, February 2017.
- 'Concurrent delay - the "Saga" continues', Practical Law, Aug 2016.
- 'Estoppel by convention: a shield or a sword?', Practical Law, Oct 2015

Additional Information

In his spare time, Harry enjoys playing the piano and skiing.