



CONSTRUCTION, ENGINEERING AND  
INFRASTRUCTURE  
NEC CONTRACTS  
PUBLIC PROCUREMENT  
PROFESSIONAL NEGLIGENCE  
ENERGY, NATURAL RESOURCES AND UTILITIES  
TRANSPORT  
INFORMATION TECHNOLOGY AND  
TELECOMMUNICATIONS  
GENERAL COMMERCIAL

## Stephanie Barwise QC

Call Date: 1988, Silk: 2006 // sbarwise@atkinchambers.com

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### PRACTICE

Widely regarded as a leader in her field, Stephanie's expertise lies in civil engineering and construction disputes. Her practice is broad based and comprises construction, civil and geotechnical engineering involving landslip/subsidence and augured/bored piles, mechanical and electrical engineering and infrastructure projects including roads, bridges, mass transit railroads, on and off shore refineries and biofuels plants, ship building and refits, wind farms, IT problems in computer automated cranes and trains, and procurement including major PFI projects such as hospitals and schools. Her practice also extends to military equipment such as man-portable, automated bomb diffusing equipment, battleships and nuclear bunkers.

Stephanie appears as an advocate in the Technology & Construction Courts, the Commercial Court, the Chancery Division and the Court of Appeal as well as in international and domestic arbitrations. She also has considerable experience in alternative dispute resolution methods including adjudication and mediation, including acting as a mediator. She also sits as an arbitrator, including ICC such as a recent panel in relation to the design of one of the locks on the Panama Canal.

Amongst the first of the 1988 call to take silk, Stephanie has been consistently recognised as a leader in her field in legal directories such as Chambers and Partners UK Bar Guide and The Legal 500. Stephanie won "Construction Silk of the Year" in the Chambers and Partners UK Bar Awards 2019 and was included in The Lawyer's 'Hot 100' list for 2019.

Stephanie appeared for the manufacturer of both trains and the signal in the Ladbroke Grove Rail Inquiry. She is currently representing the larger of the two groups of victims (survivors, bereaved relatives and former residents of Grenfell Tower) in The Grenfell Tower Public Inquiry, a group represented by three firms of solicitors.

In 2019 she was appointed by the Board of one of the UK's largest volume housebuilders, Persimmon plc, to lead an independent review to assess its customer care, culture and operations, including

workmanship standards, which reported to the Board and the findings of which were published in December 2019.

Stephanie was appointed to the Board of the International Quality Building Centre in 2020.

Stephanie has represented the UK government and foreign governments, as well as a wide variety of other clients in high-value and complex claims. Key cases include: **BHC Ltd v Galliford Try Infrastructure Ltd (t/a Morrison Construction)** [2018] EWHC 368 (TCC) the development of a gas processing plant in the Laggan-Tormore fields off the Shetland Isles: one of the biggest UK construction projects at the time; **Vivergo v Redhall** [2013] EWHC 4030(TCC) establishing grounds for wrongful termination of contract based on inadequate contractual notices having been given; **R&C Engineers v Shaylor** [2012] EWHC 1254 establishing entitlement to set-off against an adjudicator's decision; seminal case establishing an adjudicator has no right to adjudicate an account of any net balance due on set-off under rule 4.90 of the Insolvency Rules (**Enterprise Managed Services v Tony McFadden Utilities** [2009] EWHC 3222(TCC)); and seminal case in the Court of Appeal on the ability to preserve a right of set-off despite settlement as cited in *Foskett on Compromise (London & Regional (St Georges Court) v MOD* [2008] EWCA civ 1212).

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## CONSTRUCTION, ENGINEERING AND INFRASTRUCTURE

Stephanie has been involved in cases concerning all aspects of building construction and civil engineering projects, including road and bridge building, representing contractors, employers and governments all over the world. She is fully conversant with the major standard form contracts used in the construction industry and has extensive experience of the issues arising in construction projects of all types including party wall disputes, easements and interference with rights of support. Her experience includes:

### INTERNATIONAL

- Acting for a Trinidadian contractor in a > \$100m dispute under six contracts (FIDIC) for the construction of roads and other infrastructure. Successfully resisted application in the Trinidadian High Court for interim payment of \$100m and applied to stay two of the contracts to enable consolidation with another action for fraud arising out of a cartel of which Namalco was a member. Successfully appeared in the Trinidad Court of Appeal to uphold the Judge's refusal of the stay to arbitration. *NAMALCO Construction Services Limited v Estate Management & Business Development Company Limited CV2016-01522 (Trinidad & Tobago)*
- Advised on the delivery of two aircraft carriers under a target cost incentive fee arrangement with no maximum price and a 50:50 shareline meaning that any cost overruns above the firm target cost are shared 50:50 with the Industrial Participants.
- Acting on a dispute concerning complex liquidated damages clause and defects in the construction of the fully computer-automated gantry cranes, the first of their kind in the world, (Hong Kong).
- Acting on a dispute concerning the adequacy of the concrete used in the construction of the docks and Port Rashid, (Dubai).
- Representing an Italian company at an ICC arbitration in its claim under its contract with an American engineering firm to recover additional monies for the installation of a pipeline on the

Ghanaian coast by a method known as “bottom pulling”; The engineer had made an error in its calculations making it impossible for the contractor to carry out its obligations, (Ghana).

- Representing at an UNCITRAL arbitration the Contractor responsible for a multimillion-euro refurbishment of a flagship hotel in Kiev. The project was let under four separate contracts subject to one overarching contract. Difficulties arose and the project became delayed. The principle issues were whether time had been put at large, the effect of a suspension of work by the contractor in accordance with the contract terms, and the Employer’s termination (and subsequent purported re-instatement) of the contract. There were also substantial claims against the contractor for defects in the design of the structural and mechanical and electrical works, and failure to achieve the acoustic specification. The contractor recovered substantial damages, (Ukraine).
- Representing a department of the Government of Trinidad in an ICC arbitration against a large American contractor arising out of the design and construction of a petrochemicals plant. Advising as to the proper construction of the two contracts (made with subsidiaries of the US contractor) for the carrying out of the works. Issues arose as to whether time had been put at large by the terms of those contracts, or whether the contractors were entitled to an extension of time, and in either case, loss and expense, whether the government department was entitled to damages for defective works. Those defective works included faults in electronic building management services, including control loops, (Trinidad).

## DOMESTIC

- Adjudication enforcement: **E7 Building Services Ltd v R G Carter Cambridge Ltd** [2018] EWHC 3977 (TCC).
- Resisting adjudication enforcement: **R&C v Shaylor** [2012] EWHC 1254.
- **Vivergo Fuels Ltd v Redhall Engineering Solutions Ltd** [2013] EWHC 4030 (TCC); [2013] All ER (D) 156 (Dec), obtaining a declaration that the employer had wrongfully terminated a contract for the design and construction of a biofuels plant, obtaining partial extension of time for delay caused by various issues including M&E variations. Case involved argument as to the sequence of the build of the M&E and other installations; whether sequential or bulk build.
- Obtaining a stay to Danish arbitration in the High Court on behalf of a Danish architect who had carried out work for a Russian national renovating a property in England. The issues included whether the arbitration clause was validly incorporated into the agreement, and whether the client was dealing as a consumer within the meaning of the consumer protection legislation and whether the arbitration agreement would be unfair within the meaning of the Act. The Court also considered whether the architect was entitled to be sued in his own domicile (Denmark) by reason of the Brussels Regulation.
- **Courtwell Properties Ltd v Glencore PF (UK) Ltd** [2014] EWHC (TCC) [2014] All ER (D) 107, Indemnity Costs.
- **Heifer International Inc v Christiansen and Ors** [2008] Bus LR Digest D49 (obtaining a stay to Danish arbitration).
- **R&C Engineers Ltd v Shaylor** [2012] EWHC 1254. Entitlement to set-off against adjudicator’s award.
- **Enterprise Managed Services v Tony McFadden Utilities** [2009] EWHC 3222(TCC).

- Advising/representing an employer claimant in High Court proceedings against contractors and the engineer for substantial damages in relation to the defective design/installation of a roller-compacted concrete floor in a distribution centre in East Yorkshire.
- Acting for an owner/developer in its claim against an engineer for failure to achieve the required acoustic performance in the development of new apartments/houses within an existing historic courtyard complex (3 Cups Yard: Old Schools, Holborn).
- Advising and representing at a series of arbitrations, a leading mechanical and electrical engineering sub-contractor in claims made against it by a contractor in relation to the design and construction of the shell and core of a co-location project for use by the Ministry of Defence. There had been various agreements supplemental to the main contract providing for the omission of outstanding work and making good defects. Issues arose as to both parties' rights and obligations under the agreements as varied including the extent of the sub-contractor's obligations to make good defective work/complete outstanding work, temporary disconformity and the extent of the sub contractor's design obligations and its entitlement to payment of the retention.
- Advising sub-contractor responsible for laying duct for fibre optic cable under Brighton Road as to its rights and liabilities under the sub-contract including the depth to which the duct was to be laid.
- Representing in the High Court a warehouse owner whose property had been destroyed by fire: the issue was whether fire had spread from a neighbouring property: whether the rule in **Rylands v Fletcher** applied.
- Representing, in the High Court, the designer of an award-winning light industrial estate comprising block work units clad in troughed sheet aluminium with green glass reinforced plastic service modules attached. The claim against the designer was that the glass reinforced service modules were negligently designed such that they had aged too rapidly and were also impractical. Castle Park, Nottingham.
- Representing the contractor at arbitration concerning its claim (under ICE clause 12) for significant additional monies arising out of the construction of an immersed tube tunnel with cut and cover approaches to the tunnel. The project also involved the construction of roads leading into and through the tunnel. The Conwy Crossing, Conwy Estuary, Wales.

Acting for the Government on numerous contracts (all arbitrations) including:

- The total refurbishment of six barrack blocks with provision for phased Completion; (R.A.F. Upper Heyford).
- A major road and bridge construction upon ICE terms - Clause 12 Claim; (Dinorwic By-Pass and A5 Glyn Bends).
- A major road construction upon ICE terms – including Clause 12 claim; (A12 Gorleston Relief Road).
- Advising the former British Coal Board as to its rights and liabilities under a contract giving it 10-year possession of a site.
- Advising the Ministry of Defence in claims for professional negligence arising out of the design of certain types of military installations.
- Advising the Ministry of Defence regarding the procurement of the design supply and

development of the man-portable, remotely-controlled land vehicle for use in war zones.

- Advising the Government on the acoustics work on the Aldermaston project.
- Advising the Ministry of Defence (MOD) in relation to various matters including significant claims for professional negligence against a design and build contractor for defects in the construction and mechanical and electrical engineering design at a property constructed for the MOD. Preliminary issues as to the legal effect of the various agreements between the MOD, developer and contractor including the nature and effect of an agreement to settle between the contractor and the developer upon terms that the contractor became entitled to the proceeds of any litigation as between MOD and the developer **London & Regional (St Georges Court) v MOD and Secretary of State for Defence** [2008] TCC EWHC 526 TCC.

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## PUBLIC PROCUREMENT

Stephanie advises public bodies and unsuccessful tenderers, in the UK and overseas, on all aspects of public and utilities procurement including the application of the Public Works, Services and Utilities Regulations 1991 and the Public Contracts and Utilities Contracts Regulations 2006, and the Public Contracts (Amendments) Regulations 2009 and remedies for their breach and the impact of EU law on the field. Examples include:

- Advising a major UK utility company as to the proper procedure for procurement by it of a programme of pipework repair and replacement under a Framework Agreement spanning a five year Asset Management Plan. Defending a claim brought in the High Court for breach of procurement rules, **Holleran v Haswell Holleran v Southern Trent Water** [2004] EWHC 2508 (Comm).
- Advising NHS trusts as to the procurement of new hospitals under PFI agreements. In one case a set of variations were to be funded separately out of a managed fund. Issues arose as to the process by which sums might be expended out of the fund, the evaluation process for ascertaining liability for certain changes which had occurred since BAFO and the baseline against which changes were to be measured.
- Has also advised an NHS Foundation Trust as to whether some allegedly varied work which arose after Financial Close was truly varied work or mere design development which, under the contract, did not qualify as varied work attracting additional remuneration.
- Also advised an NHS Trust re: the adequacy of the reverse osmosis water system in the cancer and renal units, including advice as to the role and responsibility of the Independent Tester.
- Advised another NHS Trust as to the adequacy of the design and construction of the hot and cold water system and whether the water is contaminated by a pathogen *Pseudomonas A* and/or other bacteria, and as to whether deductions made by Trust on the grounds of lack of availability were justifiable. Also advised the Trust regarding defects in the design of the ventilation system and whether they justify defects being made on the grounds of lack of availability. Also assisting Trust in defending a delay and disruption claim.
- Advising an NHS Trust covering several hospitals as to whether it was entitled to omit specific services to be provided under the Project Agreement; whether Trust might carry out the omitted services in-house or have them procured by others and whether such omissions would require new procurement procedures of either the Project Agreement and/or the omitted services. Also

advised as to the implications of the disposal of surplus land by Trust as ancillary to the Project Agreement. Also advised as to the proper construction of the service level specification insofar as it provided timescales for the permanent repairs.

- **Laing O'Rourke v Newcastle Support NHS Foundation Trust** [2014] EWHC 2595 (TCC), Defending the Contractor's application for declarations re the state of completeness required for Practical Completion. One of the issues relied on by the Trust as preventing completion was the adequacy of the mechanical ventilation.
- Assisting a UK contractor in its negotiation of a framework agreement for consultancy services to be provided to an airline industry body in respect of all UK airports.
- Advising an agency of the Government of Trinidad as to various aspects of the procurement process of a 15-20 million US dollar project for the construction of the Trinidad Rapid Rail Transit to allow mass rail transit across Trinidad.
- Advising the Ministry of Defence regarding the procurement of the design supply and development of the man-portable, remotely controlled land vehicle for use in war zones.
- Advising contractors and procuring authorities as to their potential rights and liabilities under NEC2 and NEC3 contracts.
- Advising a local authority as to whether it had a claim against the contractor and/or Project Manager appointed under an NEC3 contract for the design and construction of an innovative design of bridge.

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## PROFESSIONAL NEGLIGENCE

Stephanie has a great deal of experience in the professional negligence field, acting for claimants, defendants and their indemnity insurers in relation to claims brought against a wide range of construction industry professionals and solicitors. Case examples include:

- Acting for Ove Arup & Partners concerning the reconstruction of Grade II listed building involving retention of much of the Edwardian facade and extensive new construction. The principal issue was whether the engineer had been professionally negligent in certain calculations, **Whiteleys Shopping Centre and Cinema Complex, Bayswater, London**.
- Representing a local authority at arbitration in its claim against the architect for damages for breach of contract. The claim included a claim for negligence against the architect in its cost reporting role (which involved detailed analysis of the quantity surveyor's monthly cost reports/projections and the architect's approval of those) for a very significant overspend relating to the redevelopment of a cultural quarter, including regency theatre, within the city.
- Representing the Local Authority in the High Court in its claim for damages against the contractor which had, in breach of contract substituted the specified welsh slates for a cheaper Spanish equivalent at Merseyside Docks. The Local Authority succeeded in recovering substantial damages.
- Advising a prestigious firm of architects in relation to a claim for professional negligence against them (and their counterclaim for fees) in relation to the redevelopment/reinstatement of a church and private dwelling house in Chelsea, London. The principal issues were whether the architect had been negligent and whether there had been contributory negligence by the employer and/or

a break in the chain of causation by reason of a settlement agreement reached between the employer and the contractor whereby Practical Completion had been deemed to occur prematurely to facilitate handover to the employer.

- Defending in High Court Proceedings an engineer against claims for damages in respect of various aspects of his design of structural elements of a manor house and fitness complex in Yorkshire.

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## ENERGY, NATURAL RESOURCES AND UTILITIES

Stephanie has experience of both domestic and international disputes regarding the design and construction of oil rigs, on and offshore pipe-laying, offshore wind farms and waste to energy plants. Case examples include:

- Representing in the Commercial Court a utility company (a licensee under the Water Act 1991) and one of its sister engineering companies in claims brought against them by a contractor who had been disappointed in the procurement process (governed by the Utilities Regulations 1996) applied by the utility company for its list of qualified contractors competent to carry out the specialised mains/pipe renewal within a specified period, **Holleran v Southern Trent Water** [2004] EWHC 2508 (Comm).
- Representing the operator of the vessel concerning High Court proceedings arising out of the conversion of a vessel, *Anasuria*, into a floating production unit in North Sea. The case involved several contractual issues including exclusion clauses, variations and a contractor's delay claim.
- Representing the contractor in its claim in the High Court by a contractor for costs arising from the design and construction of floating production units (conversion of a former vessel to an oil rig) in the North Sea. The issues concerned whether it was defective and the significance of defects.
- Representing (in High Court Proceedings) two developers involved in the construction of an offshore wind farm near Norfolk. She successfully defended both companies on the grounds that they had not become parties to a Joint Venture Agreement so as to become jointly and severally liable with others, **Enertrag (UK) Ltd v Sea and Land Power and Energy Ltd** [2003].
- Advising a waste disposal company regarding a defective boiler system designed to incinerate hospital waste and thereby generate a stipulated level of steam to drive a turbine.
- Advising and assisting a power generating company at a CEDR mediation against a major electrical power supply company arising out of an alleged significant.
- Advising on the contractual issues relating to the design and construction of an integrated waste treatment facility.

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## TRANSPORT

Stephanie has extensive experience advising governments and contractors on issues arising from the design and construction of rail and mass transit projects and infrastructures. This includes acting on disputes involving a variety of communication and signalling systems on over ground and underground rail networks. She has acted on several high-profile matters such as the Ladbroke Grove Rail Inquiry. Examples of her work include:

- Representing London Underground in an adjudication arising out of a claim against LUL for very significant damages as alleged variations to a PPP contract for the upgrade of the signalling on the Jubilee and Northern lines.
- Advising an agency of the Government of Trinidad as to various aspects of the procurement process of a US\$ 15-20million project for the construction of the Trinidad Rapid Rail Transit to allow mass rail transit across Trinidad.
- Acting for Adtranz (manufacturers of both trains involved in the Ladbroke Grove crash) and Adtranz Signals (manufacturer and installer of the signal in question passed at danger). Both companies were fully exonerated by the Inquiry.
- Representing a major contractor in its claims concerning railway working practices and communications systems involving the Tyne and Wear Metro extension.
- Advising a major contractor regarding the terms of its contracts with other members of a consortium tendering on the proposed London Underground maintenance restructuring (prior to the successful application for judicial review).
- Advising and representing a major European lessor of locomotives in claims against the German manufacturer for defects in several fleets of locomotives relating to various mechanical faults in the gearboxes, turbochargers and coupling elements.
- Advising a major contractor (acting as sub-contractor) specialising in the design and supply of signalling and other equipment for use on London Underground trains in relation to an arbitration against the main contractor.
- Advising Cunard, the operator of QE2 concerning the proceedings arising out of the total refurbishment of Queen Elizabeth II and replacement of propellers carried out by German contractors.
- Advising a defence contractor on its rights and liabilities arising out of a target cost incentive fee contract for the procurement of two battleships.

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## GENERAL COMMERCIAL

In addition to the specialised areas above, Stephanie is also frequently instructed on general commercial disputes arising on varied issues (such as bonds and warranties and payments made under mistake of fact/restitution and defence of change of position). Examples include:

- Advising an electricity generating company as to its ability to retain sums paid to it in error but not claimed back promptly in circumstances giving rise to a defence of change of position.
- Advising a major international bank which was constructing new premises in Hong Kong, concerning whether architect's certificate effective to trigger a bond given by contractor's parent company on a proper construction of the certificate and the bond.
- Advising a contractor as to its rights (including entitlement to an injunction) and liabilities concerning an on-demand performance bond which had been called by the employer in circumstances where the call was questionable and involving jurisdictional issues as the call was made by a Russian contractor on an Italian Bank in circumstances where there was an exclusive jurisdiction clause giving the Russian Courts jurisdiction and making the governing law Russian

Federal Law.

- Representing in the Chancery Division a purchaser of locomotives for use all over Europe in Part 8 proceedings as to whether the document under which it had made a call against a parent company was properly construed as a guarantee or an on-demand performance bond; **Alpha v Vossloh** [2010] EWHC 2443 (Ch).
- Representing a contractor in the Court of Appeal on the issue of whether the employer was entitled to set-off sums due to the contractor under a separate contract; **Geldof v Simon Carves Ltd (CA)** [2010] EWCA Civ 667.
- Advising a major UK homebuilder as to “no loss” transactions and validity of execution of various contracts purportedly executed by deed.

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## QUALIFICATIONS AND AWARDS

2020	IBQC (International Building Quality Centre) Board Member
2014	Chair of Middle Temple Estates Committee
2010	Bencher of Middle Temple
2006–date	Teacher for Middle Temple’s Advocacy for New Practitioners Programme
2006	Appointed Queen’s Counsel
2001-2003	Member of the Professional Conduct and Complaints Committee
1996–1997	Secretary of ORBA (Official Referees’ Bar Association) now Tecbar
1989	Middle Temple Benefactors’ Scholarship
1988	Called to the Bar of England and Wales
1986	Middle Temple Harmsworth Entrance Exhibition
1986–1987	Master of Laws degree. (LLM)
1983–1986	Downing College Cambridge - Honours Degree in Law (MA)

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## ADDITIONAL INFORMATION

Stephanie is fluent in French and competent in German.

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## RECENT RECOMMENDATIONS

*"Stephanie has the ability to make even the most stressed client feel at ease, which, combined with her superb advocacy, makes her a number one choice." "She is first-class and very professional in her approach. We have absolute confidence in her advice and ability to look after us."*  
*Construction, Chambers UK Bar 2020*

*"She is highly experienced, very practical and turns things around quickly."*

# AtkinChambersBarristers

Professional Negligence, Chambers UK Bar 2020

*"Excellent, a standout star."  
Construction, The Legal 500 2020*

*"Very knowledgeable and extremely good with clients."  
Professional Negligence, The Legal 500 2020*

*"She's got an excellent legal mind, delivers on time and is excellent at meetings and in court." "She produces very good written advice and is good in conference."  
Construction, Chambers UK Bar 2019*

*"She gives very good advice in clear-cut, black-and-white answers and is very approachable."  
"She has an excellent legal mind."  
Professional Negligence, Chambers UK Bar 2019*

*"She is very 'hands-on' and provides clear, firm views – excellent in conference and on her feet."  
Construction, The Legal 500 2019*

*"Extremely reliable and never ever lets the client down."  
Professional Negligence, The Legal 500 2019*

*"A leading specialist in construction who provides excellent service which is clear, concise and to the point." "Brings an enormously energetic and enthusiastic approach to her work and is very much liked by clients. Her advice is clear and she understands the commercial context."  
Construction, Chambers UK Bar 2018*

*"Knowledgeable, precise and willing to debate the client's commercial strategy."  
Construction, The Legal 500 2017*

The above are a selection of recent client endorsements from the leading legal directories, both UK and internationally. For a complete list of endorsements, please contact the practice management team at Atkin Chambers.