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KEATING
CHAMBERS



HIS HONOUR PETER BOWSHER QC

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Areas of practice

- Arbitrator
- Adjudicator
- Mediator

Clerks Details

Declan Redmond

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Practice overview

Peter Bowsher is a former Judge of the Technology and Construction Court who practises from Keating Chambers as an arbitrator, adjudicator and mediator.

During his 16 year career on the bench Peter handled hundreds of actions of a highly complex and technical nature on cases such as *St Martin's Property v Sir Robert McAlpine*.

Since joining Keating Chambers, Peter has acted as sole arbitrator and co-arbitrator on domestic and international disputes. These have included appointments by recognised bodies such as the International Chamber of Commerce (ICC), the Royal Institute of Chartered Surveyors and the Law Society. Peter has also acted as adjudicator on substantial claims in the construction and rail industry and has also acted as mediator on high value disputes.

Recent Cases

Arbitrator

- Sole arbitrator under ICC rules on a dispute relating to the construction of a factory in mainland Europe.
- Chairman of a three man tribunal under Omani Law dealing with claims arising from a major highway construction project.
- Sole arbitrator on dispute arising from an energy company obligation to restore land following pipeline construction projects.
- Sole arbitrator on a dispute between two housing authorities relating to a commercial loan.
- Appointed sole arbitrator by the RICS to deal with claims arising from the transfer of title.

Adjudicator

- Several disputes arising from the construction of a high speed rail link. Disputes included valuation and extension of time issues.
- Interim valuation and extensions of time disputes relating to a commercial property.
- Several disputes relating to the construction of a national football stadium.
- A high value claim between an electrical contractor and the main contractor relating to upgrade work on a substantial electric railway.
- A dispute arising from a maintenance contract for the UK mainline rail network.
- A dispute arising from power upgrade work on a substantial electric railway under a PPP contract.
- A mechanical engineering dispute concerning a bridge.

Mediator

- Acted as mediator in a commercial dispute between British and Middle Eastern Companies.
- Acted as mediator in a dispute between a householder and a property company regarding repairs required to a large country house.
- Acted as mediator in a dispute concerning property development.
- Acted as mediator in dispute relating to the construction of a national football stadium.

Selection of cases heard as a Judge of the Technology and Construction Court

As a judge he tried a wide variety of cases in the fields of construction, engineering, information technology, accounts, professional negligence, against surveyors, architects and solicitors, claims arising out of fires, environmental pollution, property disputes particularly those involving complaints of trespass and negligence, claims between landlord and tenant, and complaints about the quality of goods sold. He also heard appeals from arbitrators and actions to enforce decisions of adjudicators.

Smith Stone and Knight Ltd v. City Birmingham DC (1998) 13 CLR 118 - Limitation of liability and continuing nuisance from drains.

University of Glasgow v. William Whitfield and John Laing Construction Limited (1988) 42 BLR 66; (1988) 19 CLR 111 - Continuing duty of architect. Duty of builder to warn architect of defective design. Design of the Hunterian Art Gallery, University of Glasgow.

R.M. Douglas Construction Ltd v. Bass Leisure Ltd (1991) 53 BLR 119 - Principles of discretion to stay arbitration. Approved by the Court of Appeal of Guernsey in *States v. Miller and Baird (C.I.) Ltd* (2005-06) GLR 295.

Birmingham Midshires Building Society v. Infields (a firm) (1999) 66 CLR 20 - Alleged negligence and alleged breach of fiduciary duty by solicitors. Both allegations rejected.

Department of National Heritage v Steenson Varming Mulachy and Balfour Beatty and Laing Management [1998] 60 Con LR 33 – Claim for Breaches of Duty regarding mechanically operated shelving and electric cabling at the new British Library. Allegations of professional negligence against the defendants who joined as Third Parties Balfour Beatty, the electrical contractors, and Laing Management Ltd, the Management Contractors. Claim for £8.4m.

Ballast Wiltshire PLC (formerly Ballast Nedham Construction Limited) v Thomas Barnes & Sons Limited (1998) CILL 1417 – Court has a discretion not to remit an award where it considers that an error of law by the arbitrator has not in fact affected the outcome.

St Martin's Property v Sir Robert McAlpine (1990) 25 CLR 51 – Claim regarding the Effect of prohibition on assignment without consent Damages and whether the assignee's action for substantial damages for breach of contract is maintainable by assignor where breach occurs after assignment and assignee pays for loss. Overruled by C.A. (1992) 30 CLR 1. Judgement restored and CA overruled by HL (1994) 1 AC 85.

Drake & Scull Engineering Ltd v. McLaughlin & Harvey plc (1992) 60 BLR 102 – mandatory injunction to enforce order of arbitrator that security should be paid to trustee stakeholders.

E.H. Cardy & Son v. Taylor (1994) 38 CLR 79 – Responsibility for design between architect and contractor.

Corfield v. Grant (1992) 29 CLR 58 – Duty of supervision by architect.

Conducted the case management and trial of the first civil case to have all the documents used at trial on computer disk: *Mowlem v. Eagle Star* (1995) 44 Con LR 134.

British Steel v. Wyvern Structures (1996) 52 CLR 67 – Explosion of bellows unit at steel blast furnace. Whether claim statute barred.

Lafarge Plasterboard Ltd v. Fritz Peters & Co KG (2000) Lloyds LR 689 – Effect of exclusive jurisdiction clause on the Brussels Convention 1968.

Grovedeck Ltd v. Capital Demolition (2000) BLR 181 – Reasons for oral construction agreements not to be subject to adjudication. Adjudicator's award not enforce.

Discaint v. Opecprime (2001) BLR 285 – Rules of Natural Justice and Adjudicators.

Austin Hall v. Buckland Securities Ltd (2001) BLR 272 – Article 6 of the European Convention on Human Rights does not apply to Adjudicator not legal proceedings. Adjudicator not a public authority.

Aldi Stores Ltd v. Holmes Building plc (2002) All ER (D) 453 – Effectiveness of side letter on terms of contract as to depth of foundations.

Sahib Foods Limited and Co-Operative Insurance Society Limited v Paskin Kyriades Sands (2003) PNLR 30 – Architects were negligent in failing to advise on the use of proper fire-retarding materials and were liable for the loss caused by the spread of a fire. The claimant was not contributorily negligent for the fire's spread even though its own negligence had started the fire.

Information Technology cases:

Pegler Ltd v Wang (UK) Ltd [2000] BLR 218, [2000] ITCLR 617 – Standard form exclusion of liability clauses introduced into a contract by a supplier of computer hardware and software could not be relied upon since, on their true construction, they only applied to loss arising after supply and not arising out of late supply or non-supply, and because they failed the test of reasonableness under the Unfair Contract Terms Act 1977.

Dixon Group plc v. Jan Andrew Murray-Oboynski decision of 1997 affirmed by Court of Appeal (1999) ADR L.R. 07 upholding decisions of accountants as Expert Determiners on takeover of computer retailers (including PC World) for £4.6m.

Horace Holman Group Ltd v. Sherwood International Group Ltd (2001) All ER (D) 83 – Useless software made interface ineffective. Damages for time wasting by Directors.

SAM Business Systems Limited v. Hedley and Co (2003) 1 All ER (Comm) 465 – Computer Software, effect of Unfair Contract Terms Act, 1977 on exemption clauses.

Time Group v Computer 2000 and IBM (UK) [2002] BLR 196 – Claim regarding Abuse of process referring to Rule in Henderson v Henderson, Prior claim by Claimant against Part 20 Defendant which settled and issues relating to whether the Claimant should have raised issues in claim against Defendant in prior proceedings against Part 20 Defendant.

Career as counsel

Started with a general, mainly civil, common law practice including landlord and tenant, personal injury, contract and tort generally.

Later specialised in 50% media law (libel, copyright, passing off etc.) and 50% commercial law but continued practice in some other areas such as gaming: e.g. *News of the World v. Friend* [1973] 1AER 422 HL.

Acted for many leading national newspapers and magazines and against many of the others. Clients included leading politicians (Conservative, Labour and Liberal), Trade Union leaders, actors, actresses and professionals.

Appeared for clients before tribunals, such as the Stock Exchange Disciplinary Tribunal and the Civil Aviation Authority. Acted for Skytrain in *Laker Airways v. Department of Trade* [1977] QB 643 (Mocatta J. and CA).

Acted for leading politicians in the Bahamas before the Commission of Enquiry into the Drugs Trade in 1984 and called to the Bar of the Bahamas to make applications to the High Court of the Bahamas and the Court of Appeal of the West Indies in connection with proceedings before that Commission.

As chairman of a Working Party of the Supreme Court Procedure Committee with Andrew Smith QC (now Andrew Smith J.) and Rodger Pannone in 1991 wrote the "Guide for Use in Group Actions".

Education & Professional Career

B.A Hons Oxford (Jurisprudence)	1958
Called to Bar, Middle Temple	1959
Queen's Counsel	1978
Legal Assessor to the General Medical Council	1979-1987
Legal Assessor to the General Dental Council	1979-1987
Recorder	1979-1987
Deputy High Court Judge in QB and Chancery	1979-1987
Benchers of the Middle Temple	1985
Independent Review Body, Modified Colliery Review Procedure	1986-1987
Adjudicator, Crown Prosecution Service (Transfer of Staff)	1986
Member of the Council of the Society for Computers and the Law	1990-1995
Member Information Technology and the Courts Committee	1991-2002
Judicial Committee of the Academy of Experts	1991-2002
Fellow of the Chartered Institute of Arbitrators	1990
Chartered Arbitrator	1990
Official Referee and Judge of the Technology and Construction Court	1987-2002
Member of the London Court of International Arbitration	2003
Keating Chambers	2003
Member of the Civil Mediation Council	2003
President of the Middlesex and Thames Valley Mediators	2003-2010
Member of the Society of Construction Arbitrators	2005
Member of the Law Society Panel of Arbitrators	2005
Professional Conduct Committee of the Chartered Institute of Arbitrators	2010
Liveryman of the Worshipful Company of Arbitrators	2010

Seminars, Publications & Papers

- "Is IT adequately employed by Courts and Lawyers?" [1990] 1 (2) Computers and Law 3.
- "The Interventionist Court" SCL Papers 6 March 1990.
- "Information Technology in Complex Civil Litigation in England and Wales" [1991] 5 Yearbook of Law Computers and Technology 19.
- "Guide for Use in Group Actions" with Andrew Smith now Andrew Smith J and Roger Pannone [199] Supreme Court Procedure Committee.
- "Deciding disputes – Common ground between Judgments and Arbitration Awards". SCL Papers 5 November, 1996.
- "Trying IT Cases" [2004] Journal of Society for Computers and Law, vol. 15 issue 4, 4 November, 2004.
- "Security for Costs in Arbitration". (1997) 63 JCI Arb 1: (1997) Arbitration 36: D. Mark Cato "Arbitration Practice and Procedure" 2nd ed 531.
- "One Stop Shop – Arbitration", Mediation, and Adjudication". Talk at joint Meeting of the Society of Construction Arbitrators and the Association of Independent Construction Adjudicators at Keating Chambers, 17 December, 2003.
- "Reasons for the Award: Assessing the Evidence" – Handbook of Chartered Institute of Arbitrators (2006).
- Wright Hassall Seminar at Mallory Court, Keynote Speech, 22 October, 2008.