



BEN GRAFF

Q&A

Ben has a busy practice across Chambers' specialisms and is regularly involved in disputes arising out of large-scale construction and infrastructure projects and high-value procurement challenges. Ben's cases include domestic and international work. He works with large legal teams and also appears in his own right in the High Court, County Court and as part of his busy adjudication practice.

What have been the highlights of your practice so far at Keating Chambers?

I have been fortunate enough to have acted in two significant (3-4 week) TCC trials (on both occasions representing HS2) and they are the clear highlights. The first one took place in 2020, right at the beginning of my career (in fact, it started whilst I was still a pupil) and I don't think there was any better way to learn the ropes than being thrown into big-ticket litigation right from the off. I learnt a lot from those leading me, in particular in relation to handling witnesses (and judges!). It was then a massive bonus when judgment came in and we had won on every point. That really validated all the hard work that we had put in.

The second trial recently came to an end in January this year. This time around, I had been heavily involved in the litigation for over a year and had a couple of years of experience under my belt so I think (or at least hope) that I was able to make a more significant contribution. Judgment has not yet been handed down so we will have to wait and see whether we get the same outcome.

How have you found being involved in such a significant and long running TCC trial?

It was a very intense experience taking up a large proportion of the last 6 months of my life, but I certainly don't have any regrets. Firstly, I have already learnt in my short time at the Bar that nothing beats the excitement of fighting a trial, particularly when you have been consumed by the case for months and years and feel like you know it back to front. Secondly, it was a fascinating case, raising a number of novel points of procurement law and it will be very interesting to see how they are determined in the judgment. The case also required me to spend an inordinate amount of time thinking about trains, which I enjoyed to a possibly worrying extent. Perhaps, a new hobby awaits me. Thirdly, we had a great team – counsel, solicitors and client – who I really enjoyed working with, which is incredibly important when you're working with each other at such close quarters for months on end.

You have developed a busy and varied practice since being called to the Bar in 2019, do you have a particular area of practice that you enjoy most?

I would say that my practice is about 50/50 construction and procurement which is exactly how I'd like it to be. Procurement law has already afforded me some great opportunities, in particular, the two TCC trials that I've mentioned as well as a couple of interlocutory applications that have led to interesting judgments – concerning expert evidence and limitation issues. In addition, the subject matter of procurement cases can vary incredibly widely. It's all been train related for me so far – train stations, railway tracks and



rolling stock (i.e. trains) – but I'm looking forward to taking on a wide variety of different cases in the future. I also really enjoy construction cases so that balance is perfect.

What do you enjoy most about your work as a construction barrister?

I think it is the variety. One case you do might turn entirely on a point of law or construction – e.g. whether a clause entitling a contractor to terminate at will falls foul of the Unfair Contract Terms Act or whether a builder had design responsibility in the face of apparent contradictory requirements in the contract (both recent examples) – and the next may require you to undertake a vast factual inquiry and get to the bottom of what happened on an enormously complicated project (e.g. what caused the delay?). Further, the projects that give rise to these disputes can range from the construction of a block of flats to things like waste treatment plants, train stations or off-shore drilling rigs (again, all recent examples).

I also really enjoy having the opportunity to immerse myself in the technical detail of a dispute so that for a brief period, I might genuinely understand (or at least think that I understand) why, for example, a building is leaking or sinking. I think that it something that we all find satisfying as construction barristers.

Finally, construction law has provided me with opportunities to take on cases in my own right, for example in adjudications for reasonably large sums of money – I recently helped a contractor resist a claim for a £1.8m claim in liquidated damages for the allegedly poor performance of an anaerobic digestion plant – and adjudication enforcement proceedings.

Do you have any advice for aspiring pupil barristers considering their path to the Bar?

Don't be put off from applying somewhere because they practice an area of law that you don't have intimate (or any) knowledge of, as long as you have reason to believe (and can articulate) that you would enjoy doing what they do. The vast majority of us at Keating were not engineers in previous lives and did not have a masters in construction law before starting and we've done alright. You learn on the job.

Also use the materials that are available to you. Lots of chambers (particularly Keating) provide information about what they do and what their practices involve on a day-to-day basis (at different levels of seniority) and what they are looking for in pupils/barristers. Use this to inform your decision as to which places to apply to and to help you explain, in your application forms, why you fit what they are looking for.

Outside of chambers, what do you enjoy doing in your free time?

On my Chambers profile, it says that I'm a long suffering Arsenal fan. I think this was justified when I wrote it, as my whole adult life had borne witness to a period of steady (and sometimes rapid) decline, having grown up in the golden era of the late 90s and early 2000s. Thankfully though, times appear to be changing and the self-pity might finally have to stop.

Occasionally, I like doing things that are not football related including spending time in the/near mountains and I'm a big fan of the cinema. I would go weekly if I had the time.