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**KEATING**  
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## Harry Smith

Call: 2014

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### Areas of practice

- Construction & Engineering
- Energy & Natural Resources
- Infrastructure & Utilities
- International Arbitration
- Professional Negligence
- Adjudication
- Insurance
- Bonds & Guarantees

### Clerks' Details

**Paul Adams**

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### Practice overview

Harry specialises in construction, engineering, infrastructure and professional negligence disputes. Described as “*extremely bright*”, “*tenacious and ferocious*” and “*an exceptionally capable barrister*”, his recent recommendations in Legal 500 and Chambers & Partners include:

*“his work product is excellent and his advocacy is a pleasure to watch”*

*“His written advice is stellar, matched by his skills in court. Would not hesitate to put Harry’s intellect against any other more senior member of the Bar”*

*“excellent technically, both on paper and on his feet”*

The reported cases to Harry’s name include Aqua Leisure International Ltd v Benchmark Leisure Ltd [2021] BLR 150; Croudace Homes Ltd v PRB Wiring Solutions Ltd [2020] EWHC 2139 (TCC); Synergy Gas Services v Northern Gas Heating Ltd [2019] 1 BLR 132; and JonJohnstone Construction Ltd v Eagle Building Services Ltd [2017] EWHC 2225 (TCC).

Other highlights of Harry’s practice include his instruction by Lendlease in Northumbria Healthcare NHS Foundation Trust v Lendlease Construction (Europe) Ltd & Others – one of The Lawyer’s Top 20 Cases of 2022 – and his appearance as junior counsel for the successful respondent in the Court of Appeal in Herons Court v NHBC Building Control Services Ltd [2019] EWCA Civ 1423.

In addition to his work as a trial advocate, Harry has extensive experience of contested adjudication enforcement hearings including cases with an insolvency angle.

Harry has experience of all major standard forms including the JCT, NEC and FIDIC, and is a contributor to the current editions of Keating on Construction Contracts and the loose-leaf Keating on JCT Contracts.

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## Recent Work

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### Construction & Engineering

Harry has extensive experience of construction and engineering disputes of all kinds. Examples of Harry's caseload include:

- Herons Court v NHBC Building Control Services Ltd[2019] EWCA Civ 1423. Harry appeared as junior counsel (led by Sam Townend) for the successful Respondent in the Court of Appeal in a case concerning an attempt to extend s. 1 of the Defective Premises Act 1972 to approved inspectors.
- A High Court (TCC) claim for c.£150m concerning defects in Northumbria Specialist Emergency Care Hospital, selected as one of The Lawyer's Top 20 Cases of 2022.
- A multi-million pound claim against engineers and materials suppliers in the High Court (TCC) concerning the design and construction of an inter-tidal mudflat at Cooling Marshes on the south bank of the River Thames.
- Counsel for an insurer in a multi-million pound claim concerning fire safety issues in a housing development.
- A claim in the High Court (TCC) against the National House-Building Council concerning fire safety issues in two blocks of flats.
- A claim in the High Court (TCC) for losses arising from water damage to modular homes during their construction.
- A professional negligence claim against an engineering firm in the High Court (TCC) concerning cracks and water ingress to an underground car park.
- A claim in the London Circuit Commercial Court against the National House-Building Council concerning water ingress to the basements of adjoining houses.
- A claim in the High Court (TCC) concerning the negligent design and construction of foundations to a luxury home.
- A claim against the National House-Building Council in the High Court (TCC) concerning fire safety and other construction issues in a block of flats.
- A claim against a cladding subcontractor concerning fire safety issues in a high-rise block of flats.
- Counsel for the homeowner of a substantial property in a claim against an architect relating to the negligent design and inspection during construction of roofing works.
- Counsel for the employer in a claim against an architect for negligent design of a substantial London home.
- Counsel for a building contractor in a claim against an architect for negligent design of a commercial complex.
- Counsel for a building contractor in a claim against a design professional for negligent design of the façade to commercial premises in a shopping centre.
- Counsel for a subcontractor in a claim against an M&E designer for negligent advice as to the heating load of a building.
- Counsel for a property developer in a claim against an asbestos surveying firm relating to negligently conducted surveys of commercial warehouses.
- Advising, and appearing for, the first defendant in a claim for water damage arising from the failure of a drainage system in exceptional storm conditions.
- Advising on the passing of property and risk in a complex dispute concerning the insolvency of a flooring supplier.
- Advising a London local authority as to the merits of a claim against a building contractor in the context of a project to construct a library.

- Counsel for a building contractor in a final account arbitration concerning the refurbishment of a luxury flat in London.
- Counsel for the successful insurer claimant in domestic arbitration proceedings concerning a claim for an indemnity in respect of defective building work.
- Counsel for the successful claimant in a commercial refurbishment final account arbitration.

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*“Extremely knowledgeable and very responsive from a solicitors perspective. Excellent on paper and on his feet. His calm and methodical advocacy is a great strength.”*

Legal 500 UK Bar 2024

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#### Energy & Natural Resources

- A multi-million dollar dispute concerning an oil field in Kazakhstan.
- A international arbitration in Geneva concerning a natural gas processing plant in Qatar.
- An international arbitration concerning a power plant in South Africa.
- An adjudication concerning a project to upgrade a National Grid site (led by Alexander Nissen QC).

#### Infrastructure & Utilities

- A High Court (TCC) claim for £95m concerning a substantial busway infrastructure project in Cambridge.
- Acting for the Welsh Government in an adjudication concerning the construction of a new road.
- A multi-million euro claim in the High Court (TCC) concerning the design of a waste processing facility in Essex.
- An arbitration concerning a micro-tunnelling project in Bahrain.
- A dispute concerning a new underground metro system in Saudi Arabia.
- An adjudication concerning a chemicals manufacturing facility.

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*“Harry is an exceptionally capable barrister. He is excellent technically, both on paper and on his feet, and is very responsive.”*

Chambers & Partners UK Bar 2024

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#### International Arbitration

- A dispute concerning the construction of the Burj Khalifa (the tallest building in the world) in Dubai.
- An arbitration concerning delays and disruption to the construction of a skyscraper in Dubai.

- An arbitration concerning a micro-tunnelling project in Bahrain.
- A international arbitration in Geneva concerning a natural gas processing plant in Qatar.
- An international arbitration concerning a power plant in South Africa.
- A dispute concerning a new underground metro system in Saudi Arabia.

### Professional Negligence

- A multi-million pound claim concerning negligent project management and planning advice involving allegations of fraud and secret commissions. Harry also acted in an associated appeal in the High Court (Chancery Division) concerning payment of the project managers fees.
- A multi-million pound claim against engineers and materials suppliers in the High Court (TCC) concerning the design and construction of an inter-tidal mudflat at Cooling Marshes on the south bank of the River Thames.
- A £40m professional negligence claim in the Commercial Court concerning advice given to an insurer.
- A professional negligence claim against an engineering firm in the High Court (TCC) concerning cracks and water ingress to an underground car park.
- A professional negligence claim in the High Court (TCC) against an Approved Inspector concerning fire safety issues in a development.
- A professional negligence claim against a firm of architects in the High Court (TCC) in connection with the collapse of a hotel balcony and associated personal injuries.
- A professional negligence claim in the High Court (TCC) against a firm of architects concerning a project to refurbish and redevelop a convent.
- A claim in the High Court (TCC) concerning the negligent design and construction of foundations to a luxury home.
- A multi-million professional negligence claim against a company director for losses arising from the alleged mismanagement of a construction project.

### Adjudication

Harry has extensive experience of adjudication from referral to enforcement and is a natural choice for contested adjudication enforcement hearings. Examples of his caseload include:

- *Aqua Leisure International Ltd v Benchmark Leisure Ltd* [2021] BLR 150. Harry appeared for the successful claimant in a case about whether an adjudicator's decision had ceased to become binding pursuant to s.108(3) of the HGCRA as a result of the parties having entered into an agreement "subject to contract".
- *Buckingham v Luton Airport* (2021), unreported. Harry appeared for the successful claimant in a contested adjudication enforcement hearing in which the defendant argued, unsuccessfully, that it was entitled to have the dispute finally determined via Part 8 declarations.
- *Croudace Homes Ltd v PRB Wiring Solutions Ltd* [2020] EWHC 2139 (TCC). Harry appeared for the successful claimant in a contested adjudication enforcement hearing concerning liability for the adjudicator's fees.
- *Putensen Properties Ltd v Fry* (2020), unreported. An adjudication enforcement hearing. Harry appeared for the successful defendant, the judge accepting Harry's submission that the defendant had a real prospect of establishing at trial that the dispute to which it related arose under three separate contracts.
- *Synergy Gas Services v Northern Gas Heating Ltd* [2019] 1 BLR. The defendant resisted enforcement of an adjudicator's decision on grounds of alleged breaches of natural justice. Harry appeared for the successful claimant.
- *JonJohnstone Construction Ltd v Eagle Building Services Ltd* [2017] EWHC 2225 (TCC). An adjudication enforcement hearing. The defendant resisted enforcement of an adjudicator's decision on the grounds that the decision was made in excess of jurisdiction. Harry appeared for the successful claimant.
- Advice regarding the prospects of an insolvent company in a CVA successfully enforcing an adjudicator's decision.
- Advice regarding the prospects of an insolvent company in administration successfully enforcing an adjudicator's decision.

- A multi-million pound adjudication concerning a project to upgrade a National Grid site (led by Alexander Nissen QC).
- Acting for the Welsh Government in an adjudication concerning the construction of a new road.
- A multi-million pound adjudication concerning liability for leaks to a warehouse.
- An adjudication concerning the Grade I-listed residence of billionaire Mohammed Al-Fayed.
- An adjudication concerning a chemicals manufacturing facility.
- An adjudication concerning a defective lighting controls system at Oxford Brookes university.

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*“Harry is able to pick up complex matters quickly and efficiently, his work product is excellent and his advocacy is a pleasure to watch.”*

Chambers & Partners UK Bar 2023

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#### Insurance

- A claim in the High Court (TCC) against the National House-Building Council concerning fire safety issues in two blocks of flats.
- A claim in the London Circuit Commercial Court against the National House-Building Council concerning water ingress to the basements of adjoining houses.
- A claim against the National House Building Council in the High Court (TCC) concerning fire safety and other construction issues in a block of flats.
- Counsel for an insurer in a multi-million pound claim concerning fire safety issues in a housing development.
- Advised an insurer as to the potential impact of various statutory requirements on the scope of risks covered by the wording of its insurance policy.
- Advised a building contractor facing a substantial claim from an insurer as to how best to mount a challenge to the insurer’s standard terms of business.
- Represented an insurer in domestic arbitration proceedings concerning a claim for an indemnity in respect of defective work.

#### Bonds & Guarantees

- Advised in a dispute concerning the enforcement of a performance bond in circumstances of the contractor’s insolvency.
- Drafted Particulars of Claim seeking enforcement of a performance bond as security against a building contractor’s impending insolvency.
- Advised on the enforceability of bonds in the context of a large waste management construction project.
- Advice on the validity of a purported withdrawal of bonds.

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#### Reported Cases

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Aqua Leisure International Ltd v Benchmark Leisure Ltd [2020] EWHC 3511 (TCC)

Croudace Homes Ltd v PRB Wiring Solutions Ltd [2020] EWHC 2139 (TCC)

The Lessees and Management Company of Herons Court v NHBC Building Control Services Ltd [2019]

EWCA Civ 1423

Synergy Gas Services v Northern Gas Heating Ltd [2019] 1 BLR 132

JonJohnstone Construction Ltd v Eagle Building Services Ltd [2017] EWHC 2225 (TCC)

Heron's Court v NHBC Building Control Services Ltd [2018] EWHC 3309 (TCC)

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## Education & Professional Career

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Law LLB, University of Warwick (First Class)	2009 – 2013
City University, Bar Professional Training Course	2013 – 2014
Called to the Bar, Inner Temple	2014
Pupil, Keating Chambers	2014 – 2015
Tenant, Keating Chambers	2011

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## Awards & Scholarships

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### Worshipful Company of Arbitrators

Arbitration Weekend 2015, Best Individual Advocate

### City University

Evan Ashfield Memorial Prize (highest mark in the Free Representation Unit module)

### Inner Temple

Major Scholarship

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## Publications, Seminar & Papers

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### Books

- Keating on JCT Contracts, loose-leaf.
- Keating on Construction Contracts, 11th Edition.

### Articles

- 'A critical look at Broseley London v Prime Asset', May 2020
- 'The Terminator's Dilemma', Practical Law, February 2020
- 'Burning a Bridge', Practical Law, May 2019
- 'Groving Pains', KC Legal Update, January 2019 (co-authored with Matthew Finn).
- 'Don't wind me up', Practical Law, June 2018.
- 'An erosion of the Fiona Trust "one-stop shop" presumption?', Practical Law, Feb 2018.
- 'Employer couldn't recover overpayments made to contractor'. Practical Law, Feb 2017.
- 'Concurrent delay - the "Saga" continues', Practical Law, Aug 2016.
- 'Estoppel by convention: a shield or a sword?', Practical Law, Oct 2015.

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## Additional Information

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Harry is a keen pianist and has a particular interest in improvisation techniques. When he is not improvising, he enjoys playing everything from Beethoven to Fats Waller. He is currently working on Chopin's Aeolian Harp étude.