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RACHAEL O'HAGAN

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Areas of practice

- Construction & Engineering
- Offshore Construction & Marine Engineering
- Domestic / International Arbitration
- Adjudication
- Professional Negligence
- Rail Infrastructure
- Nuclear and Energy
- Procurement
- Commercial Law
- Property

Clerks' Details

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Practice Overview

Recently described as: “an extremely bright and effective advocate, and a real hit with clients”; “very intellectual, she gets to the heart of a dispute quickly and is very engaging”; and an “unflappable” barrister “who understands the issues straightaway”. Rachael specialises in high-value construction, engineering, technology, infrastructure, nuclear/energy along with professional negligence and insurance claims related to these sectors. She also acts in procurement disputes. She is instructed as a junior and in her own right, including acting as sole advocate in international arbitrations. Her clients are domestic and international, and she has experience in the English Courts and also representing parties under various international arbitral rules, including: ICC, LCIA, DIFC-LCIA, UNCITRAL and DIAC.

Rachael is recommended in leading UK and Global directories, including for her work in construction, professional negligence and international arbitration. She is nominated as “Junior of the Year” at the 2023 Legal 500 UK Awards and was nominated for International Arbitration Junior of the year in 2019. She is recognised as a Future Leader in the WWL Global Guide.

Rachael advises clients on all forms of commercial dispute resolution and has represented clients in mediations (including under the Court Scheme), adjudications and disputes under the Railway Industry Dispute Rules. She has been appointed as the legal nominee on a Dispute Advisory Board and is also a TECBAR Adjudicator. Rachael has also represented a Corporate Core Participant as part of the Grenfell Inquiry.

Rachael has contributed to various construction legal texts, including: two chapters of Keating on Construction Contracts (11th Edn); and writing a Chapter for “Construction Law, Costs and Contemporary Developments: Drawing the Threads Together – A Festschrift for Lord Justice Jackson”, Edited by Julian Bailey.

Recent Cases

Construction & Engineering

- Sole barrister representing a party at a two-week hearing concerning disputes arising in relation to a major PPP infrastructure project.
- Acting for parties in cases concerning fire defects:
 - Representing a Corporate Core Participant in the Grenfell Inquiry.
 - Two related sets of TCC proceedings arising out of a fire which broke out at a warehouse causing substantial losses.
 - Various cases concerning fire-stopping defects/negligent design giving rise to fire / smoke safety issues.
- TCC proceedings concerning defective render system on multiple tower blocks.
- Numerous multi-million-pound final account disputes in the TCC and in arbitration proceedings, involving (for example): leisure centres, residential homes, tower blocks, MOD sites, railway infrastructure.
- Representing a party in a multi-party dispute concerning an escape of water at a sewage treatment plant.
- Adjudications concerning disputes arising under major facilities contracts.
- Representing a supplier as sole counsel in a 5-day arbitration hearing concerning disputes about electrical equipment supplied for a cooling plant, and a 2-day arbitration hearing on delay and quantum.
- Representing a main contractor as sole counsel in a 5-day arbitration hearing concerning mechanical and electrical works to a car park.
- Acting for a party in ongoing disputes concerning alterations and extensions to a luxury home.
- Instructed in high-value TCC proceedings relating to construction defects and claims under collateral warranties.
- Arbitration proceedings on a multi-million-pound construction dispute concerning payment issues and delay and disruption claims.
- Domestic arbitration (5-week hearing) concerning a final account dispute and issues arising following termination of a sub-contract.
- Member of dispute avoidance board (DAB) for major infrastructure projects.

“Rachael is collaborative but also clear and directive; a flexible advocate who adapts her style as required for the circumstances. As an advocate, she builds rapport with the tribunal, the witnesses and even the other side.”

Legal 500 UK Bar 2024

Offshore Construction & Marine Engineering

- Sole counsel on a c.£30m insurance coverage dispute concerning construction works for a quay wall.
- Represented a party in significant disputes concerning the expansion of existing harbour facilities in Africa.
- Represented a major international telecommunications organisation in relation to a dispute concerning a sub-sea fibre optic cable in Indonesia.
- Acted in lengthy proceedings concerning the construction of a nuclear jetty facility.
- High-value arbitration relating to the construction of a LNG jetty facility in South America.

Domestic / International Arbitration

- ICC arbitration – sole barrister instructed in relation to a two-week hearing concerning a €150m infrastructure dispute. Issues in dispute concerned delay, financial relief and claims for compensation. Law of the contract was Slovak law and the seat of the arbitration was Vienna.
- UNCITRAL arbitration – instructed as sole counsel in relation to proceedings concerning points of principle on the proper interpretation of the contract.
- ICC arbitration – the disputes concerned complex design and engineering issues. Seat of the arbitration was Geneva.
- ICC arbitration – instructed in respect of delay and payment disputes concerning a project in West Africa.
- UAE, DIFC-LCIA arbitration – instructed as sole counsel at 5-day hearing.
- UAE, DIAC arbitration – instructed as sole counsel at 5-day hearing.
- *AMEC Group Ltd v Secretary of State for Defence* (2013) (as a junior), where Rachael acted for the SSD and successfully resisted AMEC's application pursuant to section 69 of the Arbitration Act 1996 for permission to appeal against the majority decision of an arbitral dispute review board.
- Proceedings in the TCC (*Secretary of State for Defence v Turner Estate Solutions Ltd* (2014)) brought under section 68 of the Arbitration Act 1996 where the claimant challenged an arbitral award on the basis of serious irregularity.

“Rachael is incredibly hard-working, a real team player, and someone who produces excellent written submissions.”

Chambers & Partners UK Bar 2024

Adjudication

- An adjudication – acting as junior counsel for a major employer organisation which successfully defeated (in its entirety) a claim brought by a contractor for some £40m. Also, instructed in respect of a directions/jurisdiction hearing as sole advocate.
- Statutory adjudication proceedings - acted for the defendant and successfully defended a contractor's claim for a multi-million-pound payment.
- *City Basements Ltd v Nordic Construction UK Ltd* (Unreported, 14 April 2014) - successfully enforced an adjudicator's decision in the TCC. The case also considered relief from sanctions in the context of an adjudication enforcement timetable.
- *Lanes Group v Galliford Try Infrastructure Ltd* (2011) - instructed as a junior in the Court of Appeal proceedings.
- Multi-million-pound delay and disruption dispute which was referred to adjudication.
- Various disputes referred to adjudication under the NEC3.
- TECBAR Adjudicator.

Professional Negligence

- Multi-million-pound professional negligence claim concerning a derailment and liability for the design of railway infrastructure.
- Multi-million-pound professional negligence case involving design issues and termination disputes on a substantial leisure complex.
- Instructed in respect of various cases concerning fire-stopping defects and negligent design regarding fire / smoke safety issues.

- TCC proceedings concerning defective render system on multiple tower blocks.
- Court of Appeal proceedings on important issues concerning the scope of a sub-sub-contractor's duty of care and liability for economic loss in tort: *Southern v How Engineering* (2010).

“Rachael sees the case as a whole, focusing on the most important points and achieving the outcome the client wants.”

Chambers & Partners UK Bar 2024

Rail Infrastructure

- Appointed as legal representative on Network Rail's Dispute Avoidance Panel.
- Acted as sole counsel in respect of a derailment and proceedings brought under the Railway Industry Dispute Rules.
- Arbitration concerning a final account dispute in relation to works carried out at a railway depot.
- Procurement disputes concerning railway franchising contracts.
- Advising in respect of limitation and defects arising in relation to substantial railway contracts.

“Excellent team player - arguments are clear and logical. Very personable, and developed rapport with tribunal despite a remote hearing and a language barrier.”

Legal 500

Nuclear & Energy

- Disputes concerning the decommissioning of a nuclear power plant.
- Disputes concerning a Liquefied Natural Gas (LNG) Terminal.
- Disputes concerning a construction project at a nuclear site.
- Project with complex nuclear related design issues.
- Proceedings concerning the construction of a power plant.
- Claim concerning the proper interpretation of an oil and gas contract.

Procurement

- Acted as junior counsel in the high-profile public procurement dispute concerning the 2019 Railway Franchising Litigation. The case was recognised by the Lawyer as being in the Top 20 cases of the year.

- Acted as junior counsel in the high-profile public procurement challenge concerning the procurement of diagnostic software for the mass testing of COVID-19.
- Acted as junior counsel in a public procurement dispute concerning the provision of medical services.

“Rachael has an affable character and a very sharp mind. She is both able to integrate into the solicitor team and lead on complex technical and legal matters.”

Legal 500

Commercial Law

- Claim for monies due under a bond.
- Substantial commercial dispute which turned on the proper construction of a contractual payment mechanism.
- Impact of the Bribery Act 2010 on international commercial transactions.

Property

- Rights to light dispute in the TCC/advised developers in relation to various rights to light issues.
- *Metropolitan Housing Trust Ltd v RMC FH Co Ltd* (2017) – A case which has resulted in substantial commentary in the fields of rights to light and property disputes and was identified as being in the top 10 most important property cases of 2017.
- Property disputes including property damage, nuisance claims, interpretation of leases and contractual claims.

Selected Reported Cases

- **Kellogg Brown & Root Limited v MOPAC & MPS** [2021] EWHC 3321 (TCC)
- **Standard Life Assurance Limited v Gleeds (and others)** [2021] EWHC 2081 (TCC).
- **2019 Rail Franchise Litigation** [2020] EWHC 1568 (TCC)
- **Metropolitan Housing Trust Ltd v RMC FH Co. Ltd** [2017] EWHC 2609 (Ch)
- **Secretary of State for Defence v Turner Estate Solutions Ltd** [2014] EWHC 244 (TCC)
- **City Basements Ltd v Nordic Construction UK Ltd** 27 June 2014 (summary reported on Westlaw) (unreported, 14 April 2014, TCC).
- **AMEC Group Ltd v Secretary of State for Defence** [2013] EWHC 110 (TCC); [2013] All ER (D) 93 (Feb)
- **Lanes Group Plc v Galliford Try Infrastructure Ltd (t/a Galliford Try Rail)** [2011] EWCA Civ 1617; (2012) CILL 3116; [2012] Bus LR 1184, 141 ConLR 46, [2012] BLR 121, [2012] 13 Estates Gazette 92, [2011] All ER (D) 179 (Dec)
- **Lanes Group Plc v Galliford Try Infrastructure Ltd** [2011] EWHC 1696 (TCC) 137 Con LR 1 also Court of Appeal [2011] EWCA Civ 1617
- **Southern Insulation (Medway) Ltd v How Engineering Services Ltd & How Group Ltd** [2010] EWCA Civ 999; [2010] ALL ER 99 (Aug)

Education & Professional Career

TECBAR Adjudicator	2020 -
TECBAR Committee Member	(ongoing appt)
Keating Chambers, Barrister	2019 -
39 Essex Street, Barrister	2009 - 2019
Called to the Bar	2006
Bar Vocational Course, Nottingham Law School (Very Competent):	2005-2006
LLB, Law with French, Birmingham University (2.1 (Hons))	2001-2005
Diplôme d'Etudes Juridiques Françaises, L'Université de Limoges	2003-2004

Seminars, Publication & Papers

Publications:

- "Keating on Construction Contracts" (2020, 11th Edn)
- "*Construction Law, Costs and Contemporary Developments: Drawing the Threads Together – A Festschrift for Lord Justice Jackson*", Edited by Julian Bailey (2018)
- Wilmot-Smith QC on Construction Contracts (3rd Edition) – Contributor, Oxford University Press 2014
- *The Law of Waiver, Variation and Estoppel*, Sean Wilken QC and Karim Ghaly, 3rd Edition OUP 2012 (assisted with research)
- *Knowing your rights to light*, by Rachael O'Hagan, (October 2009)
- *RICS Case in Point: Rights to Light*, by Sarah Hannaford Q.C., Jessica Stephens and Rachael O'Hagan (October 2008)
- *L'expert et le tribunal en Angleterre: Les réformes Post-Woolf*, by Dr. Robert Gaitskell Q.C and Rachael O'Hagan (2007)
- *Efficiency Drive* (2007) N.L.J 837 (contributor)
- Assisted with research for the First Supplement to *Keating on Construction Contracts* (8th Edn)
- Assisted with the commentaries for the Construction Law Reports
- Assisted with the editing of Halsbury's Laws of England, Volumes 19 (1) to (3) on Fuel and Energy

Recent Seminar Topics

- Current Hot Topics in Public Procurement
- Common Pitfalls in International Arbitration
- Issues arising in International Arbitration - Civil Code vs Common Law Code
- Energy Disputes
- Contract Interpretation
- Interactive adjudication workshops
- Discussing issues that arise with Expert Witnesses
- JCT vs NEC
- Rights to light disputes

Articles

- Oops! Sent out the wrong attachments to the contract? A helpful reminder of when you can claim rectification, *Practical Law* (2017)
- But what about my adjudication costs? *Practical Law* (2016)

- Beware: the TCC takes a hard line to relief from sanctions in adjudication enforcement proceedings

Memberships

Society of Construction Law

TECBAR

COMBAR

Languages

French

Additional Information

Rachael has a passion for horse riding and dressage. Rachael has taken an active role in the International Bar exchange schemes. Over the years, these schemes have provided an excellent opportunity for Rachael to work alongside lawyers in other jurisdictions including China, Korea and Malaysia.