

# Nick Kaplan

**Year of Call:** 2013

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## Overview

Nick Kaplan specialises in commercial and contractual disputes, with a particular emphasis on construction and engineering.

Nick has detailed knowledge of the full range of construction issues and has dealt with a wide variety of both contentious and non-contentious matters. His experience includes: payment disputes, delay claims, claims for defective works, claims arising from defective construction materials and associated product liability, construction professional negligence, enforcement of adjudicators' decisions and recovery of adjudicators' fees and expenses.

Prior to joining Chambers, Nick worked in the Construction and Engineering Department of a leading City law firm. His work was particularly focused on advising and preparing submissions in relation to complex and high-value construction adjudications. In that capacity Nick also gained experience defending clients in a number of Health and Safety prosecutions by the HSE, and is familiar with the range of health and safety challenges that those in the construction sector face.

### Pro-bono

During his GDL and BPTC years Nick was involved with a number of legal advice clinics where he advised clients on a range of matters including employment and housing management issues.

### Articles

- *Grove Developments: - Unloosening or tightening the Construction Act's Gordian Knot?, May 2019, Adjudication Society*

## Recommendations

"A most impressive Counsel. I was particularly taken by his grasp of the issues involved and the manner in which our case was conducted." - Client

"Nick remained poised and collected throughout, and was able to stay on track despite the interventions of both the defendant and the Judge. I really appreciated the forethought he had put in to the presentation of the argument. Win or lose he could not have given more." - Client

"Nick was a tremendous help to us with drafting our business terms and conditions. He explained potential issues in a clear and concise manner and helped us come up with effective solutions. All in all, Nick was a great resource for us." - Client

## **Academic qualifications**

- The University of Oxford – Politics, Philosophy and Economics – First Class
- Graduate Diploma in Law – City Law School – Distinction
- BPTC – BPP – Very Competent

## **Scholarships**

- Astbury Scholarship – Middle Temple
- Michell Scholarship – Queen’s College Oxford

## **Professional bodies**

Oil and Gas Arbitration Club

## **Direct Access**

Nick Kaplan is qualified to accept instructions directly from members of the public and professional clients under the Direct Public Access scheme.

# Expertise

## Construction and engineering

Nick is familiar with all standard forms of construction contract and regularly advises employers, contractors and subcontractors in relation to disputes that arise under them. Nick also has extensive experience in advising clients in relation to large-scale maintenance and supply contracts, particularly in the social housing sector.

Nick has particular experience running, and drafting submissions in, construction adjudications ranging from low-value to multi-million pound disputes. Nick both brings and defends adjudications and is well versed in the particular strategic and legal challenges that the adjudication process gives rise to. He has both brought and defended a number of challenges to adjudicators' decisions in the courts, and has advised and acted for adjudicators looking to recover their fees.

## Recent Cases

- Nick is currently instructed by the Government of Montserrat in a high value arbitration concerning allegations of repudiatory breach of a construction contract and associated claims and counterclaims.
- In *Hog Construction Ltd and Hog Group Limited v Michael Paul Langridge* (2018) EWHC 2889 (TCC) Nick successfully acted for the claimants in a Part 8 claim seeking declarations that the defendant was not entitled to adjudicate against either of the two claimants.
- Nick is currently instructed by a well-known adjudicator looking to recover his fees and expenses following a series of contested adjudications.
- Nick was involved with the preliminary 'desk-top' investigations into the fire at Grenfell, consequently he is familiar with the particular challenges faced by building owners and contractors in relation to fire-safety regulations, cladding and construction defects.
- Nick referred an adjudication in relation to a contractors application for a 700+ day extension of time, successfully arguing that on proper assessment of the EOT claim the contractor was entitled to no extension of time.
- Nick successfully defended a client in a prolonged £12 million adjudication arising under a large maintenance and supply contract which covered thousands of properties across the country. After several rounds of submissions, the Referring Party was awarded just 5% of the sums it had claimed. Nick subsequently advised on the settlement negotiations between the parties.
- Nick advised and represented a well-known adjudicator in a successful summary judgment application for the recovery of the adjudicator's fees. Summary Judgement was granted and the adjudicator's fees and his expenses in pursuing them were recovered.
- In *The Vinden Partnership Ltd v ORCA LGS Solutions and Others* (2017) EWHC B24 (TCC), Nick advised and represented the well-known adjudicator Peter Vinden in a successful summary judgement application for the recovery of Mr Vinden's fees.
- Nick resisted enforcement of an adjudicators' decision, successfully arguing that the adjudicator had lacked jurisdiction to determine the dispute..

## Commercial

Nick's commercial practice focuses on complex contractual disputes and payment claims, the supply of goods and services, product liability and professional negligence. A significant proportion of the matters in which he acts raise questions of conflicts between international jurisdictions.

Nick regularly acts for clients at both interlocutory and final hearings and his experience at a law firm prior to joining chambers ensures that he has a strong client- focused approach, with a ready grasp of the wider strategic objectives that can

drive commercial disputes. In each of his practice areas he represents parties in arbitration, the High Court, and the County Court.

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## Recent cases

- **Microlise Limited v (1) James Kemball Limited (2) Uniserve Holdings Limited** High Court (KBD) dispute between a Transport Logistics group of companies and the supplier of transport telemetry devices fitted into cabs of lorries raising several issues as to (i) contract formation; (ii) incorporation of terms; (iii) allegations of breach and misrepresentation; (iv) causation and quantification of loss. The Case also raised issues of what is necessary in terms of a clause to exclude the statutory implied terms of "fit for purpose" and "satisfactory quality" from the transactions. Nick was led by David Parratt KC. Awaiting Judgment
- High Court (KBD) dispute involving the purchase of 1930s Italian Racing car at auction for the then record price for a car of its kind of c.£1,200,000. The case raised several issues including (i) precontractual representations and contractual warranties; (ii) provenance; and (iii) value. Settled on favourable grounds. Nick was led by David Parratt KC.
- LMAA Arbitration proceedings in 3 inter-related disputes concerning the supply of security systems and devices on four Yachts. Nick was Instructed by the Claimants in a Claim for c.£1,000,000 in outstanding fees owing under the contract. The case raised several issues including various setoffs allegedly due under other contracts. Nick was engaged at pleading stage, and after raising various 'requests for further information' arising from the Defendant's pleadings Settled on favourable grounds.  
Acting for the Claimant in a claim against multinational logistics company for alleged overpayments made under a Contract for services where charges had been applied on the wrong basis. The case raised several issues as to the meaning and effect of various clauses, in particular the pricing mechanism and various limitation and exclusion clauses. Settled at mediation.
- Instructed on behalf of the Defendant in a dispute between a well-known supplier of coaches (and associated financing as well as repair and maintenance services) on hire purchase terms (the Claimant) and its customer (the Defendant), following termination of the hire-purchase agreement. Both parties alleged that the other was in repudiatory breach. There are substantial disputes as to (among other things) the meaning and effect of various contractual documents and provisions, including what (if any) terms are implied and what entitlement (if any) the Defendant had to make time of the essence under the contract.
- Nick successfully resisted an application to set aside a statutory demand arising out of a c.£10,000,000 commercial fraud claim.
- **Medsted Associates Ltd v Canaccord Genuity Wealth (International) Ltd [2017] EWHC 1815** High Court (Comm) dispute between a Broker and Investors relating to fiduciary duties owed. Nick acted in a junior capacity on behalf of the Defendant, which successfully avoided an award of substantial damages against it.

## Articles

3PB's Nick Kaplan reviews the decision in *Grove Developments: for the Adjudication Society* in an article called "Unloosening or tightening the Construction Act's Gordian Knot?"

In *Grove Developments*, two of the construction world's most esteemed Judges have, in their departing decisions before moving on to pastures new, now attempted to loosen the Gordian Knot created by the amended Construction Act and Edwards-Stuart J's decision in *ISG*.

This article seeks to assess the degree to which the decisions in *Grove* have loosened that knot, or merely entangled us in other, related, difficulties. Further, it looks briefly at the recent decision of Stuart-Smith J in *Davenport Builders* which may, to mix my classical metaphors, indicate a way to chart a course between the Scylla of *ISG* and the Charybdis of *Grove*.

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Nicholas Kaplan analyses the decision in *Grove Developments v S&T: will Smash and Grab now Crash and Burn?*

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