



CONSTRUCTION, ENGINEERING AND
INFRASTRUCTURE
ENERGY AND UTILITIES
PROFESSIONAL NEGLIGENCE
ADJUDICATION, ARBITRATION AND MEDIATION
GENERAL COMMERCIAL, COMPANY AND
INSOLVENCY

Max Twivy

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PRACTICE

Max joined Atkin Chambers as a tenant in 2019. He has gained experience at all stages of litigation, adjudication and arbitration, encompassing a variety of bespoke and standard form contracts including JCT, NEC and ACE forms, as well as PFI contracts. Max has also gained experience in a broad range of general commercial work.

Max's recent instructions have included appearing as sole counsel in the High Court and County Court, including in full trials. Max is currently instructed as junior counsel in two high-value international arbitrations concerning major airport and rail projects in the Middle East, as well as in a TCC claim relating to a large London residential development. Max recently undertook a secondment in the construction disputes team of an international law firm, gaining an insight into the commercial pressures faced by parties involved in disputes.

Prior to commencing practice, Max graduated from Cambridge University with a starred double first in History. He ranked first in the country in two consecutive years at law school. Max won first prize in the SCL Hudson Prize 2018 and has been published in the International Construction Law Review.

CONSTRUCTION, ENGINEERING AND INFRASTRUCTURE

- Appeared as sole counsel for the successful applicant in a TCC application for a final charging order arising out of enforcement of an adjudication decision: **Blacknest Gate Ltd v Semour Realty Ltd** [\[2020\] 9 WLUK 313](#).
- Appeared as junior counsel for the successful applicant in a TCC security for costs application: **Dimension Data Advanced Infrastructure Ltd v Berkeley Homes Plc** [\[2020\] EWHC 1328 \(TCC\)](#).

- Appeared as sole counsel in the High Court on various matters, including successfully obtaining an interim injunction for a contractor, obtaining an indemnity costs order.
- Acting as junior counsel in a multi-billion-dollar arbitration regarding a major airport in the Middle East, and in a high-value arbitration relating to a major Middle East rail project.
- Acting as junior counsel in a TCC claim relating to a post-termination final account under an M&E contract.
- Regular appearances in the County Court, including: in a full trial relating to defective work; applying to set aside Default Judgment in a structural engineering dispute; and objecting to a Final Charging Order.
- Drafted Defence and Counterclaim in a TCC claim relating to termination and defects on a development.
- Drafted Particulars of Claim in a TCC claim relating to a defective car park, and in a dispute concerning the defective design of M&E works for a swing bridge
- Drafted amendments to a Defence and Scott Schedule in a TCC claim relating to student accommodation.
- Drafted Defence to a claim for negligence, nuisance, trespass and breach of the Party Wall Act.
- Drafted Defence on behalf of a bank in a claim relating to a call on a performance bond.
- Drafted skeleton arguments for: a summary judgment application; a preliminary issue trial regarding contractual responsibility for design works; permission to appeal a TCC judgment.

Max has drafted advices on numerous procedural and legal matters including: limitation periods; transfer of proceedings; preliminary issues; disclosure lists; jurisdiction and governing law; assignment; a standstill agreement; merits of a claim against an Approved Inspector; effect of partial possession; procedure for obtaining a costs certificate; charging orders; effect of tiered dispute resolution provisions; independent contractor defence and non-delegable duties; variations under a contract for asbestos removal; application of UCTA; and effect of a limitation clause.

Max has advised on a number of matters relating to guarantees and bonds in a construction context, including valid execution as a deed, lack of consideration, and when/how a call on a guarantee instrument can be made.

Max also has experience of PFI work, including drafting a skeleton argument contesting jurisdiction in a PFI dispute relating to road maintenance, and advice on limitation in a PFI dispute regarding defective cladding.

ENERGY AND UTILITIES

- Drafted skeleton and grounds for appeal of a TCC judgment regarding a biomass energy plant.
- Drafted Defence & Counterclaim in a claim relating to shutdowns in oil production of an FPSO.
- Drafted advice on the defective design of parts of a waste processing/anaerobic digestion plant.

- Drafted arbitration memorial relating to a power purchase agreement.
 - Drafted advice on retention of title clauses in a contract for the supply of solar panels.
 - Drafted Defence and RFI in a claim relating to the Carbon Emissions Reduction Target scheme.
 - Drafted advice for an offshore windfarm developer regarding its rights to carry out surveys and injunctive relief.
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PROFESSIONAL NEGLIGENCE

- Acting as junior counsel in a multi-billion-dollar international arbitration on behalf of an architectural and project management firm, in a professional negligence dispute regarding a major airport in the Middle East.
 - Drafted Particulars of Claim in a TCC claim against an engineer and D&B contractor relating to a car park.
 - Drafted Particulars of Claim alleging negligent design of a bridge by mechanical engineers.
 - Drafted skeleton argument for a defendant's application for strike out/summary judgment on the basis of a lack of expert evidence supporting a professional negligence claim against a construction manager.
 - Drafted Defence and Contribution Notice in a negligence claim regarding septic tanks.
 - Drafted advice on measure of damages and the SAAMCO principle in a claim against a consulting engineer.
 - Drafted Defence in a defective design claim against architects regarding balcony soffits.
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ADJUDICATION, ARBITRATION AND MEDIATION

- Acting as junior counsel in a \$2 billion arbitration in a dispute over the design, procurement, and construction of a major airport in the Middle East. Individually responsible for producing the response to one section/package of the Statement of Defence and Counterclaim relating to passenger boarding bridges.
- Acting as junior counsel in a high-value arbitration relating to a major Middle East rail project.
- Instructed as junior counsel (drafting memorial statements of claim) in three arbitrations relating to MEP works in the construction of malls and a luxury resort in the Arabian Peninsula.
- Appeared for the successful applicant in a charging order application in TCC adjudication enforcement proceedings: **Blacknest Gate Ltd v Seymour Realty Ltd** [\[2020\] 9 WLUK 313](#).
- Drafted Part 8 TCC claims seeking declaratory relief relating to an adjudicator's jurisdiction, regarding: the conclusiveness of a final account; and the effect of a previous decision.
- Drafted skeleton argument for an application to enforce a final account adjudication decision.
- Drafted adjudication referrals/responses, including for an employer's 'smash and grab' claim.

- Drafted advices on: resisting enforcement of an adjudication decision on the grounds of non-crystallisation of a dispute; severance of part of a decision; set-off; the jurisdiction of one adjudicator to revisit a decision made in a previous adjudication; the effect of adjudication clauses which are non-compliant with the Scheme; options for a claimant where enforcement had been made subject to an unconditional stay.
- Drafted arbitration memorial relating to a power purchase agreement.
- Drafted skeleton argument for a stay under s.9 Arbitration Act 1996.
- Drafted mediation position statement in a negligence/nuisance claim relating to building works.

GENERAL COMMERCIAL, COMPANY AND INSOLVENCY

- Appeared as sole counsel in the High Court Senior Courts Costs Office, successfully obtaining a charging order enforcing sums due under Default Costs Certificates, in proceedings relating to the compulsory purchase of land by an acquiring authority.
- Appeared as sole counsel in the High Court (Insolvency and Companies List), successfully obtaining an interim injunction to restrain the presentation of a winding-up.
- Appeared in the Companies Court Winding Up List to apply for a winding-up order.
- Appeared as sole counsel in the Chancery Division, obtaining an indemnity costs order.
- Regular appearances in the County Court, including in an RTA trial and to resist a Final Charging Order.
- Drafted a Defence to a payment claim by a PR company following termination of its contract.
- Drafted Defence on behalf of a bank to a claim calling on a performance bond.
- Advised on the drafting of a Settlement Agreement and a Standstill Agreement.
- Drafted advice for a purchaser under a contract for the sale of a hotel.
- Drafted skeleton argument resisting summary judgment in a claim under a vehicle credit hire agreement.
- Various insolvency matters, including: advising on an appeal against a decision on a creditor's proof of debt; and drafting skeleton argument for a stay on the basis that the defendant had entered voluntary liquidation.

Max has also drafted advice on numerous procedural and commercial, company and contract law matters, including: bonds and guarantees; contractual interpretation relating to various insurance policies; jurisdiction and governing law; limitation; agency; ratification; retention of title in goods and s25 of the Sale of Goods Act; the prospects of obtaining an interim injunction; Environmental Impact Assessment requirements; transfer of proceedings between courts; preliminary issue applications; and disclosure lists.

QUALIFICATIONS AND AWARDS

2018	SCL Hudson Prize, 1 st prize; Times Law Awards, runner-up
2017-2018	Bedingfield Scholar, Gray's Inn
2017-2018	Bar Professional Training Course, BPP Law School, Outstanding (ranked 1 st in country)
2016-2017	Graduate Diploma in Law, BPP Law School, Distinction (ranked 1 st in country)
2013-2016	University of Cambridge, Trinity College, History BA (Hons), Starred Double First Ranked 2 nd in year in Part I, 3 rd in Part II, ranked 1 st on aggregate Faculty of History Prize for Outstanding Performance Earl of Derby Prize for highest distinction in History, Trinity College James Webb Prize for the History of Ideas Gordon Duff Prize, Cambridge University Library Bowen Prize and Greaves Prize, Trinity College; Senior Scholarship, Trinity College

LEGAL TEXTS

'The Prevention Principle After North Midland v Cyden Homes: Time for Change?' [2019] *International Construction Law Review* 375.

ADDITIONAL INFORMATION

Max spent a week marshalling judges in the TCC in April 2019. In late 2019, he undertook a secondment in the construction disputes team of an international law firm.