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SAMUEL TOWNEND

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Areas of practice

- Construction & Engineering
- Professional Negligence
- Adjudications
- Mediation
- Energy & Natural Resources
- IT & Technology
- International Arbitration

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Practice overview

Samuel Townend specialises in construction, infrastructure, engineering, energy and technology disputes along with professional negligence and insurance claims related to these sectors. He regularly acts for clients in the Courts of England, Wales and Northern Ireland along with all forms of alternative dispute resolution, at home and abroad. Samuel is regularly instructed in arbitration proceedings and in respect of many standard form dispute boards contracts including JCT, FIDIC, NEC and IChemE. As well as related appeals, and has experience of proceeding under a variety of Rules, including ICC, CIMAR, LCIA and ad hoc procedures.

Samuel has considerable expertise in adjudication work, from initial advice, drafting submissions and representation in front of adjudicators, to enforcement proceedings in the TCC. Samuel is an Accredited Mediator, Adjudicator and Dispute Resolutions Board panelist.

Since 2008 he has been Standing Counsel for the National House Building Council (NHBC) becoming the first port of call for NHBC in disputes going to court or arbitration and has been asked to advise on the drafting of NHBC's market leading policies.

Chambers and Partners have cited him as a Leading Junior in Construction for the last nine years. Legal 500, 2015, cites Samuel as a Leading Junior in three categories: Construction, Professional Negligence and Energy.

Recent Cases

Construction & Engineering

- Success in a week long trial for Defendant employer in relation to highways and drainage dispute. Obtained indemnity costs against claimant contractor.
- Success at trial for claimant builder in variations claim and defects counterclaim (presented by way of Scott Schedule) in relation to three related properties in the Home Counties.
- Acted for Claimant contractor in a substantial delay and disruption claim arising from the major recent residential development on Guernsey.
- Acted in arbitration for the owner of a care home in a claim brought by a building contractor under a JCT Standard Form of Building Contract. Persuaded the arbitrator that the final certificate was of conclusive effect and successfully resisted application for permission to appeal the Arbitration Award given.
- Advice to owners of a well known library in relation to a technically complex dispute concerning the design and construction of a state of the art off-site automated storage facility.
- Acted for a waterproofing contractor in a claim brought by owners of a high-class property in Wandsworth.

*“A leading light: hands-on, flexible
and great with clients.”*

Legal 500, 2015

- Following a series of skirmishes in the TCC, including the imminent threat of a summary judgment application, the matter settled on advantageous terms for the contractor.
- Acting for a sewage undertaker in respect of a £500,000 class action brought by homeowners all suffering from flooding as a result of leaks to the surface water drainage system for which the undertaker was partly responsible. Achieved a tactical success in High Court hearing requiring co-defendant to provide specific disclosure and specific evidence with the aim of the matter settling in ADR.
- Pleadings, advice and representation for an employer facing claims from an electrical sub-contractor.
- Acted for developer of housing estate in relation to claim against contractor and engineering consultant concerning pipeline and roads services defects.
- Standing Counsel for the National House Building Council. The market leading (over 85% market share) insurer of new and refurbished residential properties in the UK. Samuel acts for NHBC in resisting claims by owners under Buildmark, claims under the Rules for Builders and Developers against builders and developers who fail to carry out their obligations under the Buildmark scheme and against personal guarantors as well as other matters on which he is called upon to advise, draft or advocate (an average of 25 cases a year). These actions are both in arbitration and the TCC.

Professional Negligence

- Junior counsel defending a claim of in excess of £70 million for an engineering, procurement and construction management consultant who had managed the development of a gold ore processing factory in Burkina Faso (*SMB v GBM Minerals Engineering Consultants Limited*).
- Acting for solicitors defending a claim of negligence in relation to alleged failure to ensure procurement of new-build residential insurance as part of the completion of a development agreement and conveyance (*Mercian Housing Associations Limited v Bevan Brittan LLP*).

- Defended an architect in High Court litigation from claims of professional negligence and breach of contract concerning the design of a rugby club.
- Junior counsel to Nerys Jefford QC defending an architect in respect of a £6 million claim arising from a highly destructive fire at a shopping centre in the North of England. The claim is for loss of a chance on the basis of alleged failure by the architect to provide in the design for adequate fire-stopping. (*BMG v (1) Galliford Try (2) Aedas*).
- Advice on the appropriate assessment of damages in another claim arising from a fire to a warehouse brought against the professional team and contractor responsible for the design of the fire-stopping.
- Claims for a mezzanine development investor against a number of surveyors in relation to negligent valuations.

“He provides a high level of preparation, skilled drafting and advocacy, and a commercial approach.”

Legal 500, 2015

- Acting for a building society in a series of claims against their former professional advisers and valuers (*Hanley Economic Building Society v Christopher Rodgers Associates*).
- Advice and settle pleadings by a London commercial and residential developer against acoustic consultant (*Hann Tucker Consultants v Porchester Limited*).
- Multi-million pound claim for employer in connection with multiple defects in a high-class residential property in St. James against architects and contractor.
- Defending NHBC Building Control Services against allegations of alleged professional negligence in relation to a prestigious apartment with views of the Thames.
- Succeeded in trial against a building surveyor who had negligently specified the wrong waterproofing to a subterranean showroom of state of the art audio-visual equipment.
- Domestic claim of negligence of a surveyor who carried out a Homebuild survey leading to the clients purchasing a property they otherwise would not.
- Acted on behalf of the owner of a substantial high-quality London apartment alleging professional negligence against an interior designer and facing a claim of £250,000 for fees.
- Acted on behalf of an interior designer facing complaints and allegations of negligence from very high net worth client. Series of interim applications before the QB Master setting up a mediation in which the matter then achieved a settlement.

Adjudications, Enforcement & Mediation

- Brought a challenge to reasonableness of adjudicator's fees - settled before trial.
- Acted for owner of a prestigious development in Belsize Park, North London, who was facing an ambush adjudication from contractor. Persuaded first adjudicator to resign buying essential time for preparations of the Response.
- Successful summary enforcement of two adjudication decisions where unsuccessful responding party argued the Adjudicator in each case had not dealt with all of the responding party's defences (*Urang Commercial Ltd v (1) Century Investments (2) Eclipse Hotels (2011)*).
- Successful summary enforcement of an adjudicator's decision. The unsuccessful objection taken by the Defendant concerned the nature and extent of authority of the landfill manager contracting with the Claimant (*CRJ Services v Lanstar (2011)*).
- Another successful summary enforcement of an adjudicator's decision where the issue in dispute concerned whether a second adjudicator had jurisdiction to decide a matter which had been addressed tangentially in the first adjudication (*Redwing Construction v Charles Wishart (2010)*).

- Appeared for the Claimant in a whole day summary enforcement of an adjudicator's decision raising five issues. Succeeded on all but one point, whether there had been a prior compromise of the claim brought in the adjudication, which raised a triable issue. Action compromised before the expedited short trial was due to take place (*GPS Marine Contractors v Ringway (2010)*).
- Drafted Adjudication Responses in two adjudications on behalf of developer of two hospitals in Turks & Caicos Islands being pursued by electrical contractor in variation claims concerning provision of electrical resilience and off set corridor lighting.
- Acted for employer tasked with protection of the Norfolk Fens from inundation in a series of adjudications. The adjudications were in relation to claims brought by a major contractor under an NEC2 Contract in connection with the design and construction of the largest water pumping station in Europe.
- Advice and submissions in a succession of adjudications in seven figure claims on behalf of a developer in claims by a major contractor for extensions of time and money arising from hotel, residential and office refurbishment work in connection with a plot in Chelsea. Succeeded in pressing internal jurisdiction points accepted by the adjudicators, legal points of construction and strategic advice.
- Samuel has acted as mediation advocate for various clients on average about eight occasions a year for the last four years.
- Acting for the trustees of the new World Museum of Liverpool for repayment/ restitution of sums paid to a museum interior designer pursuant to an adjudication decision.
- Samuel is an Accredited Mediator with the TECBAR.

“A rigorous, highly capable senior junior.”

Legal 500, 2015

Energy & Natural Resources

- Representing insurer defendant in trial for plaintiffs' claims for defects in construction of a biomass district heating system (Northern Ireland).
 - Counsel for a water company facing claims by (*Christopher Wright v National Home-Building Council*) the maintainer/operator of a number of CHP biomass units which it employed under a bespoke contract and arising out of early termination of the contract by the company (*WB Power Service's Limited v Anglian Water Services Limited*).
 - Junior counsel in €110m dispute concerning the design and construction of a wind farm. Samuel was responsible for the delay aspects of the dispute and cross-examined several factual witnesses and the delay expert in an ICC arbitration.
 - Junior counsel in high value claim concerning the blow out of the waste processing port of an 'energy from waste' factory.
 - Dispute concerning scope of duty, remoteness and quantum arising from negligent cutting of electricity cables.
 - Advising a 'green waste' power generation company on a series of different issues arising from the construction of various contracts with suppliers, maintainers, and in connection with the contracts for supply of electricity. As a result, the company has asked Samuel to review their standard Works Order.
 - Pleadings, advice and advocacy in arbitration for a well-known waste management company in respect of a multi-million pound claim concerning their leaking land fill site.
 - Drafted Particulars of Claim and acted for the owner of an organic waste processing plant in a £7m claim against the turn-key design and build managing contractor.
 - Successfully resisted injunction applications brought against a sewerage undertaker in respect of alleged statutory failure to provide surface water drainage system.
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Railways & Infrastructure

- Acted as junior counsel to Finola O'Farrell QC on behalf of a contractor engaged to carry out road widening of the M25 motorway seeking to recover its costs on a final account of about £20m.
- Ongoing advice in relation to complex contract (three volume bespoke) related to a high profile train manufacture and maintenance contracts.
- Junior counsel on disputes arising from the widening of the West Coast main line.
- Advice and drafting pleadings in final account and delay claims for the fitting out of train rolling stock.
- Acting for well known shopping centre owners in disputes with train operator arising from development and planning gain agreements between them.
- Advising and drafting of proceedings for the supplier and installer of cladding to London tube stations.

IT & Technology

- High Court litigation concerning disputes about an internet based insurance applications processing system.
- Claim in connection with defects in a high value residential building management system.
- Junior counsel for the owner of a smart card security system across multiple sites against a negligent designer (*AC Controls Limited v British Broadcasting Corporations*).

Bonds & Guarantees

- Advised in respect of discharge of various securities held in respect of a deferred payment of construction cost of a community heating system (Northern Ireland).
- Succeeded in striking out claim brought by contractor pursuant to a personal guarantee given by a director of stone and tiling supplier (*ME Construction v Daniel Smith*).
- Acted for NHBC in multiple recoveries claims under personal guarantees given by development/contractor company directors where the company has failed to comply with its obligations under the NHBC Rules and/or where insolvent.
- Advising, negotiating and advocating on behalf of an insurance company acting as surety and facing both a call on a bond of £3/4million from a local authority threatening summary judgment proceedings and threats of injunctive proceedings to prevent payment under the bond from the developer client upon whose behalf the company had offered the performance bond.
- Advice to a well known train manufacturer about the enforceability of a performance guarantee.

International Arbitration

- Sole counsel for an international dredging and reclamation contractor in a series of adjudications before a Dispute Adjudication Board under the FIDIC Red book form. Arbitration is highly likely to follow. The subject matter was the creation of a breakwater in a large port in Romania. Claim value around €30m.
- Junior Counsel in an eight day Arbitration in Dubai for a Dubai road building contractor against its employer under bespoke contract and rules. The claim concerned a road interchange and road bridges with substantial structural defects, delay, disruption, acceleration and complex quantum issues.
- Acted for an international dredging and land reclamation company in a series of proposed arbitrations under LCIA-DIFC rules together valued at in excess of £500m. Claims were under a series of FIDIC contracts including issues of re-measurement, loss and expense and termination.
- Junior counsel in a 16 day ICC Arbitration – Acted for the owner of a substantial off-shore wind farm in a £60m delay and defects claim against the main contractor. As part of a team of counsel Samuel was responsible for delay and some technical aspects of the case and cross-examined expert and factual witnesses.

Other Interesting cases

- Succeeded at first instance and in the Court of Appeal for Claimant owner of commercial premises on a pier seeking compensation under the Building Act 1984 against a local authority who had issued prohibitive orders preventing public access to the Claimant's premises. Conducted TCC trial and Appeal hearings against a QC and junior.
- Defending a Party Wall Etc Act Appeal brought by an Adjoining Owner disgruntled about an Award made by the Agreed Surveyors. Various interesting jurisdictional arguments raised arising from the operation of the Act.

Selected Reported Cases

- *(1) Anjali Khurana (2) Mohit Khurana v Webster Construction Ltd* [2015] EWHC 758 (TCC)
- *Manolete Partners PLC v Hastings Borough Council* [2013] EWHC 842 (TCC); BLR 361
- *Herbosch-kiere Marine Contractors Limited -vs- Dover Harbour Board* [2012] EWHC 84 (TCC)
- *Urang Commercial Ltd v (1) Century Investments Ltd (2) Eclipse Hotels (Luton) Ltd* [2011] EWHC 1561, (2011) CILL 3061
- *CRJ Services Limited v Lanstar Limited* [2011] EWHC 972
- *GPS Marine Contractors v Ringway Infrastructure Services* [2010] BLR 377; [2010] Bus LR D129; [2010] All ER(D) 232 (Oct)
- *VGC Construction Ltd v Jackson Civil Engineering Ltd* [2008] EWHC 2082, LAWTEL TCC, (2008) CILL 2627

Education & Professional Career

MA in History, Trinity College, Cambridge	1996
Diploma in Law, City University	1998
Called to the Bar (Lincoln's Inn)	1999
Member of the Bar Council	2006-2008
Standing Counsel to the NHBC	2008
TECBAR Accredited Mediator	2012
TECBAR Accredited Adjudicator and Dispute Resolution Board Member	2013
Call to the Northern Ireland Bar	2014

Seminars, Publications & Papers

Samuel regularly conducts seminars and lectures on various aspects of his work, most recently:

- "Duty to Warn- Whose job is it?" to the Society of Construction Law, East Anglian Branch.
- "Certainty and Loss of a chance in the assessment of damages" to the Society of Construction Law, London Branch.
- "Expert Evidence" to Constructing Excellence, North East.
- "The Party Wall Act" to Howard Kennedy FSP "Too little, too late: Losing the right to object to jurisdiction in adjudication" to the Society of Construction Law, East Midlands Branch.

- Samuel Townend is co-author with Mr Justice Coulson and Jane Lemon of “Architects, Engineers and Quantity Surveyors” in “Professional Negligence and Liability” pub. LLP (2015).
- Author of a chapter “Public Procurement” in “Law Reform 2015” pub profile (2014).
- He has also contributed chapters of “Construction Dispute Resolution Handbook” pub. ICE (2011).

Additional Information

Samuel Townend was an elected member of the Bar Council from 2004 to 2007 and stood as a parliamentary candidate for Reigate (2005) and Bristol North West (2010). He is Vice-Chair of the Society of Labour Lawyers. He was a Councillor of the London Borough of Lambeth from 2006–2009. In that role and as a school governor Samuel was involved in a number of appointment and disciplinary panels.