

James Davison

Year of Call: 1996
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Overview

James Davison specialises in construction, engineering and commercial matters as well as in the procurement and financial arrangements that fund and support projects. James is the head of 3PB's Construction and Engineering group.

As experienced counsel he seeks to match a robustly commercial approach with the rigorous demands of document-heavy construction and commercial trials.

James Davison has practical experience of leading disputes through adjudication, arbitration and mediation.

Before joining 3PB, James worked in-house in the construction and engineering sector, working for two of the leading construction consultancy companies in the UK (Arup and Cyril Sweett) and in railway engineering projects and procurement (Jubilee Line Extension Project).

He has worked on construction projects and disputes in the Netherlands, Denmark, Malta, Italy and the USA as well as numerous high profile UK projects.

He led the team that advised the Treasury's Office for Government Commerce on how JCT 2005, NEC3 and PPC 2000 standard form contracts measured against the Government's Achieving Excellence in Construction Agenda.

James' guide to the JCT's 2005 Standard Form Construction Contracts was published by the RICS and he edited a chapter of Frances Forward's book "NEC Contracts Compared and Contrasted" published by Thomas Telford.

James' experience as company secretary of the Fibrowatt Group (one of the UK's foremost renewable energy businesses at that time) gave him experience of working for an innovative, entrepreneurial company that operated in a highly regulated market.

He still advises on non-contentious/drafting matters, acts as adjudicator and is an accredited mediator.

Academic qualifications

- LLB (Hons), Wales
- MSc King's College, Construction & Arbitration

Professional qualifications & appointments

- Tecbar Accredited Adjudicator and Member of the Tecbar Adjudication Panel

- Accredited Mediator (London School of Psycotherapy and Counselling)

Professional bodies

- Chair of the King's College Construction Law Association (2020 to date)
- Member of the TECBAR Committee
- Member of Society for Construction Law
- Member of the Editorial Board for RICS "ISurv" service
- Member of Energy Arbitration Club

Expertise

Commercial

James Davison specialises in contract and commercial disputes, with a particular expertise with large construction and engineering matters and the commercial arrangements that fund and support them. He has gained from more than 10 years experience working in-house in the construction and engineering sector, working for two of the leading construction consultancy companies in the UK.

As experienced counsel he seeks to match a robustly commercial approach with the rigorous demands of document-heavy commercial and construction disputes.

James' guide to the JCT's 2005 Standard Form Construction Contracts was published by the RICS.

He led the team that advised the Treasury's Office for Government Commerce on how JCT 2005, NEC3 and PPC 2000 standard form contracts measured against the Government's Achieving Excellence in Construction Agenda.

James' experience as company secretary of one of the UK's foremost renewable energy businesses gave him experience of working for an innovative, entrepreneurial company that operated in a highly regulated market. He has worked on construction projects in the Netherlands, Denmark, Malta, and the USA as well as numerous high profile UK projects.

James has practical experience of managing contentious matters through adjudication and mediation and advising upon the conduct of regulated procurement. He still advises on non-contentious/drafting matters.

James is an accredited mediator.

Energy & Utilities

James is regularly instructed by a number of utility (gas and electricity) companies in their actions involving commercial customers (unpaid debts) particularly including instances where injunctive relief is sought by debtors at short notice.

Prior to practising at the Bar, James gained practical first-hand experience as an in-house lawyer and company secretary of one of the UK's foremost renewable energy businesses (the Fibrowatt Group) which at the time operated three power stations and was developing several projects in the EU and USA.

He subsequently worked for two leading project management and engineering consultancies (Cyril Sweett and Arup). During his time in-house he:

- Advised the boards of directors on the legal and regulatory considerations of several companies operating electricity generating power stations
- Negotiated and drafted wholesale electricity supply contracts with several utilities (including negotiation of commercial heads of terms, prices and pricing structures)
- Took part in lobbying and consultation in respect of the impact of legislative change on small and renewable electricity generators during a period of major regulatory transition
- Drafted submissions in the first (and successful) rounds of applications to OFGEM for certification of ROCs and CCL Certificates
- Advised on transactions with the electricity markets in Europe (i.e. "export" of electricity through the interconnector of certified renewable energy)
- Advised potential purchasers of electrical infrastructure as to impact of procurement regulation

Building on that experience, his recent instructions as counsel include:

- Advising residents as to how to bring about the transfer of a local CHP plant to their ownership or control despite ongoing resistance from the property developer. This ultimately involved issuing injunctive proceedings
- Advising a sub-contractor on a multiparty dispute concerning numerous aspects of the construction of a large power station in the UK with respect to claims and cross claims for and against the Sub-Sub Contractor and similarly with respect to the Main Contractor

Construction and engineering

James Davison specialises in construction and engineering disputes and the commercial arrangements that fund and support them.

James frequently advises builders, developers and specialist sub contractors with disputes on NEC contracts, PPC 2000 and a whole host of various JCT contracts. He has built up real experience from many of adjudications and familiarity with ADR in construction and commercial disputes.

As counsel he seeks to match a robustly commercial approach with the rigorous demands of document-heavy commercial and construction disputes.

Key highlights

- Successfully resisting c.£10M Adjudication claim against a Housing Association by its framework "partner" who provided planned and reactive maintenance for tens of thousands of properties. The action progressed with great intensity from a set of payment claims across two contracts to concurrent adjudication of the issues and, ultimately, after a successful defence, a clean break settlement
- Counsel for a Steelwork Contractor in a 4 day Arbitration hearing with its Sub Contractor Employer
- Trial Counsel for Main Contractor in a 6 day Multi Track Trial in Nottingham County Court issues included: formation of contract, scope of works, basis of price, final account
- Trial Counsel for Employer in 4 day Multi Track Trial in Nottingham County Court issues included standard of works and final account - no common ground on an extensive Scott Schedule.
- Junior Counsel to Mr David Berkley QC in a High Court Case (Chancery Division) concerning the financing of a renewable power plant (notable for early use of the disclosure protocol)
- Advising unpaid environmental services Sub Contractor on HS2 to achieve a commercial outcome without litigating
- Negotiation and drafting of contracts for prototyping and development of products for HS2
- Advising Sub Contractor working on one of London's largest and high profile property and infrastructure developments
- Trial Counsel for Builders Merchant in a Multi Track Trial in Central London County Court over the execution of personal guarantees.

Adjudication Summary Judgment applications examples include:

- Successfully enforcing an adjudicator's decision in the High Court (TCC) against a local authority who claimed that the decision had been reached by an adjudicator acting under the wrong rules (Sprunt v. Camden [2011] EWHC 3191) before Mr Justice Akenhead QC
- Enforcing an adjudciators decision following summary Judgment with an Order for Sale, stayed on terms before Mr Justice Edwards Stuart QC
- Advising an M&E Sub-Contractor working on a large power station with respect to high value claims both up and down the supply chain

- Assisting an Academy operating from premises constructed as part of the "Building Schools For The Future" initiative to hold its partners to account for the rectification of major and minor defects. That meant working with the Local Authority and Contractor to break deadlock and achieve a commercial outcome
- Advising a Housing Association on the conclusion of its framework agreements following extensive change and dispute during the course of the framework
- Multi Track trial in Bristol County Court successfully securing judgment for an unpaid Sub-Contractor
- Steering a developer client through the successful conclusion of a multi-phase/multi-unit resi scheme avoiding both adjudication and litigation despite a near total lack of traction with the procedures in the JCT contract used
- Representing a specialist M&E main contractor in adjudication proceedings brought by its specialist M&E Sub-Contractor concerning a very high profile retail development in the City of London
- Representing a specialist fire stopping contractor in an action brought by its Sub-Contractor concerning works on a new tower in the City of London. The matter was successfully resolved through mediation
- Junior in a matter with serial adjudications between a government agency based in Wales and its contractor who were attempting (but entirely failing) to use an NEC3 contract but left with an unresolved final account
- Advising a Developer/Contractor based in Essex in a series of disputes with its regular sub contractor across a series of new build projects in several jurisdictions. The case was successfully settled at mediation
- Advising a Herefordshire farmer in a case of contaminated feed caused by defective plant. Difficulties in establishing causation were overcome with an extensive Scott Schedule making reference to the expert vet's evidence. The matter was successfully resolved in mediation
- Frequent appearances representing clients chasing (or contesting) payment on commercial contracts and sale of goods/supply of services agreements
- Frequently acted on matters where High Court Enforcement Officers conduct of enforcement has been challenged and have appeared in the High Court and County Court for officers in such cases and on interpleader matters.

Before entering private practice James worked in-house in the construction and engineering sector for two of the leading construction consultancy companies in the UK.

Whilst an associate at Arup he led the team that advised the Office for Government Commerce on how JCT 2005, NEC3 and PPC 2000 standard form contracts measured against the Government's Achieving Excellence in Construction Agenda.

His experience as company secretary of one of the UK's foremost renewable energy businesses gave him experience of working for an innovative, entrepreneurial company that operated in a highly regulated market.

He has worked on construction projects and developments around the world as well as numerous high profile UK projects. He is a member of the RICS' ISURV editorial board for construction.

Whilst an Associate Director at Cyril Sweett he wrote "JCT 2005: What's New" published by RICS with subsequent editions for the 2011 contracts being published online by the RICS.

He contributed a chapter to the ICE's 2015 publication"NEC3 Compared and Contrasted" focusing on NEC consultancy contracts.

James is an accredited mediator and adjudicator and is a member of the Tecbar Adjudication Panel.

ADR/NCDR

James is an Accredited Mediator (London School of Psycotherapy and Counselling).

Articles

Avantage (Cheshire) Limited and others v GB Building Solutions Limited (In Administration) and others [2022] EWHC 171 (TCC)

Construction law barrister James Davison has reviewed the case of Avantage (Cheshire) Limited and others v GB Building Solutions Limited (In Administration) and others [2022] EWHC (TCC) for Lexis®PSL.

View Article

Curtiss and others v Zurich Insurance plc (t/a Zurich Building Guarantee and Zurich Municipal) and another [2021] EWHC 1999 (TCC)

Construction law barrister James Davison has reviewed the case of Curtiss and others v Zurich Insurance plc (t/a Zurich Building Guarantee and Zurich Municipal) and another [2021] EWHC 1999 (TCC) for Lexis®PSL.

View Article

3PB construction barrister James Davison – together with Anne Wright of Lawrence Stephens – has re-published a guide to selecting and using an expert witness in construction claims. The guide "To be or not to be an expert witness", which was originally published in Construction Law, provides practical guidance on selecting an expert witness, and advises witnesses how to behave once appointed.

'The expert witness's primary duty is to help the court and this duty overrides any duty which experts may have to those who are instructing or paying them' (see the Civil Procedure Rules 1998 (CPR) r 35.3 – 'An Expert's Duties'). The expert witness is not the decision maker – the role is to provide information to assist a third party – judge, arbitrator, and adjudicator – to decide a case before them. The danger of conflating the two roles has been well aired in case law. Similarly, case law on what constitutes expert evidence and what does not, and commentary on where expert evidence has gone awry, is rather too plentiful.

This excellent guide gives some background on the use of experts in construction, and provides practical pointers to both the appointment of an expert and to the expert, once retained.

View Article