



## **WE WERE PLEASED TO WELCOME RHODRI WILLIAMS KC TO KEATING CHAMBERS IN OCTOBER 2022.**

**Rhodri has advised on and been involved in litigation concerning all aspects of public procurement, including application of the Teckal exemption, framework agreements, central purchasing bodies, service concessions, the competitive dialogue procedure and remedies. A longstanding expert in the field, Rhodri is described in the legal directories as a “very shrewd tactician” and an “advocate with strong powers of persuasion”.**

## Welcome to Keating, Rhodri! Can you tell us what influenced your move?

The principal element to my practice has long been what is now referred to as Retained EU law and, in particular, public procurement law. For a number of years, the centre of gravity of my former chambers was moving away from this area of law and I was attracted by the opportunity of joining the strong team of procurement specialists which exists at Keating Chambers, one of the pre-eminent sets in the field of public and utilities procurement law. It is so important to be part of a proactive team of likeminded professionals who thrive in the same area of law as I practise. At Keating, I have achieved that.

## You represented the successful appellants in *Brent LBC v Risk Management Partners Ltd & London Authorities Mutual Ltd & Harrow LBC* [2011] UKSC 7 (the first ever case concerning public procurement to be heard before the Supreme Court), can you tell us a bit more about that case?

This was indeed the first time the Supreme Court had been called upon to decide a public procurement case. Although the case involved a number of procurement and local government *vires* issues before the High Court and the Court of Appeal, the appeal to the Supreme Court was on the correct interpretation of the so-called *Teckal* principle in relation to in-house and quasi in-house procurement (established by the CJEU in case *C-107/98 Teckal Srl v-Comune di Viano* [1999] ECR I-8121) in relation to the provision of public indemnity insurance services. The case involved reference to and interpretation of a wealth of decisions by the CJEU in Luxembourg and how the various principles should be applied in United Kingdom domestic law. Many of these principles have now, of course, been codified in the Public Contracts Regulations 2015.

## How has the procurement Bar evolved since you first started practising in the area?

The procurement Bar has changed significantly since I first returned from Brussels to practise in this field at the Bar of England and Wales over 25 years ago! The implementation of the Remedies Directive 2007/66/EU in 2009 and, in

particular, the advent of the automatic standstill provisions in what are now the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2016, have completely changed the prospect of litigation being commenced by aggrieved tenderers and thus the volume of cases being brought before the High Court (principally the TCC). Previously, there was a dearth of procurement cases which actually made it to court and my practice largely consisted of paperwork and oral and written advice. Now there is much more litigation and many more practitioners in this exciting and fast-moving field of law.

## What is the most interesting case that you have worked on to date?

Appearing in the CJEU was always an interesting experience, going back to early but important procurement cases such as *Uniplex (UK) Ltd v-NHS Business Services Authority* [2010] ECR I-817. However, away from procurement, in the field of public and administrative law and local government law, I have enjoyed representing the Welsh Government on many occasions and, previously, the National Assembly for Wales (now Senedd Cymru) in a number of cases. In particular, on the first reference to the Supreme Court under section 112 of the Government of Wales Act 2006 in *Attorney General v-National Assembly for Wales Commission* [2012] UKSC 53, in which the Court was called upon to rule in a constitutionally important case on the competence of the National Assembly for Wales to pass legislation in the field of local government byelaws. This was, as far as I know, also the first time Welsh was used in the Supreme Court!

## What do you think the most important skills are for a leading silk in your field?

As with all significant litigation, whilst a full understanding of the law applicable in any case is essential, the ability to absorb and marshal large quantities of documentation and information is a very important skill. The vast majority of cases are, of course, decided almost entirely on their particular facts!

## What are the main challenges that clients are currently facing?

The principal challenge over the last few years (apart from the pandemic!) has been the far-reaching consequences of the decision of the United Kingdom in 2016 to leave the EU. Procurement law (and indeed

other areas of my practice such as State aid law (now Subsidy Control law)) has now ceased to be EU law based and has been separated from its origins found in the general principles of EU law deriving from the Treaty of Rome and, subsequently, the Treaty on the Functioning of the EU. This means that the relevance of and access to a wealth of decisions by the Court of Justice and the General Court of the EU in the field of public procurement is becoming less important, with the consequence that advising clients on the probable outcome of procurement disputes is becoming more of a challenge. Whilst it is virtually inconceivable in the light of its obligations under the GPA and the TCA that the United Kingdom would seek to abolish its procurement regimes altogether (and return to the situation of the early 1990's), its recent Public Procurement Bill 2022 has demonstrated that procurement law going forward may be very different.

## What do you enjoy most about the cases you work on?

I very much enjoyed the application of what was EU law to our domestic law of England and Wales. As a former linguist, the analysis of various language texts of legislation and caselaw at the EU level was particularly interesting to me. I still very much enjoy the application of the current procurement regime to factual situations as they present themselves in tender disputes and I envisage that this will continue. Outside of procurement law, I am interested in the advent and application of an ever-diverging body of Welsh law and the prospect, however remote, of a separate legal jurisdiction for Wales in my professional lifetime. We shall have to wait and see!

## Outside of the law, what are your other interests or passions?

Sport: rugby (only watching these days) & snooker; mountain walking (particularly in Eryri and the Brecon Beacons).

## And finally, how have you found your first few weeks at Keating?

I have found Keating Chambers to be remarkably well run and everyone working here to be incredibly friendly and accommodating in helping me to settle in. This has been very important to me, since I had not previously moved chambers for over 20 years!