

INTERVIEW WITH SAMUEL TOWNEND QC

Samuel Townend QC joined Keating in 2000. To mark him becoming a QC on 15 March 2021 we asked him some questions about his practice and route to silk. Sam is principally a High Court and international arbitration practitioner specialising in construction, professional negligence and energy fields. He has particular experience in working for NHBC, having been standing counsel for them for the past 12 or so years. He has also developed a specialism in offshore civils works, in particular work for and against international dredging contractors. He is called to the Northern Ireland Bar and, as in England and Wales, he is frequently pitted against Leading Counsel on construction and commercial cases.



• Are you from a legal background?

No. It really is not something in my background at all. My mother was a stained-glass painter, my father (who will be coming to the ceremonial swearing in, whenever that might be) deals in architectural salvage. Grandparents included a gas engineer, shorthand writer and insurance clerk. I went to state schools and studied history at university. I originally thought that my future might lie in the civil service and, in particular, the FCO. Having passed the fast-track exams, I failed to obtain an offer which, I suspect, was down to my rather naïve performance in interview: channelling my inner 007. Following that failed attempt I then worked on demolition sites for about six months before committing to the Bar.

What my haphazard start did, however, allow me, was the ability to project a bit of experience of construction (writ widely) at my interview at Keating. Back in 1999 I managed to hoodwink Philip Boulding, Richard Harding and Simon Hargreaves (only the first of whom was then in Silk) into persuading Chambers to give me an offer of pupillage, which I accepted, and the rest is history.

• You were described by one client as “a first-class advocate with the tenacity of a pitbull and manners of an English gentleman” – what other qualities do you think are important for a modern barrister?

Ha, I still have not found out who said that about me- they deserve the prize for creative eloquence rather than me!

The demands of practice now require a host of qualities that the barrister two generations ago would simply not have understood, let alone accepted. On the whole they are qualities outside the court room, the discipline of court room advocacy has, I suspect, stayed substantially the same.

The first is the need for flexibility and joint working with solicitors and client. Instructions now come in so many different forms. There is frequently a need for immediate or very quick responses. You often work together from the start to define the ‘job scope’, prepare a joint ‘beauty parade’ or bid with solicitors for the biggest cases and, invariably, at the outset providing costs estimates often all the way to trial. I think we have always been flexible as to times

of working, but with the advent of remote conferences with clients from across the globe, that is now to a degree greater than it was before.

Soft skills of cooperation, management of teams, attention to individuals are now essential aspects to practice. Gone are the days when a barrister could simply sagely hand down advice from on high. Getting on with professional and lay clients, building up their trust in you, is as critical to obtaining repeat instructions as being right and effective in court. In some senses this is a natural extension of an old skill that barristers have (or ought to have) being the tailoring of presentation to what is most persuasive to the Judge or tribunal but extending that to clients too. The ability to use technology is also increasingly a given!

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- **You are standing counsel for NHBC who you appeared successfully for in the Court of Appeal in the Herons Court case in 2019. What was the key finding in that important case on the duties of Approved Inspectors?**

On that appeal (together with Harry Smith) I acted for the building control arm of NHBC, who had been pursued under the Defective Premises Act 1972 by owners of flats in Herons Court for alleged breach of the common duty of care found in s. 1. Following a successful strike out application before Waksman J. on the grounds that no such duty was owed by Approved Inspectors (privatised building control), the owners sought and obtained permission to appeal on the grounds of public importance and novelty. I was pleased that the Court of Appeal unanimously dismissed the appeal on the two main grounds I relied upon in submissions. First, on the natural wording of the 1972 Act building control/Approved Inspectors are not carrying out work relating to the "provision of a dwelling". They 'police' the build, but do not positively contribute to the provision or creation of the dwelling. Secondly, the speeches of the House of Lords in *Murphy v Brentwood DC* are highly persuasive and strongly suggest that a local authority inspector owes no such duty and no distinction can properly be drawn between the position of public building control and private Approved Inspectors.

- **You have also been an elected local councillor, how did that work with practice at the Bar?**

In all honesty it is difficult, though just about possible, to combine the two. From 2006 I was a councillor in the London Borough of Lambeth in which I was able to do some good for my constituents and, in fact, I have stood for Parliament twice: In Reigate in 2005 and in Bristol North West in 2010; in neither case did I win. I was selected for Bristol by the local Labour Party in June 2007, just a day before Gordon Brown became the Prime Minister, the Conservatives and Liberal Democrats already having picked their candidates. Little did I (or my opposite numbers) expect at that point that we would be fighting a phoney war for three years before the short campaign (after a general election is actually called). What many may not know is that all the political parties demand immense time and commitment from their candidates from selection (roughly 3- 4 days every week) unpaid (of course), but also with very little supporting resource. I had a part-time campaigner assisting me for about the final year only. The rest is you and volunteers. It was exciting at times, but it exacted a heavy personal toll on my family life and an effective hiatus in my career at the Bar (until 2010). I have not been persuaded to stand again- even if anyone would want me!

- **How does taking silk differ during COVID?**

To become a QC is the culmination of many years of work and even COVID hasn't been able to remove that sense of achievement.

I found out about the appointment a day earlier than anticipated when an email was pinged through from the QCA (QC Appointments) on a Wednesday evening a week before Christmas. Of course, it being lock down there has been no going out to celebrate. Earlier this year I received the loyal declaration by email, normally spoken before the Lord Chancellor in full regalia in Westminster Hall, and asked to print out, sign, scan and send back- not quite the same! This is so I can use the designation of QC from 15 March. Fortunately, there has been no requirement for a Zoom swearing in ceremony although Keating will mark the day with a virtual celebration. The indications are that there will be a ceremony at some point in the future and, of course, hopefully I can soon celebrate in person with colleagues, family and friends. I am grateful to all those who have supported my journey to silk both professionally and personally. Although an individual accolade, it is not something that can be achieved without the strong support of others.

What sort of disputes are you currently working on?

- Cross-examining in an ICC Arbitration evidential hearing where the subject-matter is engineering services in relation to a substantial infrastructure project in the Middle East.
- Attending applications and first costs and case management conference in the TCC in relation to a four-party high-end defective residential property dispute.
- Determining a dispute concerning an energy from waste project appointed as Expert under the turn-key ADR clause.
- Acting for the solicitor defendant in a mediation of a solicitors negligence dispute in relation to the conduct of litigation in the Isle of Man of a claim of negligence against an architect.
- Advising (with Adrian Williamson QC) an NHS Trust in relation to an ongoing appeal against a rejection of a proof of debt in the liquidation of a Project Co. following the termination of a PFI contract in relation to the construction and maintenance of a hospital. This has been transferred from the Insolvency court to the TCC and is, I believe, the first case of its kind and a substantial one at that- one side says £120M should pass one way, the other party claims payment of £80M.