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MATTHEW FINN

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Areas of practice

- Construction & Engineering
- Energy & Natural Resources
- Commercial Dispute Resolution
- Profession Negligence
- PFI
- Termination of Commercial Contracts
- International Arbitration
- Alternative Dispute Resolution

Clerks' Details

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Practice Overview

Matthew Finn has specialist expertise in the resolution of high-value, complex commercial disputes, with a principal focus upon disputes arising in the construction, engineering, energy and shipbuilding sectors. Matthew accepts instructions both in contract disputes and in procurement and planning matters. Matthew is ranked as a leading junior in construction law, with clients commenting that: "Matthew is astute, quick to respond and able to deal with the fundamental issues directly, concisely and persuasively." (Legal 500, 2020)

Matthew's litigation practice involves regular appearances in the High Court (TCC and Commercial Court) and in the Court of Appeal. Recent notable cases include:

- Acting for the Claimant, as sole Counsel, in a £5m corporate finance dispute in the Commercial Court relating to the return of IPO investment funds.
- C Spencer Ltd v MW High Tech Projects UK Ltd, both before the TCC ([2019] EWHC 2547) and in the Court of Appeal ([2020] EWCA Civ 331). Spencer was a case concerned with the proper interpretation of the payment provisions of the Construction Act, in the particular context of hybrid contracts.
- Walter Lilly & Co Ltd v Clin [2019] EWHC 945 (TCC). Walter Lilly was a dispute over the contractual allocation of risk for delays to works to a high-value residential property in Kensington and Chelsea. Matthew has since been retained to appear before the Court of Appeal in the appeal of this matter, listed for early 2021. The appeal raises an important point of planning law in relation to Conservation Area Consent.
- ICE v EPIC [2018] T.C.L.R. 3. The ICE case involved a dispute over the point at which the Claimant's cause

of action accrued in respect of a debt claim. Matthew was brought in at the appeal stage and successfully resisted the Claimant's appeal against a first instance judgment on limitation.

Matthew also appears regularly in arbitrations (both international and domestic) and in adjudications (both contractual and statutory). In recent years, Matthew's arbitration and adjudication work has included:

- Acting for the claimant in an international arbitration in a \$1bn dispute relating to the construction of a power plant in Africa
- A series of PFI disputes, of up to £250m in value, being disputes principally concerned with defects, performance failures, and/or termination
- Acting for a private sector contractor in a series of adjudications and arbitrations against a government body in relation to a £200m infrastructure dispute
- Acting for the claimants in a \$80m international arbitration concerned with the construction of an underground metro system
- Acting for the claimant, as sole counsel, in respect of a \$15m international arbitration arising in the energy sector
- Acting for the claimants, as sole counsel, in respect of linked LCIA arbitrations with an aggregate value of \$10m, relating to the construction of a casino in Macau
- Acting in a range of other high-value disputes concerning the termination of commercial agreements. Those disputes have spanned a wide range of industry sectors and have been principally concerned with the validity and financial consequences of purported (or threatened) terminations

In addition to his arbitration work as counsel, Matthew has recently acted as Tribunal Secretary in a \$2bn ICC international arbitration arising out of a commercial contract in the Middle East.

Matthew is a contributor to the most recent editions of both Keating on Construction Contracts and Keating on JCT. He has completed the Keble Advanced International Advocacy Course at Oxford University. He is a recent winner of both the Jane Lemon Essay Prize and the Jonathan Brock Memorial Essay Prize.

Through his considerable experience of resolving commercial disputes of the types described above, Matthew is adept at handling all commercial disputes that require both specific industry awareness and an in-depth knowledge of the law of contract, tort and restitution. In each of the cases he is instructed upon, Matthew combines incisive legal analysis of the issues involved with a pragmatic approach to dispute resolution, which takes account of the commercial reality of the parties' relationship and the client's particular objectives.

Recent Cases

Construction & Engineering

- ICE v EPIC [2018] T.C.L.R. 3 - Brought in at the appeal stage and successfully resisted the Claimant's appeal against judgment arising out of a preliminary issue hearing on limitation.
- For the Defendant, as sole Counsel, in respect of a multi-million-pound adjudication claim concerned with the purported termination of a food production facility in the UK.
- Biffa West Sussex Limited v MW High Tech Projects UK Limited (TCC) - For the claimant (with Jonathan Lee QC) in proceedings relating to the design and construction of a mechanical biological treatment plant in West Sussex.
- Kitt v The Laundry Building Ltd [2014] EWHC 4250 (TCC) - For the Claimant, as sole Counsel, in a successful application for summary judgment in respect of unpaid adjudicator's fees and expenses in the TCC.
- For the Defendant contractor, as sole Counsel, in a high-value dispute concerning allegations of defective design in relation to an offshore wind farm on the east coast of England.
- Rendlesham Estates Plc v Barr Limited (TCC) - For the Claimant (with Jonathan Selby QC) in proceedings relating to the development of 120 apartments in Leeds city centre, alleged to be unfit for habitation for the purposes of the Defective Premises Act 1972.

Amongst other matters, Matthew has also recently advised in relation to:

- Appropriate wording for incorporation into a contractual indemnity, relating to ongoing construction works.
- Limitation and substantive merits in a claim concerning large-scale construction works

- The effectiveness of a pay less notice
- Termination of a JCT standard form contract
- Adjudication enforcement proceedings

Energy & Natural Resources

- For the Claimant, as sole counsel, in respect of a \$15m international arbitration (LCIA) arising in the energy sector.
- For the Claimant, as sole Counsel, in respect of a multi-million-pound High Court claim concerning a sub-sea cabling manufacturing facility producing umbilicals for energy projects in Asia Pacific, Africa and the Middle East.
- Junior Counsel in respect of a 10-day, multi-million-pound arbitration concerned with the purported termination of a commercial agreement relating to a power plant in Europe.
- A £250m termination dispute in relation to a £4bn energy PFI contract.
- Biffa West Sussex Limited v MW High Tech Projects UK Limited (TCC) - For the claimant (with Jonathan Lee QC) in proceedings relating to the design and construction of a mechanical biological facility.
- For the Defendant contractor, as sole Counsel, in a high-value dispute concerning allegations of defective design in relation to an offshore wind farm on the east coast of England.
- Advice on a prospective claim for loss of UK Government Feed-in Tariff payments for photovoltaic energy generation.

“Matthew is astute, quick to respond and able to deal with the fundamental issues directly, concisely and persuasively.”

Legal 500 2020 (Construction)

Commercial Dispute Resolution

- For the Claimant, as sole Counsel, in a £5m corporate finance dispute in the Commercial Court relating to the return of IPO investment funds.

For the proposed Claimant, as sole Counsel, in a conflict of laws dispute regarding the misappropriation of funds by a Spanish company operating in Norway and Monaco.

- For the Claimant business owner, as sole Counsel, in proceedings brought under the Third Party (Rights Against Insurers) Act 1930.
- NATS (Services) Limited v Gatwick Airport Limited (TCC) - For the Claimant (with Sarah Hannaford QC and Calum Lamont) in public procurement proceedings relating to the tendering process for air navigation services at Gatwick Airport.
- For the Claimant, as sole Counsel, in commercial claim arising out of the assignment of a £300,000 debt in a high-profile football club.
- For the Claimant building association, as sole Counsel, in relation to a million-pound claim arising out of a personal deed of indemnity.
- For the Defendant football club, as sole Counsel, in a claim relating to unpaid agency fees arising from the transfer of a well-known footballer.
- For the Claimant consultant, as sole Counsel, in a dispute concerned with professional consultancy services provided in connection with the London 2012 Olympic and Paralympic Games.
- For the Claimant professional footballer, as sole Counsel, in a claim arising from his club's failure to insure its players against injury.

Amongst other matters, Matthew has also recently advised clients in relation to:

- Agency fees in a sports context
- A potential restitutionary claim arising from the sale of a pharmaceutical plant and associated land
- Product liability insurance
- The Water Industry Act 1991
- The Football Spectators Act 1989

Professional Negligence

- For the Claimant business owner, as sole Counsel, in a dispute concerning solicitors' failure to instigate legal proceedings within a contractually mandated limitation period.
- For the Defendant architect, as sole Counsel, in proceedings concerning professional negligence in the provision of architectural services.
- For the Claimant employer, as sole Counsel, in a dispute concerned with limitation issues in a claim arising out of the provision of architectural services.

PFI

Matthew has recently been instructed in a series of PFI disputes. Of those, the largest had a contract value of over £4bn and the dispute value to the local authority was over £250m. That case was principally concerned with the local authority's right to terminate the contract for Contractor Default. In the course of the dispute, issues included (but were not limited to):

- The interrelationship between Works Delivery Plans and Service Delivery Plans.
- Failures to report upon Performance Failures and the contractual significance thereof.
- The proper operation of the Paymech, including the possibility of making retrospective Performance Deductions.
- The proper accrual of Performance Points to a Performance Bank and the employer's discretion in relation thereto.
- The legal status and effect of completion and acceptance certificates.
- The relative financial outturns between authority voluntary termination on the one hand and contractor default termination on the other.
- Allegations of promissory estoppel, said to preclude the authority from relying upon its strict contractual rights.

In addition, Matthew has recently advised the potential Defendant, as sole Counsel, in respect of a threatened multi-million-pound dispute concerning the proposed termination of a PFI contract in the North of England.

Termination of Commercial Contracts

As set out above, in recent years, Matthew has been heavily involved in a series of high-value disputes concerning the termination of commercial agreements. Those disputes span a wide variety of industry sectors and are principally concerned with the validity and financial consequences of purported (or threatened) terminations. Recent examples include:

- For the Defendant, as sole Counsel, in respect of a multi-million-pound adjudication claim concerned with the purported termination of a food production facility in the UK.
- For the Potential Defendant, as sole Counsel, in respect of a threatened multi-million-pound dispute concerning the proposed termination of a PFI contract in the North of England.
- Junior Counsel in respect of a 10-day multi-million-pound arbitration concerned with the purported termination of a commercial agreement relating to a power plant in Europe.

International Arbitration

Recent examples of Matthew's international arbitration work include:

- For the claimant, as sole counsel, in respect of a \$15m international arbitration (LCIA) arising in the energy sector.

- For the Respondent hotel owner, as sole Counsel, in LCIA proceedings relating to the construction of a hotel in Libya.
- For the Claimant specialist contractor, as sole Counsel, in ad hoc proceedings relating to the design and construction of headquarters for a boutique financial firm based in Jersey.
- Junior Counsel in respect of a 10-day multi-million-pound arbitration concerned with the purported termination of a commercial agreement relating to a power plant in Europe.
- Acting as Tribunal Secretary in respect of a \$2bn ICC arbitration arising out of a commercial contract in the Middle East.

Alternative Dispute Resolution

Adjudication

- For the Referring Party employer, as sole Counsel, in a multi-million pound commercial claim for liquidated and ascertained damages and damages at common law.
- For the Referring Party plant owner in proceedings relating to the design and construction of a waste treatment plant in southern England.
- For the Responding Party contractor, as sole Counsel, in a claim for payment pursuant to contract relating to office fit-out works.

Mediation

- For the Claimant building association, as sole Counsel in the successful mediation of an insurance dispute in proceedings concerning a plea of non est factum.
- For the Claimant adjoining home owner in the successful mediation of a dispute under the Party Wall Act 1996

Professional Career

Tenancy, Keating Chambers	2013
Pupillage, Keating Chambers	2012
Call, Lincoln's Inn	2011

Education

BPTC, City University	2011
Graduate Diploma in Law, City University (Distinction)	2010
MA (Cantab), St. Catharine's College, Cambridge (First Class) – ranked 3rd in year in out of over 100 students	2009

Scholarships & Prizes

Joint winner, Brock Memorial Prize Essay Competition (London Common Law & Commercial Bar Association)	2016
Lord Denning Scholarship, Lincoln's Inn	2011
Finalist, Blackstone Chambers Mooting Competition	2011
Hardwicke Scholarship, Lincoln's Inn	2010
Thomas Hobbes Scholarship, St. Catharine's College, Cambridge	2009
Gooderson Scholarship, St. Catharine's College, Cambridge	2009
Arthur Andersen Prize, St. Catharine's College, Cambridge	2009

Memberships

Commercial Bar Association
Technology and Construction Bar Association
Young Fraud Lawyer's Association

Seminars, Publications & Papers

- "Supreme Court rules on diffuse design and build obligations", Practical Law Construction Blog, August 2017.
 - Keating on Construction Contracts 10th Edition [2016].
 - Keating on JCT Contracts.
 - "Are there any circumstances (and if so, what are they) in which the Court may refuse to give effect to contractual provisions on the ground of repugnancy? Should the Court have such a power?" Brock Memorial Prize Essay Competition, 2016.
 - "Extension of time orthodoxy prevails in Carillion v Emcor", Practical Law Construction Blog, May 2016.
 - "Supreme Court clarifies law on implied terms", Practical Law Construction Blog, December 2015.
 - "Supreme Court reformulates the penalty rule in Cavendish v Makdessi", Practical Law Construction Blog, November 2015.
 - Net Contribution Clauses. Article considering judicial treatment of net contribution clauses in professional appointments, by which professionals increasingly seek to modify their common law joint and several liability.
 - Denton: Mitchell Clarified and Amplified. Article considering the import of the Court of Appeal decision in Denton v White [2014] EWCA Civ 906 in relation to relief from sanctions applications under CPR r. 3.9.
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Recent Reported Cases

- ICE Architects LTD ("ICE") v Empowering People Inspiring Communities ("EPIC") [2018] EWHC 281
 - Biffa West Sussex Limited v MW High Tech Projects UK Limited (TCC)
 - Gary Kitt and EC Harris v The Laundry Building Ltd and Etcetera Construction Services Ltd [2014] EWHC 4250 (TCC)
 - NATS (Services) Limited v Gatwick Airport Limited [2014] EWHC 3728 (TCC)
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Languages

French (conversational)
Italian (basic)
German (basic)

Additional Information

Matthew is a keen sportsman, and regularly plays football, tennis and golf, in that order of ability.