



### **Overview**

39 Essex Chambers is home to leading construction barristers at every level of experience. Its barristers litigate, arbitrate and adjudicate the full range of construction matters, as well as advise on the drafting of EPC, civil engineering and consultancy contracts. Our clients are private companies and state entities based in the UK, Africa, Asia, Australasia, Europe, the Caribbean, the Middle East, North America and South America.

### **Adjudication and dispute boards**

Our barristers are involved in all aspects of adjudication and dispute boards at all levels of seniority, both in the UK and across the globe, and at every stage.

Many of our members are senior members of adjudicator panels, such as TECBAR, TeCSA, RICS, RIBA, FIDIC, HKIAC, SHIAC and IChemE. They accept appointments through ANBs, contractual pre nomination and ad hoc appointments.

Our members are also regularly appointed to dispute boards, DRBs and DABs / DAABs around the world. We also have a breadth of experience in work as counsel before such boards.

Our barristers are instructed to advise, settle referrals and other adjudication documents, and appear in hearings before adjudicators across

the entire range of construction and engineering disputes, from simple payment notice disputes to multi-million pound final account disputes arising out of high-profile infrastructure or building projects. In appropriate cases, counsel are willing to agree to fix fees for different parts of an adjudication.

Members of 39 Essex Chambers have been instructed in many of the leading and most high-profile court cases arising out of adjudications, during and after adjudication proceedings, in enforcement proceedings or in related disputes.

### **Related practice areas**

Uniquely among the leading set of chambers, 39 Essex Chambers can offer related specialist advice and advocacy services in the fields of energy, environmental, health and safety, insurance, procurement, property and regulatory law. We are familiar with the funding and partnering arrangements that have developed around large-scale projects and regularly advise on bonds, guarantees and indemnities.

### **Client Service**

39 Essex Chambers is recognised as a leading construction set by the international and domestic legal directories.

**Chambers & Partners 2019** says "*Chambers boasts a bench of impressive and experienced*

*construction barristers, complemented by an excellent wider offering at the set. It is well suited to handle all forms of construction disputes and has industry expertise in energy, utilities, infrastructure, PFI and PPP. Its client base includes contractors, subcontractors, developers, central and local government entities across the UK and elsewhere, notably Europe, the Caribbean, Middle East and Far East."*

**Legal 500** 2019 says that "39 Essex Chambers' construction team has 'strength in depth', with members often instructed by governments, contractors and construction professionals in international disputes."

#### Notable work

- **PBS Energo AS v Bester Generacion UK Ltd** [2019] EWHC 996 (TCC), 183 ConLR 52: enforcement of an adjudication decision which is allegedly tainted by fraud.
- **Gosvenor London Ltd v Aygun Aluminium UK Ltd** [2018] EWCA Civ 2695 - stay imposed due to risk of dissipation in context of fraud allegations; (g) added to Wimbledon v Vago principles.
- **Breyer Group PLC v Adam Michael Scaffolding Services** [2018] EWHC 3959(TCC) – summary judgment for over £2 million.
- **Spartafield Ltd v Penten Group Ltd** [2016] EWHC 317 (TCC), 165 ConLR 97 – adjudication enforcement: whether an adjudicator had jurisdiction to determine that the terms of the contract between the parties were different to the terms referred to in the notice of adjudication.
- **X v Y** – Representing the public sector partner in a £200m Estimated Fair Value adjudication, following the termination of a PPP agreement for the construction and operation of a Waste to Energy plant.
- **Manchester NHS Trust v Catalyst Healthcare v Lend Lease** – Representing the public sector partner in a £25m adjudication arising out of a dispute over the interpretation of an NHS PFI contract.
- **Stellite Construction Ltd v Vascroft Contractors Ltd** [2016] EWHC 792 (TCC), 165 ConLR 108 –

adjudication enforcement on grounds of natural justice; decision severed.

- **Bouygues v Febrey** (TCC) [2016] EWHC 1333 (TCC) - Enforcement of adjudication and rectification by construction of payment provisions.
- **Cofely Ltd v Bingham** [2016] EWHC 240 (Comm), 164 ConLR 39 - natural justice and 'repeat appointment' of an adjudicator.
- **A v B** (2015) – successfully defended main contractor from claim of RM180m by civil and structural works sub-contractor. Sub-contractor was awarded RM0.00. Largest CIPAA claim at that time – 1,000MW coal fired power plant project.
- **Lanes Group plc v Galliford Try Infrastructure Ltd** [2011] EWCA Civ 1617, 141 ConLR 46: 'Forum shopping' when an adjudicator is nominated; whether an adjudicator can or should give a provisional view.
- **Pilon Ltd v Breyer Group plc** [2010] EWHC 837 (TCC), 130 ConLR 90 – leading guidance on the adjudicator's obligation to take into account a defence or set off raised by the responding party.
- **Enterprise Managed Services Limited v East Midland Contracting Limited** [2008] EWHC 727 (TCC) – claim for reversal of adjudicator's decision arising out of the certification of practical completion.
- **R C Pillar & Son v The Camber (Portsmouth) Ltd** [2007] EWHC 1626 (TCC), 115 ConLR 102 -question of whether the adjudicator had been granted an ad hoc jurisdiction to resolve all matters between the parties.
- **CIB Properties Ltd v Birse Construction** [2005] 1 WLR 2252, [2004] EWHC 2365 (TCC) – 8-day trial of enforcement proceedings as to whether a dispute had crystallised.
- **Simons Construction Ltd v Aardvark Developments Ltd** [2003] EWHC 2474 (TCC); [2004] BLR 117; [2004] TCLR 2; 93 Con LR 114; [2003] CILL 2053; [2003] All ER(D) 482 (Oct) (TCC) – failure here to produce a decision within the required timescale did not deprive the adjudicator of jurisdiction.

Members of 39 Essex Chambers have been instructed in adjudications and dispute board matters involving the following:

- PFI / PPP adjudications for public sector partners, projectcos and contractors
- Local authority regeneration projects
- DRB disputes in Malaysia
- Chairing and panel member of dispute boards for major infrastructure developments in Europe, the Middle East, Asia and South America
- Infrastructure projects (including energy and transport)

## Construction and Commercial Group Practice Management team



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